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NY's clean water advocate

February 27, 2015

VIA EMAIL

Michael T. Higgins, Project Manager
New York State Department of Environmental Conservation
Division of Environmental Permits
625 Broadway, 4th Floor
Albany, NY 12233

Re: Comments re Clean Water Act Section 401 Water Quality Certification for Algonquin Incremental Market Project, Application ID No. 3-9903-00099/00003

Dear Mr. Higgins:

Riverkeeper, Inc. (Riverkeeper) submits the following comments on Algonquin Gas Transmission LLC's (Algonquin or Applicant) application for Clean Water Act Section 401 Water Quality Certification (WQC Application) for the Algonquin Incremental Market Project (AIM Project), Application ID No. 3-9903-00099/00003.[1] The Application was made available via notice in the Environmental Notice Bulletin on December 31, 2014.

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. Riverkeeper is actively involved in public education, advocacy, and litigation surrounding the issue of shale gas extraction and related infrastructure, particularly because of the potential impacts on New York State's drinking water supplies.

As detailed below, the WQC Application fails to demonstrate that the AIM Project will comply with New York state water quality standards, as it contains insufficient information regarding stormwater runoff and fails to include detailed, site specific control measures. Accordingly, the New York State Department of Environmental Conservation (NYSDEC) must deny certification pursuant to section 401 of the Clean Water Act, or require Applicant to supplement and resubmit its application for public review and comment. If the application is

[1] To the extent applicable, the comments herein should also be applied to Algonquin's permit applications for Freshwater Wetlands, Application ID No. 3-9903-00099/00002, and Stream Disturbance, Application ID No. 3-9903-00099/00004. Both applications were submitted in a combined, joint application with the application for Clean Water Act Section 401 Water Quality Certification (WQC Application) and are subject to the same comment period. *See* New York State Department of Environmental Conservation (NYSDEC), Notice of Complete Application and Notice of Legislative Public Comment Hearing (Dec. 31, 2014).

supplemented and resubmitted, additional issues regarding discharge of hydrostatic test water and trench dewatering, wetlands mitigation, and setbacks for additional temporary workspace near waterbodies must also be addressed.

I. Background

The AIM Project spans four states and involves the replacement and expansion of approximately 37 miles of the existing Algonquin pipeline system, the upgrade of multiple compressor stations, and the upgrade of existing and construction of new metering and regulating stations along the pipeline route. In New York State, the project involves the take up and relay of more than 15 miles of pipeline, replacing the existing 26 inch pipe with a 42 inch pipe, approximately two miles of new pipeline, and a new Hudson River crossing. The New York portion of the AIM Project also includes the upgrade of two compressor stations and two metering and regulating stations. The majority of the New York portion of the AIM Project is located within the Hudson River watershed, while approximately two miles of pipeline replacement and the expansion of the Southeast Compressor Station are located within the New York City (NYC) drinking water supply watershed, which provides drinking water for nine million New Yorkers. Specifically, a portion of the AIM Project is located within the Croton watershed, part of the East of Hudson NYC watershed.

The AIM Project requires federal approval by the Federal Energy Regulatory Commission (FERC), which conducted environmental review pursuant to the National Environmental Policy Act. The Applicant submitted an application to FERC for a Certificate of Public Convenience and Necessity on February 28, 2014, following a pre-application and scoping process. Riverkeeper submitted comments regarding the scope of the Draft Environmental Impact Statement (DEIS) on October 15, 2013[2] and on the application for a Certificate of Public Convenience and Necessity on April 8, 2104.[3] Riverkeeper also submitted detailed comments on the DEIS,[4] which was issued by FERC in August 2014. In our comments to FERC, Riverkeeper identified and expressed concerns regarding a number of issues related to water quality and the AIM Project's likely impacts on both the Hudson River and NYC watersheds. FERC issued the Final Environmental Impact Statement for the AIM Project on January 23, 2015, and has yet to make a determination regarding the Certificate of Public Convenience and Necessity.

In April 2014, shortly after submitting its application to FERC, Algonquin applied to NYSDEC for certification under Section 401 of the Clean Water Act, 33 U.S.C. § 1341, that the AIM Project will comply with New York State water quality standards. Without such certification, the Applicant cannot obtain federal approval for the project.

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[2] Riverkeeper Comments Regarding Scope of the Environmental Impact Statement for the Algonquin Incremental Market Project, Federal Energy Regulatory Commission (FERC) Docket No. PF 13-16-000 (filed Oct. 15, 2013), incorporated fully by reference herein.

[3] Riverkeeper Comments on Abbreviated Application of Algonquin Gas Transmission, LLC for Certificate of Public Convenience and Necessity, FERC Docket No. CP 14-96-000 (filed Apr. 8, 2014), incorporated fully by reference herein.

[4] Riverkeeper Comments on Algonquin Incremental Market Project Draft Environmental Impact Statement, FERC Docket No. CP-14-96-000 (filed Sep. 29, 2014), incorporated fully by reference herein.

In New York, the AIM Project involves the crossing of 34 waterbodies and 77 wetlands, and the disturbance of approximately 24 acres of wetlands. Of the 34 waterbodies that will be impacted by pipeline construction, 33 will be crossed using a dry crossing technique, which involves damming or diverting any perceptible flow and digging a trench through the streambed. Twenty-four of those waterbodies are Class C fresh surface waters, six are Class B fresh surface waters, two are Class A fresh surface waters, and one is Class SC saline surface water. Thirteen of the streams that will be crossed using a dry crossing technique also carry a trout (T) or trout spawning (TS) designation. The Hudson River, a Class SB saline surface water at the crossing location, will be crossed using the Horizontal Directional Drilling (HDD) technique, which involves directional boring from the banks of the river, underneath the riverbed, to install new pipeline.[5]

Stormwater runoff and downstream turbidity caused by construction of the AIM Project within the NYC watershed will also potentially impact two reservoirs within the Croton watershed system: the New Croton Reservoir and the East Branch Reservoir. The New Croton Reservoir is a partial Class AA and partial Class A fresh surface water that serves as the terminal reservoir for the Croton system, while the East Branch Reservoir is a Class AA fresh surface water. Both the New Croton and East Brach Reservoirs are impaired waterbodies subject to Total Maximum Daily Loads (TMDLs) for phosphorous and heightened protection criteria to avoid further impairment.[6]

II. The WQC Application Fails to Demonstrate that the AIM Project will Comply with New York State Water Quality Standards

Pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, anyone applying for a federal license or permit to conduct an activity which may result in a discharge to navigable water must first obtain certification that the activity complies with applicable state water quality standards. Specifically:

> "[A]n applicant for a federal license or permit to conduct any activity 'which may result in any discharge into the navigable waters' [is required] to obtain from the State a certification 'that any such discharge will comply with the applicable provisions of sections [1311, 1312, 1313, 1316, and 1317 of this title].' Section 401(d) further provides that "any certification . . . shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant . . . will comply with any applicable effluent limitations and other limitations, under section [1311 or 1312 of this title] . . . and with any other appropriate requirement of State law set forth in such certification."

PUD No. 1 v. Wash. Dep't of Ecology, 511 U.S. 700, 707-708 (1994) (internal citations omitted). In this case, NYSDEC may only issue such certification if it finds that the Applicant has "demonstrated compliance" with applicable water quality standards. 6 N.Y.C.R.R. § 608.9(a).

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[5] WQC Application, Appendix D, Table D-1, at 1-4.

[6] *See* NYSDEC, Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (Jun. 2000), available at: http://www.dec.ny.gov/docs/water_pdf/nycjune2000.pdf.

As set forth below, Algonquin has failed to demonstrate that the AIM Project will comply with New York State water quality standards.

A. Applicable New York State Water Quality Standards

As discussion in Section I, above, the AIM Project will impact 34 waterbodies that will be crossed by pipeline facilities and two drinking water supply reservoirs in the Croton watershed – the New Croton and East Branch Reservoirs – that will be affected by stormwater runoff and any upstream increases in turbidity due to construction activities. These waterbodies cover a wide range of surface water classifications, and are subject to a number of water quality standards encompassing best designated uses, narrative water quality criteria, and numerical water quality criteria set forth in 6 N.Y.C.R.R. Part 701, 702, 703, and 704; TMDLs for reservoirs in the NYC watershed; and antidegradation policy.

1. Best Designated Uses

Four of the waterbodies that will impacted by the AIM Project are designated Class AA and/or Class A, with one of the four also a designated trout water, or Class A(T). Both Class AA and Class A waters are designated best usage for "a source of water supply for drinking, culinary or food processing purposes; primary and secondary contact recreation; and fishing" and must be suitable for "fish, shellfish, and wildlife propagation and survival." 6 N.Y.C.R.R. § 701.5 & 701.6.

Six of the waterbodies that will be crossed by pipeline facilities are designated as Class B fresh surface waters. Class B waters are designated best usage for "primary and secondary contact recreation and fishing" and must be suitable for "fish, shellfish, and wildlife propagation and survival." *Id*. § 701.7.

The majority of the waterbodies – 24 in total – that will be crossed by pipeline facilities are designated as Class C fresh surface waters, with 10 of the 24 also designated trout waters, or Class C(T), and two of the 24 also designated as trout spawning waters, or Class C(TS). Class C waters are designated best usage for fishing, and must be suitable for "fish, shellfish, and wildlife propagation and survival" and "primary and secondary contact recreation." *Id*. § 701.8.

The two remaining waterbodies that will be crossed by pipeline facilities are designated as Class SB and Class SC saline surface waters, respectively, at the point of crossing. The Hudson River, at the point of pipeline crossing between Stony Point and Verplanck, is designated as a Class SB saline surface water, the best usages of which are "primary and secondary contact recreation and fishing" and which must be suitable for "fish, shellfish, and wildlife propagation and survival." *Id*. § 701.11. The final waterbody, Dickey Brook, is designated as a Class SC saline surface water at the point of crossing. Class SC waters are designated best usage for fishing and must be suitable for "fish, shellfish, and wildlife propagation and survival" and "primary and secondary contact recreation." *Id*. § 701.12.

2. Applicable Narrative Standards

There are a number of narrative water quality standards that are applicable to construction of the AIM Project. First, in most state classified waters, including all those impacted by the project, no increase in turbidity is allowed "that will cause a substantial visible contrast to natural conditions." *Id*. § 703.2.

Second, in all waters impacted by the project, no phosphorous is allowed in "amounts that will result in growths of algae, weeds and slimes that will impair the waters for their best usages." *Id*. Finally, no toxic or other deleterious substances are allowed "in amounts that will adversely affect the taste, color or odor thereof, or impair the waters for their best usages." *Id*.

3. Applicable Numerical Standards

Numerical standards for dissolved oxygen (DO) also apply to the waterbodies impacted by the AIM Project. In Class AA, A, B, and C waters, "the minimum daily average shall not be less than 5.0 mg/L, and at no time shall the DO concentration be less than 4.0 mg/L." For trout (T) waters, "the minimum daily average shall not be less than 6.0 mg/L, and at no time shall the concentration be less than 5.0 mg/L," while for trout spawning (TS) waters, "the DO concentration shall not be less than 7.0 mg/L from other than natural conditions." *Id*. § 703.3. For Class SB and SC waters, the DO concentration "[s]hall not be less than a daily average of 4.8 mg/L, except under certain circumstances." *Id*.

4. Total Maximum Daily Loads for Reservoirs in the NYC Watershed

Both the New Croton and East Branch Reservoirs are impaired waterbodies subject to TMDLs for phosphorous. Both Reservoirs are currently exceeding their respective phosphorous TMDLs and require reductions in order to meet prescribed load allocations.[7] As a result, any new addition of phosphorous to either reservoir constitutes a violation of water quality standards.

5. Antidegradation Policy

Water quality standards must also include a statewide antidegradation policy, which in New York is set forth in NYSDEC's 1985 Water Quality Antidegradation Policy.[8] NYSDEC implements the Antidegradation Policy through technology based and water quality based controls, as well as the use classifications and water quality criteria contained in New York's water quality standards. The Antidegradation Policy requires that existing in-stream uses must be maintained and protected. *Id*. *See also* 40 C.F.R. § 131.12(a). State antidegradation policies must be implemented in a manner "'consistent' with existing uses of the stream," *PUD No. 1*, 511 U.S. at 719, and "'no activity is allowable … which could partially or completely eliminate any existing use.'" *Id*. at 718-719 (quoting U.S. Environmental Protection Agency, Questions and Answers on Antidegradation 3 (Aug. 1985)). Thus, an applicant for water quality

[7] NYSDEC, Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (Jun. 2000), at 29 and 35.

[8] NYSDEC, Organization and Delegation Memorandum No. 85-40, Water Quality Antidegradation Policy (Sep. 9, 1985).

certification pursuant to Clean Water Act section 401 must demonstrate compliance with both designated and existing uses.[9]

B. The WQC Application Contains Insufficient Information Regarding Stormwater Runoff and Detailed Site Specific Control Measures

Unless strictly controlled, stormwater runoff during construction of the AIM Project, as well as long term changes in stormwater runoff quality, quantity, velocity, and drainage patterns post construction, will result in violations of water quality standards governing turbidity, phosphorous, dissolved oxygen, best uses, and/or antidegradation for the 34 waterbodies directly impacted by project construction and the New Croton and East Branch Reservoirs. In depth discussion of stormwater runoff and detailed, site specific plans for stormwater management and erosion and sediment control – including a Stormwater Pollution Prevention Plan (SWPPP) – are missing from the WQC Application. As a result, the Applicant has failed to demonstrate that construction of the AIM Project will comply with New York State water quality standards.

First, stormwater runoff from the AIM Project is likely to increase turbidity. When construction activities remove vegetation and expose soils, forest canopies no longer intercept stormwater and root systems no longer hold soils in place. Construction site runoff can erode exposed soils and transport sediment to receiving waters, increasing turbidity.[10] In fact, without sound erosion controls in place, construction sites can discharge more than 1,000 tons of sediment per acre per year.[11] In contrast, forested lands contribute on average only one ton of sediment per acre per year, or 0.1% of the amount from construction site runoff.[12] Suspended sediment in aquatic systems degrades aquatic wildlife habitat, reduces species diversity and damages commercial and recreational fisheries.

In addition, nutrients and toxic materials, including pesticides, industrial wastes, and metals, can bind to silt and clay particles that runoff transports to waterbodies. Sediment particles also shield pathogenic microorganisms, such as *Giardia* and *Cryptosporidium*, from detection, which can result in waterborne disease outbreaks. Long-term changes in hydrology and surface drainage patterns may also result from construction activities, particularly in areas, such as steep slopes, where changes in ground cover and topography can increase stormwater runoff, reduce the ability of natural systems to filter pollutants, and permanently alter drainage patterns.[13]

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[9] Existing uses which are actually attained in the water body on or after November 28, 1975 must be maintained and cannot be (even partially) eliminated, whether or not such uses are included in the water quality standards as designated uses. 40 C.F.R. §§ 131.12(a)(1), 131.3(e), and 131.10(h)(1). Existing use protections apply to all waters. *Ohio Valley Envtl. Coalition v. Horinko*, 279 F. Supp. 2d 732, 740 (S.D. W.Va. 2003) (citing 40 C.F.R. § 131.12(a)(1)). As the U.S. Environmental Protection Agency (USEPA) has observed, the antidegradation policy "protects the highest use attained in the water body on or after November 28, 1975." *Id.* at 751.

[10] USEPA, Construction Site Management Measure III. Construction Activities (last visited Sep. 29, 2014), available at: http://water.epa.gov/polwaste/nps/czara/ch4-3a.cfm .

[11] *Id*.

[12] *Id.*

[13] NYSDEC, New York Standards and Specifications for Erosion and Sediment Controls (Aug. 2005) at 1.3.

Increases in turbidity from stormwater runoff may hinder best usages for all classes of waterbodies affected by the AIM Project. The increase in suspended sediment, as well as the toxic materials and pathogens that can bind to sediment particles, may impair the use of Class AA and A waters – including the New Croton and East Branch Reservoirs – as sources of drinking water supplies. Suspended sediment also degrades aquatic wildlife and fish habitat, which would impair the use of Class AA, A, B, C, SB, and SC waters for fishing and fish and wildlife propagation and survival.

In addition to impairing the best usages of the waterbodies impacted by project construction, any increases in turbidity as a result of stormwater runoff will violate the narrative water quality standard for turbidity, which prohibits any increase that causes "a substantial visible contrast to natural conditions." This standard applies across all classes of waterbodies affected by the AIM Project.

Second, increases in turbidity also affect dissolved oxygen levels in waterbodies, potentially in contravention of state numerical standards for dissolved oxygen in trout and trout spawning waters, as well as Class AA, A, B, C, SB, and SC waters generally. As set forth in section II.A.3, above, New York State has set strict numerical limitations for dissolved oxygen in trout and trout spawning waters, and limitations for dissolved oxygen also apply to all classes of waters impacted by the AIM Project. A rise in turbidity increases biological oxygen demand in surface waters, which in turn decreases the level of dissolved oxygen. Therefore, any increased levels of turbidity caused by stormwater runoff from the AIM Project will in turn result in decreased levels of dissolved oxygen and further harm to aquatic life.

Third, stormwater runoff from the AIM Project may also increase phosphorous in violation of water quality standards. Vegetation clearing during project construction and for right of way maintenance can cause nutrients, such as phosphorus, to be transported downstream during rain events rather than being assimilated by plants *in situ*. As discussed in section II.A.2, above, the narrative water quality standard for phosphorus prohibits any increase that "will result in growths of algae, weeds and slimes that will impair the waters for their best usage." Increases in algae growth can clog drinking water intakes and filters and impair the use of Class AA and A waters as drinking water supplies. Growth of algae, weeds and slimes also degrades aquatic wildlife and fish habitat, which would impair the use of all impacted waters for fishing and fish and wildlife propagation and survival. In addition, any increase in phosphorous loading to the New Croton and/or East Branch Reservoirs will violate water quality standards, as both reservoirs are currently impaired and subject to TMDLs for phosphorous which prohibit any new source of the pollutant.

Finally, degradation of water quality that impairs existing uses will violate NYSDEC's Antidegradation Policy. *See* discussion in section II.A.5. As detailed above, stormwater runoff from the AIM Project has the potential to significantly lower water quality as a result of discharges of turbidity and phosphorous, as well as through impacts from turbidity including lower levels of dissolved oxygen, which is a particular concern for trout and trout spawning waters. Degradation in water quality will likely impair existing uses including drinking water, fishing, and fish and wildlife propagation and survival.

By failing to include an in depth discussion of likely impacts from stormwater runoff and detailed, site specific stormwater management plans, including a SWPPP, the WQC Application utterly fails to demonstrate that the AIM Project will comply with water quality standards. As discussed above, poorly controlled stormwater runoff will result in the violation of a number of water quality standards governing turbidity, phosphorous, dissolved oxygen, best usages, and antidegradation. In order to receive certification pursuant to Clean Water Act section 401, the Applicant must demonstrate as part of the WQC Application that stormwater runoff from the AIM Project will not result in violations of New York water quality standards.

In the Notice of Complete Application, NYSDEC states that the Applicant will have to apply for and obtain coverage under the State Pollutant Discharge Elimination System (SPDES) Stormwater General Permit for Construction Activities.[14] However, the fact that the Applicant will have to obtain coverage under this permit at some unspecified later date does not excuse its failure to properly evaluate stormwater in the WQC Application. NYSDEC is charged with determining whether or not the AIM Project will violate New York State water quality standards. It simply cannot make that determination without information regarding the extent of the site specific stormwater and erosion and sediment controls that will be employed during and after project construction, as well as a pollutant loading analysis for phosphorous.

Further, NYSDEC and the public have no way of knowing whether or not the Applicant will be able to obtain SPDES coverage for stormwater discharges. To our knowledge, the Applicant has not yet submitted a Notice of Intent and final SWPPP for coverage under the SPDES Stormwater General Permit for Construction Activities. Not all projects – particularly those subject to heightened criteria due to construction within the NYC watershed – are able to obtain such coverage without making modifications to project plans and/or construction phasing schedules.[15]

As discussed above, NYSDEC may only issue certification pursuant to Clean Water Act section 401 if it finds that the Applicant has demonstrated compliance with applicable water quality standards. NYSDEC may not certify that the AIM Project as currently configured will comply with water quality standards based on an assumption that stormwater controls still in development will ensure that the project does not result in discharge of pollutants such as turbidity and phosphorous.

[14] NYSDEC, Notice of Complete Application and Notice of Legislative Public Comment Hearing (Dec. 31, 2014). However, the Notice of Complete Application incorrectly states that the Applicant will be required to obtain coverage under GP-0-10-001, which is expired. In fact, the Applicant must obtain coverage under the new SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-15-002, which took effect January 29, 2015.

[15] The SWPPP for the portions of the AIM Project within the NYC watershed must also be approved by the New York City Department of Environmental Protection (NYCDEP), which as of January 21, 2015, notified the Applicant that its SWPPP failed to include information necessary for review and issued a notice of incomplete application. Among the information requested by NYCDEP was additional detail regarding erosion and sediment control and post construction stormwater management. *See* New York City Department of Environmental Conservation, Letter re 2013-CNC-0077-SP.1, Algonquin Gas Transmission LLC Project No. 2319, Towns of Cortlandt, Yorktown, and Southeast, New Croton and East Branch Reservoir Basins (Jan. 21, 2015).

III. If the WQC Application is Supplemented and Resubmitted, Additional Issues Regarding the Applicant's Construction and Mitigation Plans Must be Addressed

If the WQC Application is supplemented and resubmitted, the following additional issues concerning discharge of hydrostatic test water and trench dewatering, wetlands mitigation, and setbacks for additional temporary workspace next to waterbodies must be also be addressed in order to demonstrate compliance with water quality standards.

A. Discharge of Hydrostatic Test Water and Trench Dewatering

The Applicant plans to use more than 6.6 million gallons of water for hydrostatic testing, or testing of pipeline integrity before entry into service.[16] According to the WQC Application, this water will be sourced from the Old Verplanck Quarry Lake and "municipal" sources, though the exact origin of the municipal sources is not specified.[17] After use, the Applicant will discharge the remaining hydrostatic test water into upland areas as specified in the WQC Application, avoiding wetlands and riparian areas "where practicable," at rates of 1,000 to 1,200 gallons per minute.[18]

Hydrostatic test water that is discharged after use will contain any contaminants present in the original water, as well as any chemical additives used during testing. In our comments on Algonquin's application for a Certificate of Public Convenience and Necessity from FERC, Riverkeeper requested a prohibition on the use of chemical additives during hydrostatic testing, which risks contaminating waterbodies and watersheds when the test water is disposed of. In response to our request, Algonquin agreed to not use chemical additives in hydrostatic test water within the NYC watershed.[19] However, the WQC Application merely notes that the Applicant "does not anticipate using chemicals for testing or for drying the pipeline following hydrostatic testing."[20] In addition to the potential for discharge of any contaminants in the test water, the discharge itself, at rates of 1,000 to 1,200 gallons per minute, may result in erosion and channelization at the point of discharge, potentially increasing sediment runoff and turbidity in receiving waters.

The Applicant also plans to discharge water that accumulates in open trenches during pipeline construction. According to the WQC Application, the Applicant will discharge this water – which will be heavily laden with sediment – into generally described filtration devices "away from the water's edge."[21] Any discharged trench water that is not infiltrated and is carried back into receiving waters will increase turbidity.

As discussed in section II.B, above, increases in turbidity may impair best usages for all classes of waterbodies impacted by the AIM Project and violate the narrative water quality

[16] WQC Application at 3.14.
[17] *Id*., Table 3-3, at 3-16.
[18] *Id*. at 3-15 – 3-16.
[19] Motion for Leave to Answer and Answer of Algonquin Gas Transmission, LLC, FERC Docket No. CP14-96-000 (Apr. 23, 2014) at 19.
[20] WQC Application at 3-15.
[21] *Id*. at 3-11.

standard for turbidity, which prohibits any increase that causes "a substantial visible contrast to natural conditions." Increases in turbidity also affect dissolved oxygen levels in waterbodies, potentially in contravention of state numerical standards for dissolved in trout and trout spawning waters, as well as all waters impacted for the project. Discharge of contaminants and/or chemical additives in the hydrostatic test water may also violate narrative standards governing the presence of toxic or other deleterious substances, which are prohibited "in amounts that will adversely affect the taste, color or odor thereof, or impair the waters for their best usages." Degradation of water quality that impairs existing uses will also violate NYSDEC's Antidegradation Policy.

Discharge of hydrostatic test water and trench dewatering must occur well outside of wetland and riparian areas, and must not be allowed within construction workspace or 100 feet of wetlands or waterbodies. The use of chemical additives during and following hydrostatic testing must also be explicitly prohibited, and must apply to the entire project area, not only within the NYC watershed.[22]

B. Wetland Mitigation

The Final Wetland Mitigation Plan must be revised to allow the use of winter rye only in specific circumstances. The Wetland Mitigation Plan proposes to treat wetlands either by "seed[ing] with a quick-growing and inert cover crop *(e.g.,* winter rye [*Secale cereale],)* or they may be left uncovered to allow native seed stock in the restored topsoil to grow and proliferate."[23] However, given that winter rye is an upland species not suited for establishment under inundated conditions, it should only be planted as a wetland soil stabilizer in the absence of standing water.

C. Setbacks for Additional Temporary Workspace at Waterbody Crossings

Despite citing FERC best practices which require locating additional temporary workspace for waterbody crossings at least 50 feet from the waterbody itself – which is lower than the 100 foot minimum recommended by experts[24] – the Applicant has indicated that it plans to locate additional temporary workspace at distances as little as zero feet from the waterbody at

[22] NYSDEC must also clarify whether or not it plans to require the Applicant to obtain a State Pollutant Discharge Elimination System (SPDES) permit for discharge of hydrostatic test water and trench dewatering. In the Final Environmental Impact Statement issued by FERC on January 23, 2015, a SPDES permit for such discharges is listed as a required NYSDEC permit, with a note indicating that this permit was applied for in April 2014. FERC, Algongquin Incremental Market Project Final Environmental Impact Statement, FERC Docket No. CP14-96-000 (Jan. 2015), Table 1.3-1, at 1-9. However, there is no mention of this permit in the WQC Application or corresponding Notice of Complete Application issued by NYSDEC on December 31, 2014. If the Applicant has submitted an application for SPDES coverage for hydrostatic test water discharges and trench dewatering, NYSDEC must clarify the status of this application and make it, along with any draft permit or conditions, available for public review and comment. If not, NYSDEC must require the Applicant to submit such application or provide justification as to why it is not requiring SPDES coverage for discharge of hydrostatic test water and trench dewatering.

[23] Algonquin Gas Transmission LLC – Algonquin Incremental Market Project Final Wetland Mitigation Plan (Dec. 2014), Appendix A at 6.

[24] One hundred (100) feet is considered the minimum buffer width recommended for water quality protection. *See* Schueler, T. Site Planning for Urban Stream Protection, Metropolitan Washington Council of Governments (1995), at 111.

10 of the crossing locations in New York State.[25] Two of these locations are within the NYC watershed, and ultimately drain to the New Croton Reservoir.

The location of additional temporary workspace – which will require vegetation clearing[26] – so close to waterbodies, with no buffer between construction activities and the waterbody itself, is likely to result in discharge of sediment and increases in downstream turbidity. As discussed in section II.B, above, increases in turbidity may hinder best usages for all classes of waterbodies affected by the AIM Project and violate the narrative water quality standard for turbidity, which prohibits any increase that causes "a substantial visible contrast to natural conditions." Increases in turbidity also affect dissolved oxygen levels in waterbodies, potentially in contravention of state numerical standards for dissolved oxygen in trout and trout spawning waters, as well as all impacted waters. Degradation of water quality that impairs existing uses will also violate NYSDEC's Antidegradation Policy.

In order to protect water quality and promote compliance with water quality standards, additional temporary workspace must be located at least 100 feet from all waterbodies.

IV. Conclusion

For the reasons set forth above, the WQC Application fails to demonstrate that the AIM Project will comply with New York State water quality standards. Accordingly, NYSDEC must deny certification pursuant to section 401 of the Clean Water Act or require the Applicant to supplement and resubmit its application for public review and comment.

Thank you for the opportunity to address these important issues.

Sincerely,

Misti Duvall
Staff Attorney

William Wegner
Staff Scientist

[25] FERC, Algonquin Incremental Market Project Final Environmental Impact Statement, FERC Docket No. CP14-96-000 (Jan. 2015), Table 4.3.2-3, at 4-53.

[26] According to the WQC Application, "[v]egetation will not be cleared, except over the pipeline trench, in the area within 10 feet of the waterbody, unless root structure disturbance results in an unsafe work condition." *Id*. at 4-10 (emphasis added). This leaves the possibility that vegetation clearing will be conducted within 10 feet of a waterbody, which will further risk increasing sediment runoff.