PHIL MURPHY
Governor
SHEILA OLIVER
Lt. Governor

State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION

CATHERINE R. McCABE
Commissioner

Division of Land Use Regulation
Mail Code 501-02A
P.O. Box 420
Trenton, New Jersey 08625-0420
www.nj.gov/dep/landuse

June 5, 2019

Sara Mochrie, Principal-Project Manager
Ecology and Environment, Inc.
368 Pleasant View Drive
Lancaster, NY 14086

RE: Denial of an Application for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront In-Water Individual Permit, Waterfront Upland Individual Permit, Coastal Wetlands Permit and Water Quality Certificate
DLUR File No. 0000-01-1001.3 FWW180001, FHA 180001, CSW180001, WFD180001, WFD180002
Applicant: Transcontinental Gas Pipeline Company
Project: Transcontinental Gas Pipeline Northeast Supply Enhancement Project
Project Location: Old Bridge Township, Sayreville Township, Middlesex County
Franklin Township, Somerset County
Block: Multiple
Lot: Multiple

Dear Ms. Mochrie:

On June 30, 2018, Transcontinental Gas Pipe Line Co. (Transco) submitted an application for the above-referenced permits for its Northeast Supply Enhancement (NESE) Project, which includes the proposed construction of a new compressor station and two new 26-inch diameter pipelines through freshwater wetlands, transition areas, coastal wetlands, flood hazard areas, riparian zones, and under the Raritan Bay. The New Jersey Department of Environmental Protection (NJDEP) Division of Land Use Regulation (DLUR) reviewed the NESE Project pursuant to the NJDEP's federal authority assumed under the Clean Water Act to issue permits for freshwater wetlands and impacts to coastal resources, the Freshwater Wetlands Protection Rules (N.J.A.C. 7:7A) and the Coastal Zone Management Rules (N.J.A.C. 7:7), which incorporate the NJDEP's consideration of water quality impacts and determination whether to issue a Water Quality Certificate pursuant to Section 401 of the federal Clean Water Act, and the Flood Hazard Control Act Rules (N.J.A.C. 7:13). The NJDEP hereby denies without prejudice the NESE Project application and the referenced permits due to the applicant's failure to demonstrate compliance as described herein.

PROJECT DESCRIPTION

The NESE Project is a proposed expansion of Transco's existing system from Pennsylvania through New Jersey to New York, to provide 400,000 dekatherms per day (Dth/d) of incremental capacity to National Grid at Transco's existing Rockaway Transfer Point located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York. According to Transco, the capacity of the existing Northeast Supply line is insufficient to provide the additional 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

The proposed NESE project would involve the construction and installation of three components in New Jersey: Compressor Station 206, the Madison Loop, and the Raritan Loop.

Proposed new Compressor Station 206 (CS 206) would be a 32,000-horsepower gas fired compressor station within Block 5.02, Lots 23 and 25 in Franklin Township, Somerset County. The proposed compressor station would occupy about 16.1 acres. Proposed new suction and discharge piping would connect CS 206 with Transco's existing Mainline, which is approximately 600 feet to the southeast of proposed CS 206. Access to CS 206 is proposed on lots 1.02, 9, 10, 11.02, 12, 16 and 17. The proposed access road, if approved as currently designed, would result in the disturbance of 2.862 acres of freshwater wetlands, 0.006 acre of state open waters, and 0.485 acres of riparian zones. In 2019, the Department received information that CS 206 was proposed in an area containing habitat for the State-listed Barred Owl. The Department investigated the information and confirmed the Barred Owl habitat, resulting in a reclassification of the onsite wetlands as exceptional resource value and increasing the associated wetland transition area from 50 to 150 feet. With these classification changes, the proposed construction for CS 206, the suction/discharge piping and a stormwater detention basin, if approved as currently designed, would result in disturbances to 1.02 acres of freshwater wetlands and 2.47 acres of exceptional resource value wetland transition areas.

The Madison Loop would be co-located within existing Transco right(s) of way in Sayreville and Old Bridge Townships, Middlesex County, and would consist of approximately 5.96 miles of new 26-inch diameter pipeline partially located within the upland waterfront development area. The Madison Loop would result in the disturbance of 1.968 acres of mapped coastal wetlands, 0.338 acres of freshwater wetlands, 1.143 acres of permanent impacts and 4.039 acres of temporary impacts to transition areas, and 0.46 acres of permanent disturbance and 0.597 acres of temporary impacts to riparian zones.

The Raritan Loop would begin within the upland waterfront development area in Middlesex County and extend into and under Raritan Bay. The Raritan Loop, as proposed, would consist of approximately six miles of new 26-inch diameter pipeline in New Jersey waters. Transco has proposed three (3) methods of installing the pipeline in Raritan Bay: horizontal directional drilling (HDD), clamshell bucket trenching and jet trenching. The HDD technique is proposed

from a location onshore in Old Bridge Township (mile marker 12+00) and continues offshore in Raritan Bay to mile marker 12+50. From mile marker 12+50 to 14+02 the pipeline would be installed via clamshell bucket. At mile marker 14+02 the pipeline would then enter New York waters, continue for approximately 12 miles, and then reenter New Jersey waters at approximate mile marker 26+50. From that point, the pipeline would be installed via jet trenching except beginning at mile marker 29+50 where it would be installed via HDD under Ambrose Channel to an exit point at approximate mile marker 30+00. At that point the pipeline would reenter New York waters and continue to its terminus at mile marker 35+49 at the Rockaway Delivery Lateral in New York State waters. Construction of the Raritan Loop in New Jersey would result in the discharge of dredge or fill material into Waters of the United States or navigable waters, with potential water quality impacts and adverse effects on aquatic species due to sediment disturbance, increased turbidity and sediment redeposition (including contaminated sediments).

On March 27, 2017, Transco applied to the Federal Energy Regulatory Commission (FERC) for a Certificate of Public Convenience and Necessity (Certificate) pursuant to the Natural Gas Act for approval of the NESE Project. FERC issued a Draft Environmental Impact Statement ("DEIS") for the NESE Project on March 23, 2018, and a Final Environmental Impact Statement ("FEIS") on January 25, 2019. The FEIS identified some of the various environmental impacts FERC anticipates from the construction and operation of the Project. On May 3, 2019, FERC issued Transco a Certificate for the Project subject to conditions to mitigate the anticipated environmental impacts.

ADMINISTRATIVE HISTORY

- On March 27, 2017, Transco submitted an application to FERC for a Certificate pursuant to the Natural Gas Act for approval of the project.

- On July 26, 2017, Transco submitted an initial application to NJDEP for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development Individual In Water Permit, Waterfront Development Individual Upland Permit, and a Coastal Wetlands Permit (DLUR File No. 0000-01-1001.3.3 FWW170001, FHA170001, FHA170002, WFD170001, WFD170002, and CSW170001) for the NESE Project. The proposed activities included the construction of a new compressor station in Franklin Park, Somerset County and new 26-inch diameter gas pipelines for the proposed Madison Loop and Raritan Loop. Transco withdrew the application on June 15, 2018 due to technical deficiencies.

- On June 20, 2018, DLUR received the resubmission of the application for NESE Project for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Flood Hazard Verification, Waterfront Development Individual In Water Permit, Waterfront Development Individual Upland Permit, and a Coastal Wetlands Permit (DLUR File No. 0000-01-1001.3.3 FWW180001, FHA180001, FHA180002, WF180001,

WFD180002, and CSW180001).

- On July 18, 2018, the DLUR issued a deficiency letter, which informed Transco that among other deficiencies, its application did not include property owner consent to access work and construction areas outside the existing Transco Right of Way, failed to address stormwater management issues at the proposed compressor station, and did not include approval from the United States Army Corps of Engineers for Transco to dispose of dredge materials within the Historic Area Remediation Site (HARS) or any another suitable proposed upland disposal facility.

- On September 4, 2018, Transco submitted a response package to the July 18, 2018 deficiency letter. Information included updates to property owner certification, stormwater information, and dredge plan and spoils disposal information.

- On September 14, 2018, DLUR issued a second deficiency letter after determining the information submitted on September 4 was not complete.

- On September 26, 2018, Transco submitted a response package to the September 14, 2018 deficiency letter. Transco's response included the necessary property owner consents for all outstanding properties and an updated Sediment Sampling and Analysis Plan for the proposed Raritan Loop.

- On September 27, 2018 the Division issued a third deficiency letter advising Transco that although the Sediment Sampling and Analysis Plan was sufficient for dredge sampling to begin the application remained deficient until the results have been analyzed and a letter was provided from an upland dredge material disposal facility indicating that both storage and chemical composition was acceptable. The September 27 letter also identified outstanding stormwater deficiencies.

- On November 5, 2018, NJDEP held a public hearing in Franklin Township for the freshwater wetland components of proposed Compressor Station 206 and the Madison Loop. The public comment period for the public hearing was from November 5 through November 20.

- On November 8, 2018, DLUR requested that Transco provide an analysis of a potential alternative access road into CS 206 from the SUNCO utility right of way to determine if such an alternative would reduce or avoid impacts to wetlands. Transco provided responses on November 30, supplemental information on December 12, 2018, and follow up responses related to the access road width on December 21, 2018. The follow up information indicated that the SUNCO alternative would not reduce or avoid wetlands impacts.

- On February 6, 2019, Transco provided information consisting of revisions and supplemental information for the CS 206 infiltration basin, results of pre-dredging sampling and analysis, and the acceptance letter from an upland dredge material disposal facility. The NESE Project application was declared complete for review February 6, 2019. The 90-day review period pursuant to the Coastal Zone Management Rules and the Flood Hazard Area Control Act Rules was set to end May 6, 2019.

- On March 18, 2019, NJDEP held a public hearing in East Brunswick Township for the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits and a pending Division of Water Allocation permit application for temporary dewatering activities for the NESE Project. The public comment period for the public hearing was from March 18 through April 2, but was subsequently extended to April 17, 2019, to allow the public additional time to provide comments on the Waterfront Development, Coastal Wetland and Flood Hazard Area Permits for the NESE Project.

- On March 20, 2019, DLUR requested additional information from Transco regarding HDD failure contingency plans and proposed work in the Raritan Bay Superfund Slag Site as a result of comments received during the public hearing. Transco provided an HDD contingency plan memo on March 27, 2019.

- On March 20, 2019, DLUR asked Transco to revise the Madison Loop site plans to reflect that there were no exceptional resource value wetlands west of Gondek Drive. Revised plan sheets depicting this change were received on April 28, 2019.

- On March 25, 2019, DLUR received an email from Eastern Environmental Law Center concerning the sighting of a Barred Owl adjacent to the proposed CS 206 site by a local resident.

- On April 4, 2019, DLUR's Threatened and Endangered Species Unit conducted a site visit at the CS 206 site location to determine the suitability for Barred Owl habitat.

- On April 5, 2019, DLUR in consultation with Transco agreed to extend the 90-day review period for 30 days. The review period ends June 5, 2019. The public comment period was extended an additional 15 days to May 2, 2019.

- On April 11, 2019, DLUR asked Transco to revise the CS 206 site plans to account for the anticipated exceptional resource value wetland reclassification and update the freshwater wetland compliance report and alternative analysis to account for the Barred Owl habitat evaluation. On May 1, 2019, Transco provided revisions to the environmental report to address N.J.A.C. 7:7A-10.3 and 10.4 and DLUR received site plan revisions on May 2, 2019. On May 17, 2019, DLUR received further revisions to the

CS 206 site plans to reflect the modified buffer and changes to the Stormwater Detention Basin.

- On April 29, 2019, the Barred Owl sighting record was accepted as valid by the NJDEP Division of Fish and Wildlife, Endangered and Non-Game Species Program. At that time, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owl and therefore, the wetlands surrounding the CS 206 were reclassified as exceptional resource value with a 150-foot buffer.

ANALYSIS

The Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1, et seq.) and Rules (N.J.A.C. 7:7A) require that a permit be obtained from the Department for regulated activities within freshwater wetlands and/or transition areas to freshwater wetlands. The Flood Hazard Area Control Act Rules (N.J.A.C. 7:13) require that a permit be obtained from the Department for regulated activities within flood hazard areas and/or within the riparian zones of regulated waters. The Waterfront Development Law (N.J.S.A. 12:5-3) and the implementing Coastal Zone Management Rules (N.J.A.C. 7:7) require a Waterfront Development Permit be obtained from the Department for any regulated activity below the mean high-water line of any tidal water body and for any regulated activity within the upland 500 feet from the mean-high water line. The Wetland Act of 1970 (N.J.S.A. 13:9A) requires that a Coastal Wetlands Permit be obtained from the Department for any regulated activity within any wetland delineated and mapped pursuant to the Wetlands Act of 1970. Finally, Section 401 of the Clean Water Act requires an applicant for a federal license or permit to conduct any activity including, but not limited to, the discharge of dredge or fill material into Waters of the United States or navigable waters, to obtain a Water Quality Certificate from the State from which the discharge originates.

The Division of Land Use Regulation denies without prejudice the referenced permit applications for the NESE Project because the applicant has not demonstrated compliance with the applicable Rules as discussed below.

Proposed Compressor Station

Freshwater Wetlands Individual Permit

7:7A-10.2 Standard requirements for all individual permits
(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:

1. Has no practicable alternative which would meet the requirements at (b)1i and ii below:

i. The alternative would have a less adverse impact on the aquatic ecosystem or would not involve a freshwater wetland or State open water; and

ii. The alternative would not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal;

Construction of and access to the CS 206 site, as proposed, would adversely impact freshwater wetlands, and Transco has failed to demonstrate that that no practicable alternatives exist. First, as set forth above, after receiving a sighting report of a Barred Owl adjacent to the proposed CS 206 site and subsequent investigation, including an inspection of the site and contiguous forested area by NJDEP biologists on April 29, 2019, NJDEP accepted as valid the sighting report of a Barred Owl adjacent to the proposed CS 206 site due to the presence of suitable forested habitat conditions on site and the larger contiguous forested area. As a result, the forested wetlands surrounding the CS 206 site were determined to be suitable habitat for Barred Owls and wetlands surrounding the proposed compressor station were reclassified as exceptional resource value with a 150-foot buffer.

In anticipation that the wetlands would be reclassified from intermediate to exceptional resource value, DLUR asked Transco on April 11, 2019 to supplement its Freshwater Wetlands Individual Permit application to demonstrate compliance with N.J.A.C 7:7A-10.2(b) and N.J.A.C.7:7A-10.4. In response, Transco submitted additional information on May 1, 2019. On May 17, 2019, Transco submitted site plan revisions that depicted a 150-foot wetlands transition area as well as design changes to the proposed stormwater detention basin.

Transco's revised site plans proposed to clear exceptional resource value forested wetland transition areas to construct 1) the compressor station and 2) the proposed stormwater detention basin. Transco also proposed to clear a large area to the west of the compressor station for "staging and laydown," with no permanent structures proposed following construction activities. Shifting the compressor station footprint to the west would avoid impacts to the exceptional resource value transition area. The transition area serves, among other functions, as a sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetland species, habitat area for breeding, spawning, nesting and wintering of endangered, commercially, and recreationally important wildlife, and a corridor area which facilitates the movement of wildlife to and from freshwater wetlands, streams, and uplands. The supplemental information submitted by Transco did not address why the proposed compressor station and stormwater detention basin could not be shifted to the west, with any associated reconfiguration of the proposed staging and laydown areas, to avoid the exceptional resource value transition area. In addition, there was no information submitted to address why the transition area disturbance for the project as proposed could not be reduced.

Second, Transco's preferred alternative to access the proposed CS 206 site is from County Route 518 (Georgetown Franklin Turnpike), which would result in 2.862 acres of freshwater wetland disturbance. The submitted alternatives analysis identified an existing access road for the adjacent Higgins Farm Superfund Site (Higgins Farm access road) as an alternative point of accessing the CS 206 site. Utilizing the Higgins Farm access road would require the road to be extended 700 feet and widened in some areas resulting in 1.5 acres of disturbance to the Higgins Farm site. However, DLUR determined based upon a site inspection of the Compressor Station 206 site and the use of the NJDEP GIS wetland mapping that the Higgins Farm access road alternative would result in approximately 0.50 acres of wetland impact, compared to 2.862 acres under Transco's preferred alternative. Thus, the Higgins Farm access road alternative would reduce the wetland impacts by approximately 2.362 acres.

Transco asserted that this alternative is not practicable because the Higgins Farm is a Superfund site and there is a conservation easement on the property which prohibits non-agricultural development. In support of its position, Transco provided only an incomplete and unrecorded conservation easement between the property owner and Franklin Township. Additionally, Transco provided no information to demonstrate that the U.S. Environmental Protection Agency (USEPA) would prohibit use and extension of the Higgins Farm access road, or that the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq., pertains to this site and, if applicable, how the Act would prohibit use of the access road. Transco also cited Franklin Township's opposition to the project for rejecting the Higgins Farm access road as a practicable alternative. According to the information in the submitted application, Transco, through its local counsel, sent the Franklin Township attorney a letter dated May 26, 2017, requesting the opportunity to discuss temporarily delaying the adoption of any ordinance or resolution to allow time for negotiations to take place between Transco and the Higgins family. Transco did not provide DLUR with a copy of its letter to the township. According to Transco, the township attorney never responded to the letter. Transco apparently had no further follow up communication with the township. Therefore, Transco has not demonstrated either that it exhausted reasonable efforts to continue communication with the township, or otherwise made reasonable attempts to remove the encumbrance necessary to extend the access road.

As such, DLUR finds that Transco failed to demonstrate that no practicable alternative exists and therefore has not demonstrated compliance with N.J.A.C. 7:7A-10.2(b)1 and 2.

7:7A-10.3 Additional requirements for a non-water dependent activity in a wetland or special aquatic site

(a) In addition to meeting the requirements of N.J.A.C. 7:7A-10.2, a non-water dependent activity in a freshwater wetland or special aquatic site shall meet the requirements of this section. If an activity is water-dependent, or if it disturbs only a State open water that is not a special aquatic site, this section does not apply to the activity.

(b) There shall be a rebuttable presumption that there is a practicable alternative to a nonwater dependent activity in a freshwater wetland or in a special aquatic site, which

alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem.

(c) In order to rebut the presumption established in (b) above, an applicant must demonstrate all of the following:

1. That the basic project purpose cannot reasonably be accomplished using one or more other sites in the general region that would avoid or reduce the adverse impact on an aquatic ecosystem;

2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;

3. That the basic project purpose cannot reasonably be accomplished by an alternative design that would avoid or reduce the adverse impact on an aquatic ecosystem;

4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints; and

5. If any portion of the proposed activity will take place in an exceptional resource value wetland or in trout production waters, that the requirements of N.J.A.C. 7:7A-10.4 are met.

As discussed above, it has not been demonstrated that there are no practicable alternatives to the access road and that there is no alternative design for CS 206 and the proposed detention basin. Therefore, compliance with 7:7A-10.2(c) 1 through 4 has not been met because it has not been demonstrated that the project could not have been reconfigured, reduced in scope or relocated to avoid exceptional freshwater wetlands and their associated transition areas. Additionally, to the extent Transco has rejected alternatives due to alleged constraints, as discussed above, Transco has failed to show it made reasonable attempts to remove or accommodate such constraints.

7:7A-10.4 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters

(a) If an applicant proposes a non-water dependent activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:

1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland or trout production water, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or

2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

As defined under N.J.A.C. 7:7A-1.3:

"Compelling public need" means that based on specific facts, the proposed regulated activity will serve an essential health or safety need of the municipality in which the proposed regulated activity is located, that the public health and safety benefit from the

proposed use and that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.

To address the compelling public need requirement at 7:7A-10.4(a)1, Transco submitted supplemental information on May 1, 2019 to address the project purpose, the January 25, 2019 FERC issuance of its Final Environmental Impact Statement (EIS), the anticipated May 2019 issuance of the Certificate of Public Convenience and Necessity (which was issued on May 3, 2019), and National Grid's comment on the FERC Docket confirming its support for the project. According to Transco, this information demonstrates a public need for an increase in the capacity of the existing Northeast Supply line by 400,000 Dth/d of additional incremental transportation capacity to National Grid's existing service territory.

However, to satisfy N.J.A.C. 7:7A-10.4, Transco must demonstrate a compelling public need as defined by the applicable regulations or, alternatively, an extraordinary hardship. Transco has done neither. Specifically, Transco has not demonstrated, based on facts specific to its application, that the proposed regulated activity will serve an essential health or safety need of the municipality in which the activities are proposed, that the proposed use is required to serve existing needs of the residents of the State, and that there is no other means available to meet the established public need.

Furthermore, while Transco asserts that the vast majority of the wetlands impacts that will occur in connection with CS 206 are necessary for the NESE Project as a whole and therefore a denial of the Freshwater Wetlands Individual Permit would constitute an extraordinary hardship brought about by circumstances peculiar to the subject property, Transco has not, as discussed above, demonstrated that there are no practicable alternatives that would avoid the purported hardship.

Therefore, Transco has not demonstrated compliance with N.J.A.C. 7:7A-10.4.

Flood Hazard Area Control Act Permit

7:13-11.2 Requirements for a regulated activity in a riparian zone.

(b) The Department shall issue an individual permit for any regulated activity or project that results in clearing, cutting, and/or removal of vegetation in a riparian zone only if:

1. The basic purpose of the regulated activity or project cannot be accomplished onsite without clearing, cutting, and/or removal of vegetation in the riparian zone;

2. Clearing, cutting, and/or removal of riparian zone vegetation is minimized through methods including:

i. Situating the regulated activity or project as far from any regulated water as feasible; and

ii. Limiting construction to actively disturbed areas and/or areas wherein the benefits and functions of a riparian zone are considerably deteriorated and impaired as a result of previous development, such as:

(1) Areas devoid of vegetation, including areas covered with structures or other impervious surface;

(2) Abandoned pavement that has partially revegetated;

(3) Areas of dirt and gravel that are primarily devoid of vegetation;

(4) Eroded embankments; and

(5) Landscape islands within a paved parking area;

Pursuant to N.J.A.C. 7:13-11.2(b)2ii, Transco has not adequately demonstrated that the proposed access road to the CS 206 site from the Franklin Georgetown Turnpike that crosses Block 5.02, Lots 1.02, 9, 10, 11.02, 12, 16 and 17 could not be accomplished without clearing, cutting or removing riparian zone vegetation of three unnamed tributaries to Carters Brook. Transco has not fully explored utilizing the existing Higgins Farm access road, which would eliminate all disturbances to riparian zone vegetation.

Raritan Loop

Waterfront Development Individual Permit and Water Quality Certificate

N.J.A.C. 7:7-12.7 New Dredging

10. The new dredging shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:

i. An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. 7:7-12.9, Dredged material disposal in water areas, and N.J.A.C. 7:7- 15.12, Dredged material placement on land.). The Department will make an acceptable use determination for the beneficial use of dredged material in accordance with Appendix G;

ii. Pre-dredging chemical and physical analysis of the dredged material, including water quality predictive analyses for surface water and ground water may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;

iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and discharges from dredged material management areas (see N.J.A.C. 7:7-9.49) shall meet applicable Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may require the permittee to conduct biological, physical, and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;

Due to suspected contamination of sediments along the proposed submerged pipeline route for the Raritan Loop, DLUR required Transco to provide pre-dredging chemical and physical analysis of the dredged material, as well as additional testing to determine potential impacts to surface water quality and benthic communities. The testing results were also necessary for NJDEP to determine if the proposed dredged material placement method and disposal site are acceptable. NJDEP's rules at N.J.A.C. 7:7-12.7(2) require compliance with Appendix G, regarding the management and regulation of dredging activities in state tidal waters, including required application information. As stated in Appendix G, a water quality certificate is required for any discharge of dredged material into navigable waters of the United States associated with the dredging operation.

Transco provided initial in-situ sediment sampling for bulk sediment chemical analysis, sediment grain size, and texture. However, the testing was insufficient for DLUR to determine if the proposed upland placement facility was acceptable or if surface water quality would be impacted due to resuspension of contaminants at the proposed dredging site.

NJDEP worked with Transco to create a sediment sampling and analysis plan (SSAP) for the upland placement of material. Transco conducted sediment sampling in fall/winter of 2018. Bulk sediment chemistry on raw dredged material samples results were screened against the *Ecological Saline Water Sediment Effects Range Medium (ER-M)* criteria. ER-Ms are measures of toxicity in marine sediment that are used in assessing toxicity hazards for trace metals and organic contaminants. Parameters that exceed the ER-M value indicate there is a greater than 50% incidence of adverse effects to benthic communities (*Guidance for Sediment Quality Evaluations – NJDEP – November 1998).* Transco's sampling results showed exceedances of the ER-M value for bis(2-ethylhexyl)phthalate, phenanthrene, arsenic, manganese, mercury, polychlorinated biphenyls (PCBs) and 4,4'-DDE (pesticides) at certain sample points, as follows:

Bis(2-Ethylhexyl)phthalate (Semi-Volatile Organic Compounds):

ER-M Screening Criteria	Sample ID	Result
2.64651	VC-214	4.98

Phenanthrene (Semi-Volatile Organic Compounds):

ER-M Screening Criteria	Sample ID	Result
1.5	VC-214	2.21

Arsenic (Inorganic Compounds):

ER-M Screening Criteria	Sample ID	Result
70 (Non-res 19)	VC-208	63.8
70	VC-214	70.1

Manganese (Inorganic Compounds):

ER-M Screening Criteria	Sample ID	Result
260	VC-304	366
260	DEP-3	379
260	DEP-4	353
260	DEP-5	371

Mercury (Inorganic Compounds):

ER-M Screening Criteria	Sample ID	Result
0.71	VC-208	1.56
0.71	VC-214	2.17

PCBs (Aroclors Sum):

ER-M Screening Criteria	Sample ID	Result
0.18	VC-208	0.821
0.18	VC-214	0.869

4,4'-DDE (Pesticides):

ER-M Screening Criteria	Sample ID	Result
0.027	VC-208	0.0289
0.027	VC-214	0.0366

These results indicate that the proposed dredging could adversely impact surface water quality. Specifically, Transco's sampling results indicate the proposed dredging for the Raritan Loop may exceed the applicable surface water criteria for toxic substances at N.J.A.C. 7:9B (SWQS). Based on Transco's submission, the relevant contaminants are bis(2-ethylhexyl)phthalate, phenanthrene, arsenic, manganese, mercury, PCBs and 4,4'-DDE (pesticides). In support of its application, Transco provided a report entitled "*NESE Hydrodynamic & Sediment Transport Modeling*" dated August 2017 that analyzed various methods of dredging and potential total suspended solids (TSS) turbidity and sediment plumes. An analysis was provided for open bucket with barge overflow, jet sledding, jet trenching, and HDD dredging techniques. DLUR asked Transco to provide a more detailed analysis to compare different methods of bucket dredging and jet equipment. Additionally, DLUR required a comparison of different methods selected for the pipe installation. Transco provided information on the feasibility of the HDD method, mechanical dredging, and jet trenching and provided a modeling analysis of cumulative TSS, distance of TSS plume, production rates, maximum distance of deposition and confirmed it would implement appropriate best management practices to control TSS in a manner that complies with the surface water quality standards.

However, the chemical analysis for sample locations VC-208, VC-214, VC304, DEP-3, DEP-4, and DEP-5 resulted in exceedances to the *Ecological Saline Water Sediment ER-M criteria* which indicates there could be potential impact to water quality. Transco did not provide modeling to show that turbidity concentrations and water quality parameters for the identified chemicals of concern downstream and upstream of the dredging site will meet the SWQS.

Accordingly, the available information indicates that the proposed dredging could adversely impact surface water quality and that Transco has not sufficiently demonstrated how it would avoid adverse impacts to surface water quality. Any resubmittal of NESE Project application must include a modeling analysis for the above referenced parameters that demonstrates compliance with the SWQS, through the implementation of appropriate best management practices identified in Appendix G or otherwise, to avoid adverse water quality impacts.

RECOMMENDATIONS AND CONCLUSION

Based on the above analysis, Transco has failed to demonstrate that the proposed NESE Project would comply with the Freshwater Wetland Protection Act Rules at N.J.A.C 7:7A, the Flood Hazard Control Act Rules N.J.A.C. 7:13, and the Coastal Zone Management Rules at N.J.A.C. 7:7. Therefore, the NESE Project permit application, including for a Freshwater Wetlands Individual Permit, Flood Hazard Area Individual Permit, Waterfront Development Individual In-water Permit, Upland Waterfront Development, Coastal Wetland Permits and Water Quality Certificate, is hereby denied without prejudice.

If you or anyone is aggrieved by this permit decision, an administrative appeal may be filed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-28, Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-21, and the Flood Hazard Control Act Rules at N.J.A.C. 7:13-23.

Any interested person who considers himself or herself aggrieved by this permit decision may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin by writing to: New Jersey Department of Environmental Protection, Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, 401 East State Street, P.O. Box 402, Trenton, NJ 08625-0402. This request must include a completed copy of the Administrative Hearing Request Checklist. The Checklist is available through the Division's website at http://www.nj.gov/dep/landuse/forms.html. The DEP Bulletin is available through the Department's website at http://www.nj.gov/dep/.

I am sharing a copy of the denial with the appropriate local and federal agencies to promote inter-governmental cooperation in managing natural resources.

If you have any questions on this decision, please contact Matthew Resnick of my staff in

writing at the above address, by telephone at (609) 777-3955, or via email at Matthew.resnick@dep.nj.gov.

Sincerely,

Diane Dow, Director
Division of Land Use Regulation

cc: Bureau of Coastal and Land Use Enforcement, Toms River
Sayreville Township, Municipal Clerk and Planning Board
Old Bridge Township, Municipal Clerk and Planning Board
Franklin Township Municipal Clerk and Planning Board

Transcontinental Gas Pipe Line Co. Attn: Joseph Dean, Manager, EH&S
2800 Post Oak Road Blvd., Suite 900
Houston, Texas 77056

FERC