

Participating Organizations

Alliance for a Living Ocean
American Littoral Society
Arthur Kill Coalition
Asbury Park Fishing Club
Atlantic Highlands Arts Council
Bayside Regional Watershed Council
Bayshore Saltwater Flyrodgers
Belford Seafood Co-op
Belmar Fishing Club
Beneath The Sea
Bergen Save the Watershed Action Network
Berkeley Shores Homeowners Civic Association
Cape May Environmental Commission
Central Jersey Anglers
Citizens Conservation Council of Ocean County
Clean Air Campaign, NY
Clean Water Action
Coalition Against Toxics
Coalition for Peace & Justice/Unplug Salem
Coastal Jersey Parrot Head Club
Communication Workers of America, Local 1075
Concerned Businesses of COA
Concerned Citizens of Bensonhurst
Concerned Citizens of COA
Concerned Citizens of Montauk
Eastern Monmouth Chamber of Commerce
Environment NJ
Fishermen's Conservation Association, NJ Chapter
Fishermen's Conservation Association, NY Chapter
Fishermen's Dock Cooperative, Pt. Pleasant
Food and Water Watch, NJ
Friends of Island Beach State Park
Friends of Liberty State Park, NJ
Friends of the Boardwalk, NY
Garden Club of Allenhurst
Garden Club of Bay Head and Mantoloking/Seaweeders
Garden Club of Belle/Bayberry
Garden Club of Englewood
Garden Club of Fair Haven
Garden Club of Long Beach Island
Garden Club of RFD Middletown
Garden Club of Morristown
Garden Club of Navesink
Garden Club of New Jersey
Garden Club of New Vernon
Garden Club of Oceanport
Garden Club of Princeton
Garden Club of Ridgewood
Garden Club of Rumson
Garden Club of Sea Girt/Holly
Garden Club of Short Hills
Garden Club of Shrewsbury
Garden Club of Spring Lake
Garden Club of Terra Nova
Garden Club of Washington Valley
Great Egg Harbor Watershed Association
Green Party of Monmouth County
Green Party of New Jersey
Highlands Business Partnership
Hudson River Fishermen's Association
Jersey Shore Captains Association
Jersey Shore Parrot Head Club
Jersey Shore Partnership
Junior League of Monmouth County
Keyport Environmental Commission
Kiwamis Club of Shadow Lake Village
Leonardo Party & Pleasure Boat Association
Mantoloking Environmental Commission
Marine Trades Association of NJ
Monmouth Conservation Foundation
Monmouth County Association of Realtors
Monmouth County Audubon Society
National Coalition for Marine Conservation
Natural Resources Protective Association, NY
NJ Beach Buggy Association
NJ Environmental Lobby
NJ Friends of Clearwater
NJ Marine Education Association
Nottingham Hunting & Fishing Club, NJ
NYC Sea Gypsies
NY Marine Education Association
NY/NJ Baykeeper
Ocean Wreck Divers, NJ
PaddleOutLong
Piscataway Saltwater Sportsmen Club
Raritan Riverkeeper
Religious on Water
Rotary Club of Point Pleasant
Rotary District #7540—Interact
Saltwater Anglers of Bergen County
Sandy Hook Bay Anglers
Save Barnegat Bay
Save the Bay, NJ
SEAS Monmouth
Shark Research Institute
Shark River Cleanup Coalition
Shark River Surf Anglers
Sierra Club, NJ Shore Chapter
Sisters of Charity, Maris Stella
South Monmouth Board of Realtors
Staten Island Tuna Club
Strathmere Fishing & Environmental Club
Sunrise Rod & Gun Club
Surfers' Environmental Alliance
Surfider Foundation, Jersey Shore Chapter
Surfider Foundation, South Jersey Chapter
TACK I, MA
Unitarian Universalist Congregation/Monm. Cnty.
United Boatmen of NY/NJ
Viking Village
WATERSPIRIT
Women's Club of Beck Township
Women's Club of Keyport
Women's Club of Long Branch
Women's Club of Merchantville
Women's Club of Spring Lake
Zen Society, NJ



Ocean Advocacy
Since 1984

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May 2, 2019

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P.O. Box 420
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Submitted Electronically

RE: Comments on Northeast Supply Enhancement Project Individual Permits Pending before the New Jersey Department of Environmental Protection

Dear Mr. Resnick,

Clean Ocean Action, Inc. ("COA") submits these comments in opposition to the pending applications before the New Jersey Department of Environmental Protection ("DEP") relating to the Williams/Transco's Northeast Supply Enhancement ("NESE") project proposal. Specifically these comments focus on the requirements under the (1) Coastal Wetlands permit application, (2) Flood Hazard Area permit application, (3) Waterfront Development permit application, (4) Clean Water Act and Water Pollution Control Act, (5) Coastal Zone Management Act, (6) and the Tidelands Act and Shore Tourism and Ocean Protection Act, as well as other laws and regulations.

Clean Ocean Action (COA) is a broad-based coalition of 115 conservation, environmental, fishing, boating, diving, religious, student, surfing, women's, business, civic and community organizations dedicated to the improvement of water quality and defending the marine ecosystem in the region from Montauk, NY to Cape May, NJ.

These comments are also submitted on behalf of the Belford Seafood Cooperative Association, United Seacoast, and Clean Water Calm Company. These organizations are described in these comments and will be significantly harmed if this project is approved.

Based on a thorough review of the applicable laws, regulations and facts surrounding the proposed project, the DEP has the clear authority to regulate this pipeline. This project offers absolutely no benefit to the state of New Jersey or its residents. It violates numerous standards created for the protection of the natural environment, water quality, marine life, and public health and welfare. Given that the project fails to meet the applicable environmental standards and legal requirements, the project is meritless. Therefore, the DEP must in fact reject this project under the above mentioned laws and regulations.

Section one of these comments will focus on the clear authority the DEP has over the project under the various statutes, regulations, and rules. Section two will outline the

clear legal violation surrounding the proposed project under New Jersey law and regulations.

Section One: The Department of Environmental Protections Jurisdiction

I. Statutory and Regulatory Authority Over the Proposed NESE Pipeline

It is *clear* that the DEP has both the jurisdiction to review the pipeline under both federal law and state law. While the Natural Gas Act does preempt state environmental regulations of interstate natural gas pipelines, the Act specifically allows for state participation and review under the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, and applicable state laws and regulations.

The DEP was statutorily given the power to enforce State air pollution, water pollution, conservation, water quality, and environmental protection through promulgated rules, regulations, and approved federal plans.¹ In reviewing the project, the DEP must evaluate the proposal through the lens of its legislative charge of “formulat[ing] comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the state.”²

For the NESE pipeline the DEP has authority under (A) The Clean Water Act, (B) The Coastal Zone Management Act, and (C) state statutes and regulations, to deny this proposal for its failure to comply with environmental protections.

A. Clean Water Act

Under the Clean Water Act, the U.S. EPA is responsible for limiting the discharge of pollutants into water bodies.³ The act requires states to establish water quality standards that must be at least as stringent as minimum federal requirements.⁴ The U.S. EPA must approve the state’s water quality standards.⁵

A major provision of the Clean Water Act is Section 404, which requires a permit for any proposed activity that may result in the discharge of dredge or fill materials into the navigable waters of the United States.⁶ Typically, the U.S. Army Corps of Engineers are responsible for issuing Section 404 permits.⁷ However a state may assume authority to administer these permits.⁸ New Jersey has assumed authority to issue Section 404 permits and delegated administration of the permitting program

¹ N.J.S.A 13:1D-9(n)

² N.J.S.A 13:1D-9

³ 33 U.S.C. 1311

⁴ 33 U.S.C. 1313

⁵ *Id.*

⁶ 33 U.S.C. 1344

⁷ *Id.*

⁸ 33 U.S.C. 1341

to the DEP, which exercises this authority pursuant to the New Jersey Freshwater Wetlands Protection Act and Coastal Zone Management Rules.⁹

Section 401 of the Clean Water Act requires the issuance of a Water Quality Certificate to establish that a given proposal will comply with federal discharge limitations and state water quality standards.¹⁰ Unlike the Section 404 permit, the Water Quality Certificate is by default a state permit, and the issuance and review of a Water Quality Certificate is left to the state.¹¹ Since the State of New Jersey assumed permitting authority under Section 404, the issuance of a Section 404 permit in New Jersey carries with it a Section 401 Water Quality.¹²

Therefore, the issuance of the pending permits currently being reviewed by the DEP, also implicitly carry authorization under the Clean Water Act Sections 404 and 401.

B. Coastal Zone Management Act

The Natural Gas Act specifically provides for the protection of rights granted to the states under the Coastal Zone Management Act of 1972 (“CZMA”).

Direct federal activities that are within the state’s coastal waters and affect the coastal zone are always subject to consistency requirements. Coastal states must develop a list of federally licensed or permitted activities that affect coastal uses or resources, but may also review unlisted activities. In addition, if federal activities occurring in one state’s lands or waters affect the uses or resources of another state’s coastal zone, consistency review may also be applicable. If the latter state has an approved list of federal activities that will be routinely subject to review, that includes geographic locations, then it can review listed and unlisted activities for consistency.

New Jersey’s enforceable policies are intended to protect natural resources and the environment, including the preservation and enhancement of beach and dune systems and wetlands, open space, and views of the coastal landscape, by managing activities affecting the coastal zone.

Therefore, the proposed Williams NESE pipeline must comply with the enforceable policies of the State of New Jersey as outlined in the approved Coastal Zone Management Plan.

C. New Jersey State Law

⁹ See, N.J. Stat. Ann. 13:9B-1-30; 33 N.J. Reg. 3045(a); N.J. Admin Code 7:7A-2.1(c); Memorandum of Agreement between the New Jersey Department of Environmental Protection and the United States Environmental Protection Agency (1993).

¹⁰ 33 U.S.C. 1341(a)(1)(d)

¹¹ See, e.g. *Lake Erie All. For Prot. Of Coastal Corridor v. U.S. Army Corps of Eng’rs*, 526 F. Supp. 1063, 1074 (W.D. Pa. 1981).

¹² N.J. Admin. Code 7:7A-2.2(c)-(d)

Under the Coastal Area Facility Review Act (, N.J.S.A. 13:19-1 et seq.), Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and the Waterfront Development Act (N.J.S.A. 12:5-3), Williams/Transco must receive an individual permit for the construction of the pipeline.¹³ Individual permits are subject to the above mentioned laws and the criteria established in the Coastal Zone Management Rules.¹⁴ The rules are also used in the review of water quality certificates subject to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341, and Federal consistency determinations under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. § 1456.¹⁵

The water quality standards outlined in the Coastal Zone Management Rules also include the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act, (N.J.S.A. 58:10A-1 et seq.).¹⁶

The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases, and licenses. Leases or grants for offshore oil and gas pipeline and infrastructure within the submerged lands and/or tidelands of the state are also subject to the requirements of the Shore Tourism and Offshore Protection Act.¹⁷ Finally, there are other laws and regulations, such as air quality standards which the DEP also contains jurisdiction over.

II. Importance of Using State Authority to Deny the Project in the Wake of Federal Attempts to Limit Jurisdiction.

As stated above, New Jersey and the DEP have clear legal authority over this project under numerous statutes and mechanisms. However this jurisdiction is currently being attacked. The recent executive order *Executive Order on Promoting Energy Infrastructure and Economic Growth*, signed on April 10, 2019, seeks to limit state authority over federal pipelines despite the environmental impacts to state resources.¹⁸ The order specifically seeks to limit state authority to protect environmental resources through Section 401 of the Clean Water Act¹⁹. Currently, the executive order does not revoke state authority, but directs the United States Environmental Protection Agency (“EPA”) to review which sections need clarification or revision to be consistent with the goal of efficient pipeline development.²⁰

Therefore, the federal government has only begun a process by which to remove state jurisdiction over federal pipelines like the NESE project which will result in clear and direct environmental degradation.

¹³ N.J. Admin. Code 7:7-1.1(a)

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ E.O – *Promoting Energy Infrastructure and Economic Growth*. (April 10, 2019). Available at <https://www.whitehouse.gov/presidential-actions/executive-order-promoting-energy-infrastructure-economic-growth/>

¹⁹ *Id.*

²⁰ *Id.*

The DEP continues to have a duty to enforce its current regulations governing Section 401 of the Clean Water Act and should exercise its authority to deny this dangerous project to send a message to the federal government about the importance of state authority over its environmental resources.

III. Conclusion

Thus, not only does the DEP have specific authority to review the proposed project, but under the consolidated rules outlined in the Coastal Management Plan, the state has ample authority to deny the project based on its environmental impacts which violate state and federal standards. We urge the DEP to utilize its authority, which the federal government is attempting to revoke, to deny this unnecessary and dangerous project.

Section Two: Clear Violations of Environmental Protections

Having established that the DEP has the authority to regulate the proposed NESE Pipeline, it is clear that under the statutory and regulatory authority of the Department, the project fails to meet environmental standards necessary for approval.

Specifically, the project is unlawful for violations under the: (I) Shore Tourism and Ocean Protection Act, (II) Special Area rules, (III) General Water Area rule, (IV) General Location rules, (V) Water Dependency Requirement, and (VI) Protections for Fish and Fisheries. Moreover, this section will also outline (VII) the numerous investments made in improving the Raritan Bay and how the approval of the pipeline will undo that investment.

I. The Regulated Activity is Unlawful under the Recently Enacted Shore Tourism and Ocean Protection Act.

First and foremost, COA argues that the project in its entirety is unlawful under the recently enacted Shore Tourism and Ocean Protection Act (“STOP Act”). The legislative findings of the STOP Act specifically note that oil and natural gas development in New Jersey state waters pose a “serious and unacceptable risk to the coastal resources of the State, the water quality of State waters, and the continued viability of the State’s shore tourism and commercial fishing.”²¹

The law specifically prohibits natural gas infrastructure such as Williams/Transco’s pending application in three clear ways. First, the STOP Act prohibits offshore oil and natural gas development in State waters.²² Second, the STOP Act specifically prohibits the DEP from leasing tidal or submerged lands for the purpose of oil or natural gas development.²³ Finally, the law prohibits the DEP from issuing or approving any permit under the Coastal Area Facility Review Act, Coastal Zone Management Act, or any other state or federal law, rule or regulation for any development associated with offshore drilling for oil

²¹ N.J. Stat. Ann. 13:19-48(2)(e)

²² N.J. Stat. Ann. 13:19-49(3)(a)(1)

²³ N.J. Stat. Ann. 13:19-49(3)(a)(2)

or natural gas whether proposed in state waters or outside federal waters. Development, as used in the statute, is “not limited to pipeline infrastructure related to offshore oil and gas drilling.”²⁴ Furthermore, the act states that the DEP is responsible for the implementation of the prohibition of leasing submerged or tidal lands.²⁵

Williams/Transco’s proposed NESE pipeline clearly falls into the prohibition of the statute. First, the project falls under the prohibition for offshore oil and natural gas development in State waters. The project would see the construction of 6 miles of offshore pipelines in New Jersey state waters to carry and transport natural gas. Second, the project requires a lease of both tidal and submerged lands by the DEP for natural gas development. The applicant is currently seeking a Tidelands Utility License from the New Jersey Bureau of Tidelands Management.²⁶ Again this is a proposed pipeline for natural gas transmission which is seeking a lease/grant from the DEP for tidelands. Finally, the applicant is seeking permits pursuant to state and federal law that may be related to offshore oil and gas drilling. Williams and its subsidiary Transco operate pipelines that connect to active offshore oil rigs. The proposed pipeline would be linked to a system connected to these offshore rigs. Thus, there is no guarantee by the applicant that the natural gas used in this pipeline would not be from offshore oil and gas drilling activities. Therefore, under the legislation, the NJDEP is prohibited from allowing this project to move forward. Thus, the applications must be denied.

Furthermore, the DEP has not been forthcoming and transparent in its review for the Tidelands Utility License. While the Tidelands Resource Council, with the approval of the Commissioner of the DEP may license any person or corporation to lay any pipe or pipes under the lands of the state under tidewaters, the standards of review have not been fairly disclosed.²⁷ The Tidelands Act charged the Tidelands Resource Council with the responsibility of determining “whether applications for the lease, license, or grant of riparian lands are in the public interest.”²⁸ The Act further states that the standards for “reviewing and processing applications for the lease, license, and grant of riparian lands should be made readily available to the general public.”²⁹ As outlined below this project is not within the public interest and the DEP and Tidelands Resource Council has not fulfilled its statutory charge of making the information and review process readily available to the general public.

II. The Proposed Project Would Violate the Special Area Rules under the Coastal Management Rules

Special areas are areas that are given special and higher protection because they are so “naturally valuable, important for human use, hazardous, [or] sensitive to impact as to merit focused attention and

²⁴ N.J. Stat. Ann. 13:19-49(3)(c)

²⁵ N.J. Stat. Ann. 13:19-50(4)(a)

²⁶ See FERC FEIS at 1-17

²⁷ N.J. Stat. Ann. 12:3-26

²⁸ N.J. Stat. Ann. 12:3-12.1

²⁹ *Id.*

special management.”³⁰ Certain land or water areas are subject to one or more special area rules.³¹ Where the applicable general area rules and special area rules conflict, the special area rules govern.³²

Specifically, the proposed NESE Pipeline will violate special area rules protecting (A) shellfish habitat, (B) surf clam areas, (C) prime fishing areas, (D) finfish migratory pathways, (E) wetlands, (F) endangered and threatened wildlife habitat, and (G) special hazard areas. Therefore the project cannot be approved and the DEP must deny the permit applications.

A. The Project Would Unlawfully Impact and Impair Shellfish Habitat.

Shellfish habitat are considered special areas which are “so naturally valuable, important for human use... sensitive to impact, as to merit focused attention and special management rules.”³³ Shellfish habitat is defined as an “estuarine bay or river bottom which currently supports or has a history of production for hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), eastern oysters (*Crassostrea virginica*), bay scallops (*Argopecten irradians*), or blue mussels (*Mytilus edulis*), or otherwise listed below in this section.”³⁴

New dredging “within shellfish habitat is prohibited.”³⁵ New dredging is the removal of sediment that is not maintenance dredging or environmental dredging.³⁶ Dredging adjacent to shellfish habitat is discouraged, and may only be allowed if it “can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population, or harvest.”³⁷ However, this prohibition does not extend to any areas determined by the Department to be included on the List of Water Quality Limited Segments (303(d) list).

The NJDEP specifically prohibits dredging that will impact estuarine shellfish habitat because “Estuarine shellfish are harvested by both commercial and recreational shellfishermen.”³⁸ Moreover, “hard clams are the most sought after species harvested as they occur in all estuarine waters.”³⁹ Furthermore, shellfish have non-economic benefits such as playing “an important role in the overall ecology of the estuary and are an important forage food source for a variety of finfish species, crabs, and migratory waterfowl.”⁴⁰ Dredging activities have a “negative effect on the recruitment of shellfish by changing

³⁰ N.J. Admin. Code 7:7-9.1(a)

³¹ N.J. Admin. Code 7:7-9.1(b)

³² *Id.*

³³ *See*, N.J. Admin Code 7:7-9.1 – 9.2

³⁴ N.J. Admin Code 7:7-9.2

³⁵ N.J. Admin. Code 7:7-9.2(e)

³⁶ N.J. Admin. Code 7:7-12.7

³⁷ N.J. Admin. Code 7:7-9.2(g)

³⁸ N.J. Admin. Code 7:7-9.2(m)

³⁹ *Id.*

⁴⁰ *Id.*

the composition of the substrate, degrad[ing] water quality, salinity regime, substrate characteristics, natural water circulation patters, and natural functioning of the shellfish habitat.”⁴¹

The Raritan Bay is currently listed on the New Jersey Department of Environmental Protection 2014 Section 303(d) list.⁴² Based on impairment shellfishing is restricted and all harvests must undergo processing at approved depuration plants. Despite this, significant portions of shellfish are harvested from the Raritan Bay. According to Seacoast United, a depuration plant in Sea Bright, over 20 million clams are processed and sold annual.

While the designation of impairment under by the DEP would remove the Raritan Bay and the pipeline route from the prohibition against shell fishing, the current status of the Raritan in terms of impairment is unknown. The DEP is responsible for updating the 303(d) list every two years.⁴³ The last available data from under the 303(d) list for New Jersey is from 2014. Therefore the current impairment list, and thus areas which are excluded from the definition of shellfish habitat are unknown. While a comprehensive analysis of the Raritan Water Region was conducted in Spring of 2016, the final comprehensive assessment has not been released. Since the current 303(d) list and evaluation of the Raritan Bay has not been released, it is currently unknown which areas the prohibition is applicable to. Until that list is finalized, the DEP must not issue any permits allowing new dredging activities.

The numbers from Seacoast United illustrate the economic benefit and future economic potentialities of a clean Raritan Bay. The Raritan is one of the most fruitful shellfishing industries in the state and therefore no new dredging should be permitted.

B. The Project Would Unlawfully Harm Surf Clam Areas.

The special use rules prohibit development which “would result in the destruction, condemnation, or contamination of surf clam areas.”⁴⁴ Surf clam areas are “coastal waters which can be demonstrated to support significant commercially harvestable quantities of surf clams.”⁴⁵

At the state and federal level, there was no comprehensive, scientific assessment of the short and long term impacts to surf clams and surf clams habitat. Moreover, the resuspension of 1,091,734 cubic yards of sediment, known to include harmful pollutants, would be excavated or otherwise suspended into the water column during the offshore pipeline installation will significantly harm and contaminate surf clam areas. ⁴⁶ There are many points along the proposed route that exceed contamination levels; minimal to no testing was done to test sediment along other alternate routes to determine if there were routes with less contamination. FERC’s FEIS maintains that “Concentrations of organic contaminants

⁴¹ *Id.*

⁴² New Jersey Department of Environmental Protection, Final 303(d) List (2014).

⁴³ 40 C.F.R. §130.7(b)(4)

⁴⁴ N.J. Admin. Code 7:7-9.3(b)

⁴⁵ N.J. Admin. Code 7:7-9.3(a)

⁴⁶ FERC FEIS at 4-106

were greater than upper level effects thresholds at approximately 33 percent of the sample sites. Approximately 83 percent of the sample sites had at least one exceedance of an inorganic (metal) threshold .”⁴⁷ Exceedances of upper-level effects thresholds for heavy metals (e.g., copper, lead, zinc, mercury) were detected at multiple locations. These included exceedances 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.⁴⁸

The sediment modelling does not address the effects of the different toxins in the contaminated sediments to any of the marine species (benthic or pelagic, migratory or otherwise) that may be exposed to those chemicals (including sediment used in backfill) with minimal evaluation of the effects otherwise. Such an oversight underscores Williams/Transco’s intentional focus on sediment transport and misdirection away from what is actually in the sediment.

Furthermore, in the FEIS, FERC estimated that it would take bottom-dwelling species, such as surf clams at least 1 to 3 years to recover after the construction of the Raritan Bay Loop portion of the project.⁴⁹ Bottom dwelling marine life in or near the excavation will be exposed to toxins and therefore significantly harmed.⁵⁰ These impacts will be increased by the construction through the Raritan Bay Slag Superfund site which also contains numerous heavy metals and pollutants which will be disturbed and enter the water column. The circular current patterns of the Raritan Bay will spread the contaminants throughout the entire Bayshore area including Sandy Hook Bay. These areas are used by numerous calmers and serviced by two depuration plants, Untied Seacoast and White Clam. These plants highlight the economic potentiality and prosperity associated with a clean Raritan Bay. United Seacoast harvests 22,429,777 little neck clams, 1,593,866 top clams, 1265,470 cherry clams, and 360,154 chowder clams annually. They have numerous large scale distribution networks including Shoprite, Wegmans, Restaurant Depot, and the Fulton Fish Market. Overall their immediate customer based is roughly 44-50 businesses. Furthermore they employ roughly 22 individuals and have been operating for the past two years. Recently they invested 1.4 million dollars into the depuration plant to increase output. Clearly, this plant alone illustrates the economic benefit the Raritan Bay shell fishing industry brings to the State.

Therefore, it is clear that the NESE Pipeline will result in the destruction, condemnation and contamination of surf clam areas, and as such the permits must be denied.

C. The Project Would Unlawfully Impact Prime Fishing Areas.

The project will both directly and indirectly negatively impact prime fishing areas. Prime fishing areas include (1) tidal water areas and water's edge areas which have a demonstrable history of supporting a

⁴⁷ FERC FEIS at 4-182

⁴⁸ FERC FEIS at 4-121

⁴⁹ FERC FEIS at 4-190

⁵⁰ FERC FEIS at 4-107.

significant local intensity of recreational or commercial fishing activity, (2) the areas identified in New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay.⁵¹

The special protections to prime fishing areas are a result of an understanding of the need to leave bathymetric features and seafloor areas in their natural state to ensure a functioning marine ecosystem, as well as the importance of commercial and recreational fishing in the state.⁵² Annually, over 1,120,000 people, of which 690,000 are New Jersey residents, participate either commercially or recreationally in fishing and shell fishing.⁵³ According to the National Marine Fisheries Service, New Jersey has the highest harvest of four of the five most important recreational fish species (summer flounder, bluefish, seabass, and tautog).⁵⁴ The state ranks second in terms of striped bass harvest.⁵⁵ The recreational fishery industry is worth \$1.5 billion annually to the economy of New Jersey.⁵⁶ In 2011, New Jersey's commercial fisheries had a dockside value of more than \$220 million and an overall economic impact of \$1.3 billion to the State's economy.⁵⁷

The proposed pipeline will have significant effects that will be detrimental to fishing and shell fishing in the Raritan and Sandy Hook Bays. The route of the pipeline impinges on seven fishing grounds used by commercial and recreational fisheries.⁵⁸ Fishing areas will be negatively impacted by (1) resuspension of toxic sediment, (2) noise and activity within the 14,000 acre work space, (3) discharge of drilling fluids and other chemicals by the applicant, and (4) hydrostatic testing.

First, the offshore construction is estimated to re-suspend 1,091,734 cubic yards of contaminated sediments.⁵⁹ However, the number will likely be larger due to vessel traffic, anchoring, hydrostatic testing, and other aspects of pipeline construction. The resuspension will result in significantly decreased water quality which will negatively impact fishing and shell fishing in the area. Dredging up buried industrial toxins (like arsenic, lead, zinc and mercury) and organic compounds (PCBs, DDT, dioxins) from the seabed will poison fish, shellfish and marine life in the Raritan and Sandy Hook Bays. Dredged-up toxins will affect aquatic migration, clog fish gills, interfere with breeding, and contribute to harmful algae blooms. Furthermore, the redistribution of sediments that fall from suspension, will bury benthic and demersal species, resulting in mortality of eggs and other life stages, including winter flounder that spawn in shallow, inshore waters in the project area. The FEIS specifically notes that eggs and larva of this species could be directly affected by excavation or by smothering in toxic-laden

⁵¹ N.J. Admin. Code 7:7-9.4(a)

⁵² N.J. Admin. Code 7:7-9.4(c)

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ FERC FEIS at 4-240

⁵⁹ FERC FEIS at 4-106.

sediments during construction.⁶⁰ Additionally, the resuspension will result in increased turbidity. Excavating a 23.5 mile trench will make it difficult for these animals to find food and to navigate. The excavation of an 8- to 15-foot deep trench for 23.5 miles will disturb hundreds of acres of sand and gravel, creating increased sediment in the water. The resulting increase in the turbidity of the water threatens marine life since the clarity of water is critical to the ability of many species to navigate, find food, and avoid predators. Moreover, impacts also include temporary loss of habitat and foraging areas.⁶¹

Second, the construction and noise from the project will negatively impact the density and distribution of fish populations and therefore harm both recreational and commercial fishing in the vicinity. The applicant intends to disturb over 14,000 acres.⁶² Again, it is known that the major contributor to the impairment of both waterbodies is the contaminated sediment. The applicant intends to impact and disturb a significant portion of each bay, further re-suspending sediment from vessel travel, heavy equipment, and other activities. Furthermore, the noise associated with the construction will harm fisheries. Noise and vibration can also disorient marine species and lead to long-lasting damage and growth abnormalities in newly hatched organisms. The number of marine vessels required by the NESE Project (with diesel engines 24/7) and the drilling required for the tunneling portions will disrupt numerous species from bottom dwelling shellfish, such as crabs, to gigantic marine mammals, such as whales. Roughly nine months of 24/7 construction in the bay also poses a hazard to fisheries.

Third, the applicant intends to discharge over 690,000 gallons of drilling fluid into the water. Transco has indicated that it will use biocides, which will contaminate the water quality and impact the food chain, increasing the impairment for fishing and shellfishing in these areas.⁶³ The FEIS indicates some of the specific additives but not all. At the time of the FEIS, Transco was “working with its contractors to finalize the specific additives that would be used in HDD construction.”⁶⁴ How can the impacts to the water quality of these already impaired waterbodies be understood when the specific chemicals to be discharged in them are unknown? Based on the lack of information, the application should not have been considered administratively complete and ready for review. However, the scope and severity of the negative impacts and violates under New Jersey state rules and regulations compels the DEP to deny the permits regardless of the lack of information.

Finally, the process for the hydrostatic testing will also result in negative impacts to fisheries by killing fish eggs and larva, as well as by further disturbing the benthic habitat and layer of the Raritan Bay. During the process the applicant will place a hose into the bay which will syphon 3.5 million gallons of

⁶⁰ FERC FEIS 4-118

⁶¹ *Id.*

⁶² FERC FEIS at ES-10

⁶³ FERC FEIS at 4-126

⁶⁴ FERC FEIS at 4-151

water.⁶⁵ The water will be syphoned at an extremely fast rate, 2,350 gallons per minute.⁶⁶ The water will be filtered through a mesh screen before entering the pipeline.⁶⁷ The position of the water intake will be halfway in the water column. Importantly, the Raritan Bay is a shallow waterway.⁶⁸ Therefore, due to the proximity of the intake, the shallowness of the water and the pressure of the intake, the benthic layer will be significantly disturbed. This will result in increased re-suspension of toxic sediment, increased turbidity, and the destruction of all larva and eggs near the intake.

Thus, it is clear this project will have significant negative effects on prime fishing areas violating New Jersey's regulations mandating the protection commercial and recreational fisheries and therefore cannot lawfully be permitted.

D. The Project Would Unlawfully Impact Finfish Migratory Pathways.

Under the Coastal Zone Management Rules, development which lowers the water quality to such an extent as to interfere with the movement of fish along migratory pathways is prohibited.⁶⁹ Finfish migratory pathways are "waterways (rivers, streams, creeks, bays and inlets) which can be determined to serve as passageways for diadromous fish to or from seasonal spawning areas."⁷⁰ The rules specifically note that the Atlantic Sturgeon is a species of concern to be accounted for under this standard.⁷¹

The primary impacts which will result in direct harm to Atlantic Sturgeon include exposure to re-suspended contaminants, bioaccumulation of toxins, seafloor and benthic habitat disturbances, noise, and vessel strikes.⁷² Atlantic sturgeon would also be affected by interactions with construction and pipeline equipment, hydrocarbon spills, and drilling fluid release.⁷³

Indeed it is also clear this project will impact the Atlantic Sturgeons migratory pathway. Currently, the National Marine Fisheries Service Office determined that the NESE Pipeline may affect, and is likely to adversely affect the Atlantic Sturgeon.⁷⁴ Therefore, NMFS has requested formal consultation pursuant to the Endangered Species Act.⁷⁵ During formal consultation, the Service must evaluate the "effects of the action," including all direct and indirect effects of the proposed action, plus the effects of actions

⁶⁵ FERC FEIS at 2-55

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See, *Id.* and Fish and Wildlife Services, *Significant Habitats and Habitat Complexes of the New York Bight Watershed*. Available at https://nctc.fws.gov/pubs5/web_link/text/rb_form.htm

⁶⁹ N.J. Admin. Code 7:7-9.5(c)

⁷⁰ N.J. Admin. Code 7:7-9.5(a)

⁷¹ N.J. Admin. Code 7:7-9.5(a)

⁷² FERC FEIS at 4-185

⁷³ *Id.*

⁷⁴ NOAA National Marine Fisheries Service, Revised Determination of Effect and Request for Consultation. Feb. 7, 2019.

⁷⁵ *Id.*

that are interrelated or interdependent, added to all existing environmental conditions – that is, the “environmental baseline.”⁷⁶ The environmental baseline includes the past and present impacts of all Federal, state, and private actions and other human activities in the action area....⁷⁷ The effects of the action must be considered together with “cumulative effects,” which are “those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.”⁷⁸ Thus, currently the impacts to Atlantic Sturgeon or its migratory pathway are not fully understood.

Furthermore, while the applicant agreed to restrict construction of the Raritan Bay Loop portion of the project during March 1 to June 30 from mile posts (“MPs”) 12.0 to 14.25 and MPs 30.0 to 35.5 and from October 1 through November 30 from MPs 30.0 to 35.5 to better protect the Atlantic Sturgeon, the applicant has since requested a modification to these restrictions which would offer no such protections.⁷⁹ Atlantic sturgeon are anadromous, migrating into freshwater rivers to spawn in the spring and early summer, and migrating downriver in the summer or fall to reside in estuarine and marine waters.⁸⁰ As benthic feeders, Atlantic Sturgeon consume benthic invertebrates such as crustaceans, worms, and mollusks. As stated above, the resuspension of toxic sediment will have a significant effect on bottom dwelling species. The contamination of benthic invertebrates will harm the Atlantic Sturgeon through bioaccumulation of toxins. The FIES specifically acknowledges this.⁸¹

As bottom dwellers and feeders, Atlantic Sturgeon are at risk of injury or mortality from direct construction operations occurring on the seafloor.⁸² The species is known to prey on bottom dwelling crustaceans, marine worms, and shellfish which occur thorough the vicinity of the proposed pipeline route.⁸³

Therefore, every aspect of the proposed construction of the pipeline will result in significant harm to the Atlantic Sturgeon, as well as other economically valuable finfish species, and severely harm migratory pathways. Thus, the DEP must deny the individual permit application.

E. The Project Would Unlawfully Impact Wetlands.

Under New Jersey’s Freshwater Wetlands Protection Act, a permit is required from the DEP for activities in freshwater wetlands and state open waters, as well as in transition areas adjacent to the wetlands.⁸⁴

⁷⁶ 50 C.F.R. §§ 402.14 and 402.02.

⁷⁷ *Id.* § 402.02.

⁷⁸ *Id.*

⁷⁹ FERC FEIS at 4-119

⁸⁰ 2017k; NYSDEC, 2017c; Atlantic Sturgeon Status Review Team, 2007

⁸¹ FERC FEIS at 4-185

⁸² 4-189

⁸³ 4-190

⁸⁴ See, N.J.S.A. 13:9B, N.J. Admin. Code 7:7A.

Under the Coastal Zone Management Rules, development of any kind is prohibited unless the DEP can establish that the proposal (1) requires water access, (2) has no prudent or feasible alternative on a non-wetland site, (3) will result in minimum feasible alteration of impairment of natural tidal circulation, and (4) will result in minimum feasible alteration of impairment of natural contour and vegetation.⁸⁵

Wetlands include those defined under the Freshwater Wetlands Protection Act, as well as those identified and mapped by the coastal wetlands map.⁸⁶

In general, the project crosses numerous wetlands and will result in significant negative affects to the wetlands of the state. The NESE pipeline will impact 11 wetlands in the state.⁸⁷ The impacts include 16.5 acres of wetlands throughout the state.⁸⁸ Construction of the NESE Project would directly affect wetland soils, vegetation, and habitats, and could affect hydrology characteristics.⁸⁹ The construction will result in significant soil compaction which causes alterations in natural hydrological patterns and may inhibit regeneration of cleared vegetative species.⁹⁰ Recovery to preconstruction conditions for emergent wetlands is estimated to take 2 years.⁹¹ Recovery for scrub-shrub wetlands is estimated to take as long as four years.⁹² Furthermore, project construction could also result in secondary and indirect effects on adjacent or nearby wetlands, such as sedimentation or habitat loss due to microclimate changes following clearing of forested vegetation.⁹³ Finally, 3.9 acres of wetlands would be permanently altered.⁹⁴

Not only are the impacts to wetlands severe and unacceptable, but the applicant has failed to prove that the proposal (1) requires water access, (2) has no prudent or feasible alternative on a non-wetland site, and (3) will result in minimum feasible alteration of impairment of natural contour and vegetation.

First and foremost, the project does not require water access because it is unwarranted and unneeded. There is a clear lack of need for this project. As mentioned below in the section focused on the basic location rules, numerous studies have concluded that there is no underlying need for the project or the natural gas it will supply. Furthermore, alternatives such as renewables, energy efficiency, energy conservation and other environmentally beneficial technologies are readily available and could easily be deployed. Therefore, the proposal, a 37 mile long pipeline is not necessary and alternatives which do not require water access are available.

⁸⁵ N.J. Admin. Code 7:7-9.27(c)

⁸⁶ N.J. Admin. Code 7:7-9.27(a)(1)

⁸⁷ FERC FEIS at 2-30

⁸⁸ FERC FEIS at 4-63

⁸⁹ FERC FEIS at 4-64

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

Second, for similar reasons it is clear that prudent and feasible alternatives which do not require wetland sites are available. A wide range of alternatives are available which would deal with any energy demand in National Grid's service area. Furthermore alternatives such as energy efficiency and renewable energy resources are more versatile and can meet demand in a flexible way, unlike natural gas.

Thus, the project proposal fails to meet the requirements of the Freshwater Wetlands Protection Act, as well as its implementing rules under the Coastal Zone Management Rules and, therefore, development is prohibited.

F. The Proposed Project Would Unlawfully Impact Endangered and Threatened Wildlife Habitat.

Under the Coastal Zone Management Rules, development in endangered and threatened wildlife habitat is prohibited unless the applicant can demonstrate that the endangered and threatened wildlife habitat would not directly or indirectly be adversely affected.⁹⁵ Endangered and threatened species habitat are areas "known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife or plant identified as "endangered" or "threatened" species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing.⁹⁶

The project will harm numerous endangered, threatened species under both the Federal Endangered Species Act of 1973, as well as those listed under New Jersey State Law.⁹⁷ The offshore segment of the project alone may impact 20 listed species. Currently, NMFS determined that the NESE Pipeline may affect, and is likely to adversely affect the right whale, fin whale, and Atlantic Sturgeon.⁹⁸ Therefore, formal consultation pursuant to the Endangered Species Act has been requested, and until consultation is finalized the impacts to these species is unknown.⁹⁹

The impacts to threatened and endangered species are linked to the direct and indirect effects the project will have on habitat. Noise impacts are consistently found to impact migration, breeding, and foraging for marine mammals and other aquatic species. Marine mammals are sensitive to noise, and the constant noise and vibration generated by vessel engines and construction will be difficult for these animals to tolerate and could alter behavior. Noise and vibration can also disorient marine species and lead to long-lasting damage and growth abnormalities in newly hatched organisms. The number of marine vessels required by the NESE Project (with diesel engines running 24 hours a day, seven days a

⁹⁵ N.J. Admin. Code 7:7-9.36(b)

⁹⁶ N.J. Admin. Code 7:7-9.36(a)

⁹⁷ See, 16 U.S.C. §1531 et seq. (1973), and FEIS at 4-162.

⁹⁸ NOAA National Marine Fisheries Service, Revised Determination of Effect and Request for Consultation. Feb. 7, 2019.

⁹⁹ *Id.*

week for months on end) as well as the drilling required for the tunneling portions will disrupt numerous endangered and threatened species throughout the Raritan and Sandy Hook Bays.

Nine months of 24/7 construction in the bay also poses a hazard to marine mammals from vessel strikes. To protect these animals, Williams/Transco has proposed training vessel operators and crews to recognize them in the water and then take avoidance measures like slowing a vessel down or maneuvering it away. However, this will not work at night or in bad weather. Also, the types of vessels used to construct an in-water pipeline are not agile or easy to maneuver. Vessel operators are unlikely to be able to prevent collisions that may injure or kill whales and turtles.

Furthermore, the Raritan Bay is a foraging area for numerous raptors including the Bald Eagle and the common tern osprey. Bald Eagles and Osprey are both known to nest and forage in the Bayshore area.¹⁰⁰ Therefore the project will not only impact endangered and threatened marine life, but also avian. Decreases in densities and distributions, and general populations of fish which these predators depend on will impact the breeding and wellbeing of the species. Furthermore, the resuspension of toxic sediment will bioaccumulation Osprey and Bald Eagle populations through ingestion of contaminated marine life.

G. The Proposed Project Would Unlawfully Involve a Special Hazard Area.

Furthermore, coastal development – specifically labor intensive economic development – within a special hazard area is discouraged.¹⁰¹

A special hazard area is an area which contains known actual or potential hazards to public health, safety, and welfare.¹⁰² This includes areas where hazardous substances are used or have been disposed.¹⁰³ Hazardous substances include environmental hazardous substances, hazardous substances adopted by the federal Environmental Protection Agency (“EPA”) under both Section 311 and 307 of the Clean Water Act, as well as the list of hazardous substances adopted the EPA pursuant to CERCLA.¹⁰⁴

The development of an offshore pipeline through dredging, horizontal directional drilling, and other processes clearly constitutes “labor intensive economic development.” Segments of the Raritan Bay Loop would cut through the Raritan Bay Slag Superfund Site.¹⁰⁵ Specifically, the exit pit for the Morgan

¹⁰⁰ See, New Jersey Division of Fish and Wildlife, New Jersey Bald Eagle Project – 2018; and New Jersey Division of Fish and Wildlife, 2018 Osprey Project (October 2018).

¹⁰¹ N.J. Admin. Code 7:7-9.39(a)

¹⁰² N.J. Admin. Code 7:7-9.39(a)

¹⁰³ N.J. Admin. Code 7:7-9.39(a)

¹⁰⁴ N.J.S.A. 58:10-23.11b

¹⁰⁵ FERC FEIS at 4-251

Shore Approach HDD would be in Raritan Bay Slag Superfund Site Areas 7 and 11, and about 1,000 feet of the Raritan Bay Loop pre-lay trench would cross Raritan Bay Slag Superfund Site Area 11.¹⁰⁶

Furthermore, the Raritan Bay Slag Superfund site has known contaminants under both the Clean Water Act and CERCLA.¹⁰⁷ An analysis of sampling site within the Superfund Site near the Morgan Shore portion of the pipeline showed a greater number of exceedances of established thresholds for several contaminants including dioxins, polychlorinated biphenyls, and heavy metals, such as mercury.¹⁰⁸ The FEIS states that contaminated soil and groundwater could potentially be encountered during construction of the Raritan Bay Loop between the approximate MP 12.5 (the exit pit for the Morgan Shore Approach HDD) and MP 12.7 due to the sediments associated with the superfund site.¹⁰⁹ Disruption of this soil will push contaminated soil into the bay and further impact water quality and human health. Furthermore, the currents will ensure that not all re-suspended sediment will fall back down to the seafloor, but will continue to mix in the water column.

Disturbing this superfund site for an unwarranted and needless project is unacceptable. This labor intensive project will involve direct and indirect development of the superfund site/special hazard area which will drastically harm the surrounding environment. Therefore development should be barred.

III. The Proposed Project Would Violate the New Dredging Standards Protecting General Water Areas

General water areas are “all water areas which are located below either the spring high water line, or the normal water level of non-tidal waters.”¹¹⁰ General water areas include both the Atlantic Ocean as well as open bays, such as the Raritan Bay and the Sandy Hook Bay.¹¹¹ The proposed project will violate the standards regulating New Dredging.

New dredging in general water areas is conditionally accepted provided that the applicant can demonstrate (A) there is a demonstrated need that cannot be satisfied by existing facilities, (B) the dredging will meet applicable turbidity requirements, **and** (C) the dredging will meet surface water quality standards.¹¹²

A. There is No Demonstrated Need and Existing Facilities Can and Will Continue to Meet Energy Demands in National Grids Service Territory.

¹⁰⁶ *Id.*

¹⁰⁷ U.S. EPA, Raritan Bay Slag – Old Bridge Township, Sayreville New Jersey – Contamination List. Available at <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.contams&id=0206276>

¹⁰⁸ FERC FEIS at 4-121

¹⁰⁹ FERC FEIS at 4-251

¹¹⁰ N.J. Admin. Code 7:7-12.1(a)

¹¹¹ N.J. Admin. Code 7:7-12.1(b)(6)

¹¹² N.J. Admin. Code 7:7-12.7

The applicant has failed to establish a “demonstrated need that cannot be satisfied by existing facilities.” The alleged purpose of the project is to bring an “incremental” amount of natural gas to National Grid’s service territory to meet winter heating needs.¹¹³ However, the need for this project has not been independently documented and studies show existing facilities can currently meet the heating needs for the service territory. Williams and National Grid have claimed that the project is necessary to meet a 10% increase in natural gas demand over the next decade; however the projection is based on outdated information.¹¹⁴ Independent studies contradict Williams and National Grids claims for these reasons:

- According to the U.S. Energy Information Administration, from 2000 to 2050 natural gas consumption in the residential and commercial sectors will remain flat due to efficiency gains and population shifts which counterbalance demand growth.¹¹⁵
- The New York Independent System Operator (NYISO), who maintains and regulates the state’s energy system, found that energy use in New York is expected to decrease over the next decade.¹¹⁶
- The Long Island Power Authority, which serves 1.1 million customers on Long Island, the Rockaways and Queens, has also forecasted flat energy demand until 2035.¹¹⁷
- New York City recently passed the most aggressive building energy efficiency standards in the nation. The Climate Mobilization Act will require buildings over 25,000 square feet to cut climate emissions by 40% by 2030 and 80% by 2050. Therefore, residential and commercial buildings will be required to invest in energy efficiency which will further decrease heating demands over the coming decades.

The applicant’s justification for the alleged increase in demand is based on the locally mandated elimination of heavy No. 6 and No. 4 fuel oil from use in residential boilers, from which Williams and National Grid claim they will convert roughly 8,000 customers per year to natural gas.¹¹⁸ This claim has also been questioned and challenged based on the following facts:

¹¹³ FERC FEIS at 1-3

¹¹⁴ 350 Brooklyn, *False Demand: The Case Against the Williams Fracked Gas Pipeline*. March 2019. Available at http://350.org/wp-content/uploads/2019/03/Stop_Williams_False_Demand.pdf

¹¹⁵ U.S. Energy Information Administration, *Annual Energy Outlook 2019* (Jan. 24, 2019) (available at <https://www.eia.gov/outlooks/aeo/pdf/aeo2019.pdf>) (hereafter, USEIA *Annual Energy Outlook 2019*), p. 82

¹¹⁶ New York Independent System Operator (NYISO), *Power Trends: New York’s evolving Electric Grid 2017* (hereafter, NYISO 2017 *Power Trends Report*), p. 12. The report’s data is from the 2017 *Load & Capacity Data Report*, known as “the Gold Book.”

¹¹⁷ LIPA, “*Integrated Resource Plan and Repowering Studies – FAQs*” (2017) (available at <https://www.lipower.org/wp-content/uploads/2016/10/Frequently20Asked20Questions20LIPA20201720IRP20and20Repowering20Reports1.pdf>)

¹¹⁸ See, Mark Harrington, *supra*. National Grid’s own proffered energy plan for 80% GHG reductions by 2050 calls for increased burning of natural gas for heating from 55% to 60% of heating sources. For natural gas GHG reductions it primarily recommends converting half of all vehicles to electric by 2030. National Grid, Northeast

- All of the No. 6 boilers in New York City residential buildings were converted from heavy oil long ago.
- The New York City Housing Authority stopped using both No. 6 and No. 4 and converted to natural gas. Currently the Housing authority relies on natural gas for 98% of its heating needs.¹¹⁹
- The oil burners which convert to No. 2 oil will be required to use No. 2 oil mixed with biodiesel. New York City currently requires 5% biodiesel mixed with ultralow sulfur No. 2. In 2025, the standard increases to 10% and eventually 20% by 2034.¹²⁰
- Less than 446 No. 4 oil boilers (which must be converted by 2030 under New York City regulations) exist in national grid's service area. Even if all were converted to natural gas and not ultra-low sulfur No. 2 oil and biodiesel, this does not come close to the 400 million cubic yards the applicant is seeking to bring to New York per day.¹²¹
- The remaining oil burners either use or will convert to ultralow sulfur No. 2 oil, which can replace heavier dirtier home heating oil without any modifications to furnace system modifications.
- Due to the fact both No. 2 and biodiesel can be adopted without any modifications to home furnace systems, it acts as a true bridge to renewable energy and energy efficiency. Home and building owners will not need to invest in a new heating system and therefore will not be deterred from future distributed renewable energy investments or energy efficiency investments.

Thus, the projection and conversion statistics highlight how demand is currently met, and will continue to be met, through "existing facilities." Moreover, with the new focus and requirements in New York City, investments in energy efficiency will be expected. Energy efficiency is readily available and is a

80x50 Pathway (June 15, 2018) (available at <http://news.nationalgridus.com/wp-content/uploads/2018/06/80x50-White-Paper-FINAL.pdf>).

¹¹⁹ City of New York, Local Law 43 of 2010 and Rules of the City of New York, Title 15, §§ 2-15(b)(2), (c)(1) and (d) (available at http://www.nyc.gov/html/dep/pdf/air/heating_oil_rule.pdf). The Rules were promulgated by the New York City Department of Environmental Protection ("NYCDEP"). In 2010, only one percent of buildings were using No. 4 and No. 6 heating oil – but those boilers' emissions were causing 86 percent of soot pollution in the City. D. Seamonds, D. Lowell, T. Balon, *The Bottom of the Barrel: How the Dirtiest Heating Oil Pollutes Our Air and Harms Our Health* (Environmental Defense Fund, 2016) (available at https://www.edf.org/sites/default/files/10085_EDF_Heating_Oil_Report.pdf).

¹²⁰ See Local Law 119 of 2016 (available at https://www1.nyc.gov/assets/buildings/local_laws/ll119of2016.pdf); and NYC Department of Citywide Administrative Services, "New York City Submits Strong Comments to EPA Supporting Biodiesel," *Biodiesel Magazine* (Oct. 2017) (available at <http://www.biodieselmagazine.com/articles/2516181/new-york-city-submits-strong-comments-to-epasupporting-biodiesel>).

¹²¹ New York City adopted more comprehensive legislation in 2015, Local Law 38, that effectively bans the burning of No. 6 fuel oil for any purpose by January 1, 2020, and the burning of No. 4 fuel oil by January 1, 2030 (except that any boiler replaced before the deadline must use a cleaner fuel). City of New York. "Local Laws of The City of New York For the Year 2015, No. 38" (Apr. 16, 2015) (available at https://www1.nyc.gov/assets/buildings/local_laws/ll38of2015.pdf).

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cheaper and more environmentally sound. Energy efficiency programs have proven to be the most cost effective means of both lowering rates and reducing carbon emissions.¹²²

Furthermore, developing a 23.4 miles offshore pipeline that will have a 50-60 year minimum useful life will lock in fossil fuels and block renewable energy development. This project will create an unneeded but available supply of natural gas at a time when we have acknowledged the need for drastic emission reductions. This pipeline goes against the renewable energy goals of New Jersey and will see renewables continue to be blocked from fair market entry.

Therefore, it is clear that there is no need for this project and that cost-effective alternatives such as renewable energy and energy efficiency are readily available.

B. The Dredging Would Violate Turbidity Requirements.

The development of 23.4 miles of offshore pipeline will significantly increase turbidity in the project area and throughout the Raritan Bay. The trenching and cover required for the offshore section of the pipeline range from 7 feet to 15 feet.¹²³ As previously mentioned the dredging, trenching and cover of the pipeline alone will re-suspend over 1,000,000 tons of toxic sediment into the water column. The dredging and trenching activities will disturb 87.8 acres directly.¹²⁴ An additional 9,474 acres of seafloor would also be disturbed by backfilling and excavation, and thus affected by the resuspension and redistribution of toxic sediment, impacting turbidity over this area.¹²⁵ The EPA notes that suspended solid particles have the largest effect on turbidity.¹²⁶ This excavation will disturb hundreds of acres of fine grain sediments such as silts and clays which harbor toxins, thereby creating increased sediment in the water.

Furthermore, the numerous other activities necessary for construction of the pipeline within the entire 14,165.5 acre workspace which the applicant intends to use will also significantly increase turbidity in the Raritan Bay.¹²⁷ For instance the hydrostatic testing will further impact turbidity. Again, the Raritan Bay is a shallow water way and the positioning of the intake valve along with the pressure of intake will disrupt seafloor sediment and suspend sand, gravel and most importantly fine grain sediments which will re-suspended toxins into the water column. Similar impacts can be expected from the discharge of drilling fluids during horizontal directional drilling. Moreover, the vessel traffic for construction will also churn up gravel, sand, and suspended toxins due to the shallow nature of the

¹²² See, The Cost of Saving Electricity Through Energy Efficiency Programs Funded by Utility Customers: 2009 – 2015. Energy Analysis and Environmental Impact Division of Lawrence Berkeley National Laboratory. (June 2018). Available at http://eta-publications.lbl.gov/sites/default/files/cose_final_report_20180619_1.pdf

¹²³ Williams/Transco's Supplement to FERC in Accession No. 20181012-5123 (33185953) - Page 2-3

¹²⁴ FERC FEIS at 2-11

¹²⁵ *Id.*

¹²⁶ U.S. Environmental Protection Agency, *Voluntary Estuary Monitoring Manual – Chapter 15: Turbidity and Total Solids*, (March 2006).

¹²⁷ FERC FEIS at 2-8

Raritan. The vessel traffic will be heavy and constant throughout the pipeline construction operations. Studies have indicated that increased vessel traffic can cause issues with turbidity.¹²⁸ Furthermore, in the FEIS, FERC estimated that it would take bottom-dwelling species, such as surf clams at least 1 to 3 years to recover after the construction of the Raritan Bay Loop portion of the project.¹²⁹

The increased turbidity will have significant effects on the marine ecosystem. Turbidity can clog fish gills, reduce resistant to disease in marine mammals and fish, impact growth rates, alter egg and larval development, and destroy filter feeding systems of animals. Winter flounder which spawn in shallow, inshore waters in the project area will be significantly impacted. The FEIS specifically notes that eggs and larva of this species could be directly affected by excavation or by smothering in toxic-laden sediments during construction.¹³⁰

C. The Proposed Project Would Violate Surface Water Quality Standards.

Section 307(f) of the Federal Coastal Zone Management Act and the federal, state and local water quality requirements established under the Clean Water Act must be met for a proposed development under the coastal management program.¹³¹ These requirements are not limited to the minimum standards imposed under the Clean Water Act, but also the additional requirements adopted by the State, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act, and the New Jersey Water Pollution Control Act which enabled New Jersey to create more stringent standards.¹³² Moreover coastal development which would violate Federal or state water quality standards is prohibited.¹³³ Projects proposed in the waters under the jurisdiction of the Interstate Environmental Commission in the New York-New Jersey metropolitan area, must also meet the Interstate Environmental Commission's Water Quality Regulations.¹³⁴ The Raritan Bay is subject to the Interstate Environmental Commission.¹³⁵ The Raritan Bay is classified as a Class A waterbody. It is the underlying principle of the Interstate Environmental Commission regulations that each class and subclass is to be "suitable for its best intended uses and that all waters are to be protected, maintained, and improved to the end that they will afford as satisfactory conditions as possible for the maintenance and restoration of the natural ecosystems".¹³⁶ Furthermore, "all waters should be aesthetic assets and should, at a minimum, be available for those recreational uses which do not bring the human body into

¹²⁸ P.N. Garrad, R.D. Hey, *Boat traffic, sediment resuspension and turbidity in a Broadland River*, Journal of Hydrology 289 – 297, November 1987.

¹²⁹ FERC FEIS at 4-190

¹³⁰ FERC FEIS at 4-118

¹³¹ See, N.J. Admin. Code 7:7-16.3(a), 16 U.S.C. §§ 1451 et seq, and 33 U.S.C. §§ 1251.

¹³² See, N.J. Admin. Code 7:7-16.3(a), 33 U.S. Code § 1251, and N.J.S.A. 58:10A-1 et seq

¹³³ See, N.J. Admin. Code 7:7-16.3(b)

¹³⁴ See, N.J. Admin. Code 7:7-16.3(a)

¹³⁵ Interstate Environmental Commission, *Areas We Serve*. Available at <http://www.iec-nynjct.org/do/overview/areas>

¹³⁶ Interstate Environmental Commission, *Regulations*. Available at <http://www.iec-nynjct.org/do/water/regulations>.

direct contact with the water."¹³⁷ Finally, the commission regulations prohibit allowing toxic or deleterious substances in class A water bodies, either alone or in combination with other substances in such concentrations as to be detrimental to fish or inhibit natural migrations. The prohibition on toxins also extends to concentrations which would be harmful to human health.¹³⁸

The resuspension of toxic-laden sediments, throughout the dredging and drilling process as well as through the discharge of drilling muds, hydrostatic testing, vessel anchoring and operations will significantly degrade the water quality of the Raritan Bay and result in concentrations harmful to fish and shellfish that are detrimental.¹³⁹ Alone, the resuspension of 1,090,000 tons of toxic containing sediments is enough to trigger a violation of the water quality standards based on impacts to fish, shellfish, and human health. The impacts from the resuspension will be coupled with the release 690,000 gallons of chemically infused drilling fluids, further sediment and toxin resuspension from hydrostatic testing, vessel transportation and other instillation processes. Additionally, Williams/Transco plans to release water used in testing the pipeline into the bay. Their plan involves releasing 3.2 million gallons of seawater that was treated with the toxic chemical CORRTREAT 15316. According to the Environmental Protection Agency, CORRTREAT 15316 is a highly toxic substance harmful to humans and marine life.

Furthermore, the project may result in increased Harmful Algal Blooms (HABs) from the re-suspension of sediments. Though admitting to the fact that the study was not done in a saltwater environment similar to the project area, the FERC FEIS maintains that this would have a negligible effect on potential for HAB formation.¹⁴⁰ However, the study only focused on the placement of dredging, not on the level of contamination. Part of what influences HAB occurrence, even in freshwater, is the conversion of nutrients that are bound in the upper layer of sediment and unavailable to plankton for growth into a more biologically available form. This happens due to shifts in environmental conditions, not unlike the removal of sediment from dredging. The study presented in the FEIS does not address the resuspension of nutrients into the water column by exposure from direct removal and disturbance. The FEIS only focused on the addition of sediment, which fails to capture the entire scope of the issue. This study does not provide a reliable comparison and cannot be relied upon in this context. The projects impacts may increase HAB occurrence, further threatening water quality fisheries, and shellfish economic potentialities. Furthermore, this issue is not addressed by the NJ DEP permit and it clearly affects water quality.

Millions of dollars have been invested into cleaning up this waterway. Significant improvements have been noted over the past decade, however the toxic legacy remains. That legacy will be unearthed by this project and set the Raritan Bay back decades in terms of water quality. The central goal of the Clean Water Act and Section 401 was to achieve water quality that is both "fishable" and "swimmable" by the

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ FERC FEIS at ES-11

¹⁴⁰ FEIS 4-53

mid-1980s. While obviously this date has long passed, the goal remains and efforts to attain it continue. The Raritan Bay currently fails to achieve the fundamental goal of fishable and swimmable, despite recent improvements. Approval of the NESE Project will reverse years of investments aimed at de-listing the Raritan. The recent improvements and investments in improving the Raritan Bay should not be sacrificed for a project which offers absolutely no benefit to the state or its residents. As a result of the proposal violating the new dredging standards protecting general water areas, the permits must be denied.

IV. The Proposed Project Would Violate the General Location Rules

The project violates the general location rules and therefore cannot be permitted. The DEP may reject a proposed development to (A) promote the public health, safety and welfare, (B) protect public property, wildlife, and marine fisheries, and (C) to preserve, protect and enhance the natural environment.¹⁴¹

The reasoning for this broad rule and the discretion in denying projects it offers the DEP is to “afford the appropriate discretion to the Department to reject ... projects that otherwise meet the rule but may pose a threat to the public, natural resources, property, or the environment”¹⁴² This standard offers a “common sense approach” that “recognizes that unusual circumstances may result in a project meeting the letter of the rules but not their intent and provides necessary parameters for the Department’s review of such projects.”¹⁴³

As detailed in this comment, the project will have significant impacts to the environment of the state and threatens public safety, health and wellbeing without offering a single benefit to neither the state nor its residents. Furthermore, the need for the project has been significantly questioned with no proof of any purpose for the significant harm it poses.

A. The NESE Pipeline would harm public health, safety and the general welfare.

It is clear that this project will endanger public health and safety of the residents of New Jersey, and that it fails to improve the general welfare of the state. The DEP is required to interpret the public health, safety and welfare analysis under the rules as providing full consideration for the national interests in the “wise use of coastal resources as required under the Coastal Zone Management Act.”¹⁴⁴

- i. First, the project will continue to exacerbate climate change and increase the severity and intensity of the impacts associated with it.

¹⁴¹ N.J. Admin. Code 7:7-14.2(a)

¹⁴² N.J. Admin. Code 7:7-14.2(b)

¹⁴³ N.J. Admin. Code 7:7-14.2(b)

¹⁴⁴ N.J. Admin. Code 7:7-1.1(b)

To be clear, there is nothing clean about natural gas. Over the lifecycle of natural gas (mining, transport, and use for electric power/heating) it produces a great deal of harmful pollutants that “result in at least 60-80 times more carbon-equivalent emissions and air pollution mortality per unit of electric power generated than does wind energy over a 100-year time frame.”¹⁴⁵

The resulting impacts from climate change will be particularly harmful to the region and especially New Jersey. The impacts of climate change are real and already being felt throughout the state. Continued allowance of projects which will see the State locked into years of fossil fuel consumption will have significant impacts on the coast. Specifically, impacts from stronger and more frequent storms, sea level rise, prolonged and severe flooding, and associated health risks, will significantly impact residents.

Hurricane Irene and Sandy illustrated the severity that stronger storms can have on the State. Flash flooding washed out roads and bridges, undermined railroads, brought down trees and power lines, flooded homes and businesses, and damaged floodplain forests. Hurricane Sandy was responsible for about 150 deaths, approximately half of which occurred in the Northeast.¹⁴⁶ Damages, concentrated in New Jersey, New York, and Connecticut, were estimated at \$60 to \$80 billion, making Sandy the second most costly Atlantic Hurricane in history behind Katrina.¹⁴⁷ It is also estimated that 650,000 homes were damaged or destroyed, and that 8.5 million people were without power.¹⁴⁸

Climate impacts will also significantly harm human health. Temperature related climate impacts include premature death and hospitalization due to increased temperatures. One recent study projected that temperature changes alone would lead to a 50% to 91% increase in heat-related deaths in Manhattan by the 2080s (relative to a 1980s baseline).¹⁴⁹ Increased ground-level ozone due to warming is projected to increase emergency department visits for ozone-related asthma in children (0 to 17 years of age) by 7.3% by the 2020s relative to a 1990 baseline of approximately 650 visits in the New York metropolitan area.¹⁵⁰ According to the DEC, The annual average temperature statewide has risen about 2.4°F since 1970, with winter warming exceeding 4.4°F.¹⁵¹

¹⁴⁵ Jacobson, Mark Z., *et al.*, 2013. Examining the feasibility of converting New York State’s all-purpose energy infrastructure to one using wind, water, and sunlight, *Energy Policy*, 57: 585-601.

¹⁴⁶ Blake, E. S., T. B. Kimberlain, R. J. Berg, J. P. Cangialosi, and J. L. Beven, II, 2013: Tropical Cyclone Report: Hurricane Sandy. (AL182012) 22 – 29 October 2012. 157 pp., National Oceanic and Atmospheric Administration, National Hurricane Center.

¹⁴⁷ NOAA, 2013: Billion Dollar Weather/Climate Disasters, List of Events. National Oceanic and Atmospheric Administration.

¹⁴⁸ *Supra* 25.

¹⁴⁹ Li, T., R. M. Horton, and P. L. Kinney, 2013: Projections of seasonal patterns in temperature-related deaths for Manhattan, New York. *Nature Climate Change*, **3**, 717-721.

¹⁵⁰ Sheffield, P. E., J. L. Carr, P. L. Kinney, and K. Knowlton, 2011: Modeling of regional climate change effects on ground-level ozone and childhood asthma. *American Journal of Preventive Medicine*, **41**, 251-257, doi:10.1016/j.amepre.2011.04.017.

¹⁵¹ *Supra* note 44.

- ii. Second, the re-suspension of toxic-and-pathogen-laden sediment and the discharge of chemically laden drilling fluid would have significant health impacts to the people of New Jersey.

As mentioned above, the proposed project will result in the resuspension of 1,091,734 cubic yards of toxic-laden sediment. The toxins include arsenic which is known to cause a variety of cancers in humans. Lead, another heavy metal which samples found exceeded the state thresholds is proven to cause neurologic impairment, especially in children. The re-suspended PCBs will enter the food chain and have significant effects on human health. More than 90% of human exposure to PCBs is through food, including fish and shellfish.

Furthermore, part of the proposal includes the release of chemical-laced water into the bay. Williams/Transco plans to release 3.5 million gallons of seawater that was treated with the toxic chemical CORRTREAT 15316.¹⁵² According to the Environmental Protection Agency, CORRTREAT 15316 is a highly toxic substance that is harmful to humans. Clariant, the manufacturer of CORRTREAT specifically notes on its Safety Data Sheet that “the product should not be allowed to enter drains, water courses, or the soil.”¹⁵³

Importantly, part of the Raritan Bay Loop would cut through the Raritan Bay Slag Superfund Site. The slag is contaminated by known pollutants such as lead, arsenic, antimony, copper, iron and chromium. Other metal contaminants include manganese, vanadium and zinc. EPA sampling has found contaminates in the soil and surface waters in these areas. Disruption of this soil will push contaminated soil into the bay and further impact water quality and human health. Furthermore, the currents will ensure that not all re-suspended sediment will fall back down to the seafloor, but will continue to mix in the water column.

Moreover, the currents in both the Raritan and Lower New York Bays run counter-clockwise.¹⁵⁴ Therefore, both the toxic-and-pathogen-laden sediment and the chemically laced drilling fluid will be caught by the currents and pushed toward the shores of the Bayshore. These known harmful chemicals may make their way onshore, polluting the coast and impacting public health.

- iii. Third the project would re-suspend methylmercury into the Raritan Bay and Ocean.

As the testimony from Yaseen Zaky from the Marine Academy of Science and Technology indicated at the March 18 hearing, the proposed pipeline will re-suspend methylmercury into the water column

¹⁵² FERC FEIS at 5-13.

¹⁵³ Clariant, Safety Data Sheet: CORRTREAT 15316. Pg. 4. Available at https://www.epa.gov/sites/production/files/2018-02/documents/tx0134060_sds.pdf.

¹⁵⁴ Jeffries, Harry, *Environmental Characteristics of the Raritan Bay: A Polluted Estuary*, Narragansett Marine Laboratory, 1962.

harming marine life and human health. Methylmercury was not discussed or evaluated in the FEIS. If re-suspended into the water column, the methylmercury may cause phytoplankton to absorb the toxin which will bio-accumulate up the food chain, harming marine life and significantly harming human health. In all samples taken by Mr. Zaky, methylmercury was detected. Some samples indicated levels as high as 1.406 micrograms per gram which is significantly higher than the EPA guidelines for safe mercury consumption, which is less than 0.4 micrograms per gram. The samples were taken along the proposed pipeline route; therefore it is likely that the construction of the pipeline will re-suspend these toxins. Methylmercury has known harmful effects on human health including neurological disorders, birth defects, and complications in childhood growth.

iv. Finally, Williams has a poor safety record.

Natural gas is primarily methane, a highly flammable and explosive gas. Williams has a poor safety record in the management of its pipelines, compressor stations, and processing plants. In the last ten years, Williams pipelines and compressor stations have exploded and/or caught fire ten times. In addition, incidents at other Williams facilities have killed six people and injured dozens. These accidents have released methane into the atmosphere, leveled buildings, and contaminated groundwater.

The Pipeline and Hazardous Materials Safety Administration has repeatedly levied civil penalties against Williams for neglecting safety procedures.

B. The NESE Pipeline would harm public property, wildlife, and marine fisheries.

The NESE Project will not only threaten the water quality of both the Raritan Bay, but will significantly impact other natural resources of the state, such as marine and wildlife that inhabit the waters. Striped bass, fluke, winter flounder, bluefish, tautog and weakfish are among the fish species that utilize the Raritan and ocean. Moreover, crustacean species such as blue crab, fiddler crab, green crab, and others are known to be plentiful in the project area. Furthermore, as mentioned above clams and mussels also thrive in the bay and are the center of a multi-million dollar national industry.

The offshore section of the project will impact all marine life that use and depend on the Raritan Bay and ocean for habitat, foraging areas, spawning grounds, and other necessary biological functions. Again, the toxic sediment resuspension will significantly impact marine life. The sediment modeling does not address the effects of the different toxins in the contaminated sediments to any of the marine species (benthic or pelagic, migratory or otherwise) that may be exposed to those chemicals (including sediment used in backfill) with minimal evaluation of the effects otherwise. Such an oversight underscores Williams/Transco's intentional focus on sediment transport and misdirection away from what is actually in the sediment. Furthermore, there was no analysis provided to document anticipated synergistic effects of exposure to a combination of toxins to any marine species (benthic or pelagic, migratory or otherwise).

Furthermore marine life and fisheries will be significantly harmed from the (1) noise, (2) hydrostatic testing, and (3) release of drilling fluids.

i. Impacts from noise.

The noise impacts from construction will impact marine mammals and fish. Marine mammals are sensitive to noise, and the constant noise and vibration generated by vessel engines and construction will be difficult for these animals to tolerate and could alter behavior and migration patterns.

Noise and vibration can also disorient marine species and lead to long-lasting damage and growth abnormalities in newly hatched organisms. The high number of marine vessels required by the NESE Project (with diesel engines 24/7) and the drilling required for the tunneling portions will disrupt numerous species from bottom dwelling shellfish, such as crabs, to gigantic marine mammals such as whales.

Nine months of 24/7 construction in the bay also poses a hazard to marine mammals from vessel strikes and noise. To protect these animals, Williams/Transco has proposed training vessel operators and crews to recognize them in the water and then take avoidance measures like slowing a vessel down or maneuvering it away. However, this will not work at night or in bad weather. Also, the types of vessels used to construct an in-water pipeline are not agile or easy to maneuver. Vessel operators are unlikely to be able to prevent collisions that may injure or kill seals, whales and turtles.

ii. Impacts to marine life, fish, shellfish and mollusks from sieving.

Through hydrostatic testing, Williams/Transco will suction up over 3.5 gallons of water at an extremely fast rate (2,350 gallons per minute) and filter the water through a mesh screen. Williams/Transco intends to position the water intakes halfway in the water column. It is important to remember that the water of the Raritan Bay is shallow. Therefore, this process will likely result in increased sediment turbidity, adding to the re-suspension of 1,091,734 cubic yards already disturbed from the installation of the pipeline. This, again, will re-suspend toxins and harm marine life.

Moreover, the process will have significant impacts on the marine life of New Jersey. The fish, larva, eggs, shellfish, and others caught in the process will be either crushed against the screen by the immense pressure or tunneled through the 23.5 mile pipeline. Any marine life caught in the process will be trapped in the pipeline for at least seven days, but possibly up to a month.¹⁵⁵ In either circumstance the marine life are certain to be killed or harmed in the process.

iii. Impacts from discharge of nearly 700,000 gallons of drilling fluid.

As mentioned above, the applicant intends to release 690,000 gallons of drilling fluid during the construction of the project. Drilling fluids/muds can be synthetic or oil based. It is unclear which type

¹⁵⁵ FERC FEIS at 4-134.

Williams/Transco will be using. Synthetic fluids can accumulate in sediment and adversely affect the benthic communities, causing decreases in species diversity. Williams/Transco has not even finalized what other harmful substances will be in this chemical cocktail. Common additives include toxic chemicals which impact marine life and disrupt healthy ecosystem functions. Thus, the permit cannot be considered complete and the impacts to marine life cannot fully be understood.

iv. Impacts to private property.

Based on the currents of the Raritan Bay, the re-suspended sediment will be pushed toward the shoreline. The chemicals and other contaminants may make it to the beach and wash along the shoreline, impacting homes, businesses, and property values.

C. The NESE Pipeline fails to preserve, protect and enhance our natural environment.

For the above mentioned reasons the project clearly fails to preserve, protect and enhance our natural environment. The impacts from developing the offshore segment of the project including (1) resuspension, (2) discharge of drilling fluids, (3) use of harmful chemicals, (4) hydrostatic testing, and (5) impacts to a superfund site do not preserve, protect or enhance the natural environment of the state. Instead, this project seeks to allow development of a pipeline that will decimate the marine environment of the Raritan Bay and the shoreline of the Bayshore area. The millions of dollars invested in the revitalization of the Raritan Bay will be lost. The communities, businesses and industries which depend on the health of the Raritan bay will be significantly harmed if this project is approved.

Therefore, the project clearly violates the general location rules and as such the DEP must deny the permit to ensure the preservation and protection of our natural environment.

V. The Proposed Project is Not Water Dependent and Alternatives Exist Which Will Not Harm Marine Resources and Water Quality

The proposed project is not water dependent and therefore the DEP should deny the permits.

Water dependent is defined as development which cannot physically function without direct access to the body of water along which it is proposed.¹⁵⁶ Moreover, uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location.¹⁵⁷ The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use.¹⁵⁸ A proposed

¹⁵⁶ N.J. Admin. Code 7:7-1.5

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use.¹⁵⁹ Similarly under the Flood Hazard Area

First, the proposal does not need access to the Raritan Bay. As explained above, the need and demand for the project have significantly been questioned by numerous independent sources. Thus, it is not clear that the project is necessary, let alone water dependent. Furthermore, the purpose of the proposal, to meet alleged energy needs in National Grid's service territory can be met with energy efficiency and renewable energy resources, both of which are cost-effective alternatives that do not require water access.

Second, the proposed water body is not suitable to satisfy the requirements and absorb impacts from the use. As these comments outline, the Raritan Bay has been significantly restored through private investment. However, the toxic contaminants that once severely polluted this waterway have been buried under clean sediment. The development of this pipeline through the waterway will re-suspend those toxic-laden sediments and re-contaminate the waterway. Based on the buried toxic-sediment the Raritan is not a suitable location for this project and will fail to absorb the impacts of development.

Therefore, the project should be denied as it is not water dependent.

VI. The Proposed Project Violates the Resource Rules Protecting Marine Fish and Fisheries.

Under the resource rules of the Coastal Zone Management Regulations, any activity which would "adversely impact the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged."¹⁶⁰ Furthermore, any activity that would "adversely impact any New Jersey based marine fisheries or access thereto is discouraged, unless it complies with" the appropriate general water rules.¹⁶¹ Marine fish are defined as "marine and estuarine animals other than marine mammals and birds."¹⁶² Marine fisheries is defined as "one or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics."¹⁶³ As the FERC FEIS indicates 33 species which are designated as Essential Fish Habitat under the Magnuson-Stevens Act are in the project area.¹⁶⁴ Of the 33, three (Bluefin tuna, dusky shark, and sand tiger shark) are listed as a species of special concern by the National Marine Fisheries Service.¹⁶⁵

¹⁵⁹ *Id.*

¹⁶⁰ N.J. Admin. Code 7:7:16-2(b)

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ FERC FEIS at 4-139

¹⁶⁵ *Id.*

The construction of the proposed pipeline will result in significant negative impacts to marine fish and fisheries through increased turbidity, re-suspension of toxin-laden sediment, noise impacts, and hydrostatic testing. Furthermore, the applicant does not appear to be complying with necessary time of year restrictions.

A. Increased Turbidity.

The sediment resuspension and subsequent increase in turbidity will result in direct and indirect adverse impacts on designated essential fish habitat.¹⁶⁶ Increases in turbidity can affect fish physiology and behavior which may impair migration, breeding, spawning and development. Potential physiological effects from increased turbidity include mechanical abrasion of surface membranes, delayed larval and embryonic development, reduced bivalve pumping rates, and interference with respiratory functions.¹⁶⁷ Furthermore, the redistribution of sediments that fall from suspension, will bury benthic and demersal species, resulting in mortality of eggs and other life stages, including winter flounder that spawn in shallow, inshore waters in the project area. The FEIS specifically notes that eggs and larvae of this species could be directly affected by excavation or by smothering in toxic-laden sediments during construction.¹⁶⁸

B. Re-suspended Toxic-Laden Sediment.

Furthermore, the re-suspended fine-grain sediments will not readily resettle and contain known harmful chemicals such as heavy metals, methylmercury, dioxin, and others. The re-suspended contaminants will affect habitat quality and risk contamination of fishery resources.¹⁶⁹ Furthermore, if absorbed by phytoplankton the contaminants risk bio-accumulation throughout the food chain and will significantly impair fish populations and the fishing industry which depends on these species. Additionally, impacts disrupting natural benthic habitat will harm fish and fishery resources. The FERC FEIS indicates that when benthic habitat is physically disrupted from dredging and smothering, the community can be expected to recolonize in roughly 1-3 years.¹⁷⁰ However, this estimate does not account for the toxic-laden sediment which will now be unearthed, impacting the benthic layer and its viability as potential habitat for marine life.

C. Impacts from Noise.

The noise from the installation of 163 piles, of which 24 would be constructed with a diesel impact hammer and vibratory device will harm, harass and disrupt naturally occurring fish populations and may

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ FERC FEIS 4-118

¹⁶⁹ FERC FEIS at 4-147

¹⁷⁰ FERC FEIS at 4-149

result in significant long term adverse effects.¹⁷¹ The FERC FEIS notes that noise generated by pile driving will exceed both the injury and behavior disturbance thresholds for fish.¹⁷²

D. Hydrostatic Testing Impacts.

Finally, entrainment and impingement is expected from the hydrostatic testing. As the applicant suctions roughly 3.5 million gallons of seawater Juvenile and early stage adult fish and invertebrates could be impinged on the intake screens and zooplankton (including plankton) could be entrained or entrapped.¹⁷³ The seawater will be suctioned at a rate of 2,350 gallons per minute with the intake expected to be placed halfway into the water column or at least 10 feet below the surface. This will significantly impact benthic habitats, further re-suspend toxic chemicals, and kill all marine life captured in the intake.¹⁷⁴

E. Time of Year Restrictions.

In order to protect fisheries and marine fish, the NJDEP has specifically requested that the applicant cease all construction activities from April 15 to September 15. However, the applicant has not yet agreed to this request.¹⁷⁵ Furthermore, while the applicant agreed to restrict construction of the Raritan Bay Loop portion of the project during March 1 to June 30 from mile posts (“MPs”) 12.0 to 14.25 and MPs 30.0 to 35.5 and from October 1 through November 30 from MPs 30.0 to 35.5 to better protect the Atlantic Sturgeon, the applicant has since requested a modification to these restrictions which would offer no such protections.¹⁷⁶

F. Conclusion.

Thus, based on the numerous significant impacts to marine fish and fisheries, as well as the cumulative effect from all construction activities, the proposed project should be denied, and the DEP must not grant the pending permits. The DEP has a duty to protect and enhance the marine fish and fisheries populations and approval of this project violates that duty.

VII. Significant Investments Have Drastically Improved the Raritan Bay and Revitalized the Bayshore Economy. These Investments Should Not Be Scarified for this Pipeline.

Coastal water has improved significantly since their low point in the 1970s. Stricter environmental laws, investments in waste treatment, and the decline of industries on the rivers that flow into the

¹⁷¹ FERC FEIS at 4-150

¹⁷² *Id.*

¹⁷³ FERC FEIS at 4-152

¹⁷⁴ *Id.*

¹⁷⁵ FERC FEIS at 4-146

¹⁷⁶ FERC FEIS at 4-119

region have led to a dramatic improvement in water quality. The old toxins have become buried beneath the seabed of the Raritan Bay. Under the Federal Water Quality Act, states have the right and the duty to protect the quality of their local waters. The waters in Raritan Bay were once referred to as a “dead sea”.¹⁷⁷ After decades of efforts to clean up the waters in the bay, marine life that had once vanished has begun to return. Whales are seen with increased frequency in Raritan Bay, and communities of seals live on Sandy Hook and an island by the Verrazano Bridge.

Moreover, in general the State of New Jersey has invested millions of dollars in promoting “Jersey Fresh Seafood,” which has become a highly prized product nationwide and beyond. Contaminating fish and shellfish habitats will risk undermining the brand, not just for the bay but for the entire state.

Projects and investments from local governments, non-profits, and the state have seen documented improvements in the Raritan Bay. Efforts by the Billion Oyster Project have led to oyster reefs which are cleaning the water.¹⁷⁸ Efforts to establish 100 acres of oyster reefs are underway through the Billion Oyster Project, begun in 2014. The Billion Oyster Project has reinstated oysters and reefs along the waters of Staten Island in the area of the proposed pipeline. Oysters are a filter feeder of plankton, and they will be affected by the construction of NESE’s pipeline in the New York Bight. The debris from digging will smother oysters.

Improving water quality has significantly benefited the economy of the Bayshore community. The Belford Seafood Co-Op, which has a membership of 30 fishing vessels, currently operates along the Raritan and utilized the Bay and surrounding ocean for fishing. In 2016 there were 18 to 20 boats active in the Belford fishing fleet, and some 50 families make their living there.¹⁷⁹ Improvements in water quality has increased the output of Belford. Currently, the Co-Op has seven trawlers and 17-18 other boats including commercial draggers and pound-net fishermen. These fishermen go out every single day, weather permitting. These fishermen depend on every season being profitable. Pound-netters have only the summer season to earn a full year’s income. Fishing for bunker during the season supplies not only the local area but all the way to Maine. Representatives from Belford have stated that the last few years have had some of the best seasons for multiple species. The area of the proposed pipeline will negatively impact numerous fishing grounds including for blue crabs, menhaden, and flounder. Their livelihoods mean more to them than dollars and cents they are passionate about the work and the ecosystem that provides them these resources. It is hard and demanding work that they thrive upon and that they consider priceless.

The construction of a pipeline under the sea floor is a highly intrusive process that threatens the progress made in cleaning the waters of the Raritan Bay and Ocean. Fishermen, recreational boaters,

¹⁷⁷ Brown, D.M., Robbins, J., Sieswerda, P.L., Schoelkopf, R., & Parsons, E.C.M. (2018 January).

¹⁷⁸ Mike McCann, New York City Oyster Monitoring Report, (May 2018).

¹⁷⁹ Caren Chesler, *From Selling Bait to Managing the Belford Seafood Co-Op: A Fish Story*, NJ Spotlight (May 11, 2016). <https://www.njspotlight.com/stories/16/05/11/profile-from-selling-bait-to-managing-the-belford-seafood-co-op-a-fish-story/>

and whale-watching businesses would be negatively impacted. There was no complete analysis of the economic adverse impact from NESE that will result from disturbances in/by the Raritan and Lower New York Bays on the habitat or the greater community that relies on fishing and recreation. The improvements and investments will be lost if the project is approved. The water quality will be degraded harming those who live, work, and recreate along the Bayshore.

VIII. Conclusion

As these comments have outlined, the NJDEP has ample authority to regulate the Williams/NESE pipeline based on both federal and state law, and based on its many significant negative impacts the NJDEP is compelled and obligated to deny the permits for the proposal. This project offers absolutely no benefit to the state of New Jersey or its residents. It violates numerous standards created for the protection of the natural environment, water quality, marine life, and public health and welfare. The NJDEP must exercise its clear statutory authority over the project and deny all permits.

Sincerely,



Cindy Zipf
Executive Director



Peter Blair, Esq.
Policy Attorney

Submitted on behalf of:

Richard Isakson
President: Belford Seafood Cooperative Association

David Tauro
Manager: Belford Seafood Cooperative Association

Tim Ryan
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Open Letter

May 2, 2019

Comments Opposing the Williams/Transco NESE Pipeline.

Clean Ocean Action