

NEW HAMPSHIRE
SITE EVALUATION COMMITTEE

Docket No. 2015-08

**Application of Tennessee Gas Pipeline, LLC, (TGP) for a Certificate of Site and Facility for
the Construction of Northeast Energy Direct (NED) Project**

**Reply to Objection TGP to the Motion of the Towns of Fitzwilliam, Rindge and Pelham,
New Hampshire, to Retain Expert to Ensure That Applicant Tennessee Gas Pipeline, LLC
Fully Complies with the Clean Water Act (33 USC, Chapter 26, Subchapter IV)**

Reply

Status of Clean Water Act Section 401 Water Quality Certification

The New Hampshire Department of Environmental Services (NHDES) is responsible to ensure that the TGP NED pipeline project complies with Section 401 of the Clean Water Act (CWA). Section 401 requires that NHDES certify that the NED project not degrade the waters of New Hampshire.

The work that NHDES will be required to undertake to ensure compliance with CWA 401 will be daunting.¹ The NED project will be massive and will impact many hundreds of waterbodies. The project will require excavation, dredging, blasting, boring, damming, draining and filling. The threat to water bodies, lakes, ponds, rivers, streams, vernal pools, surface waters and ground water aquifers is real. TGP contractors will use blasting agents, emulsions and chemicals containing perchlorate and nitrates that threaten ground water aquifers that supply drinking water. TGP will also perform conditioned discharges into surface waters of the state for hydrostatic testing of its pipeline welds. Each action will require the careful review by NHDES staff within several Bureaus to ensure compliance with the water quality standards set by the state under RSA 485-A.

TGP filed a CWA 401 Application with NHDES on November 25, 2015. The Application is accompanied by only general statements of best management practices for its contractors and subcontractors. The Application does not describe the precise boundaries and potential impacts on the waterbodies that NHDES will be required to assess in the 401 permitting process. The Application does not address the methods and practices that NHDES will be required to evaluate during the CWA 401 permitting process on each waterbody that will be impacted by the project. TGP has filed thousands of pages of documents with NHDES, most of which have nothing to do with New Hampshire, but will require NHDES review and analysis.

**The Towns of Fitzwilliam, Rindge and Pelham Each Have Important Waterbodies That
Need and Are Entitled to the Protection of CWA 401.**

¹ For example, I was recently advised that NHDES has just two wetlands inspectors for the entirety of the project, some 70 miles.

The Assurance That Those Waterbodies Are Protected in the CWA 401 Process Demands Expertise

1. Threatened Waterbodies in the Town of Fitzwilliam.

Water quality expert, Rick Van de Poll, Ph.D., CWA #110, has prepared a preliminary report that assesses the impacts of the TGP project on precious Fitzwilliam waterbodies. The waterbodies identified include the Scott Pond Complex and the Scott Brook Marsh North. According to Dr. Van de Poll's assessment, the Scott Pond Complex at 305.4 acres and the Scott Brook Marsh at 206.3 acres are the 3rd and 5th largest wetland complexes identified in the Fitzwilliam Prime Wetland Protection Project currently underway by Dr. Van de Poll. Both complexes include high to very high functional value ratings relative to other wetlands in the region.

According to Dr. Van de Poll, based on an aerial photograph mapping completed by EMC, the TGP NED pipeline intends to permanently impact a minimum of 7.4 acres of wetlands along the 50 foot pipeline ditch. He notes that the permanent impact does not include an estimated 12.5 acres of temporary impacts to wetlands that will arise from access roads, construction staging areas and crossings. A total of .96 acres of permanent impacts will occur across the open water area of the Scott Pond Complex and an estimated 1.64 acres of permanent impacts will occur across the open marsh, scrub-shrub and palustrine forested system that is part of the Scott Brook Marsh North.

According to recent TGP responses to FERC Environmental Data Request No. 2, 60, TGP plans to cross Scott Pond using the dry cofferdam method. The cofferdam construction will require dewatering that will totally alter the plant, soil and hydrology of the Scott Pond. According to Dr. Van de Poll, the Scott Pond and Scott Brook Marsh have deep peat mats (50"+) that exist in a boreal environment. The chemical, physical and biological integrity of the peatlands will be permanently altered by the crossings.

2. Threatened Waterbodies in the Town of Rindge.

The results of Dr. Van de Poll's mapping work in Rindge showed a total of 485.2 acres of contiguous wetlands among 81 separate wetland evaluation units within the vicinity of the proposed pipeline. Several of the wetlands are very large and well known, such as the 62.3-acre Tarbell Brook Wetland Complex in the western part of town, the 64.7-acre unnamed mill pond marsh just to the east, and the 42.8-acre McGregor Meadow just west of Converse Meadow. All three of these wetlands have extensive marsh and scrub-shrub "critical" habitat according to NH Fish & Game, and include unique peatland resources that will be permanently altered by the proposed pipeline.

In addition, there will be at least four open water crossings of ponded wetlands within the proposed ROW. Based on discussions with TGP staff, none of the open water crossings will utilize horizontal directional drilling (HDD), which minimizes or eliminates direct impacts to the water bodies above. This more complicated approach to crossing sensitive water resources has been deemed "impractical" for the crossings involved. The four open water crossings include an unnamed pond

near a private residence (162 feet in length), Tarbell Brook (445 feet), Robbins Road pond (306 feet), and Goddard Pond (495 feet).

At least 25 vernal pools lie within the 200-foot study area on either side of the proposed pipeline in Rindge. Eight of these will be directly or indirectly impacted by the pipeline construction. Impacts to vernal pools are among the 40 wetland crossings that will impact a total of 12.14 acres within the 50-foot permanent pipeline ROW, and an additional 7.4 acres of impacts will result from “temporary workspace.” Based on existing information in the Environmental Resource Reports, it is unclear whether or not these “temporary” impacts will actually be short-term or long-term impacts. Certainly the access roads, which are unclearly marked on the TGP route maps, will require repeated use in order to maintain the low-growing vegetation along the pipeline ROW. Both the continued use of maintenance vehicles and the herbicides required to maintain the ROW and access roads in a “low growing condition” will effectively be permanent and not temporary as labeled by TGP.

3. Threatened Water Bodies in the Town of Pelham.

Within Pelham, Dr. Van de Poll has identified nine known and 25 estimated wetlands crossings that vary from .2 acres to over 1.2 acres per crossing within the 50-foot permanent ROW. The largest crossing involves Golden Brook, a 132-acre wetland-stream complex that has been designated as a *prime wetland* in Pelham. The dry ditch method proposed for this 1000-foot crossing will irreparably harm one the largest and most high valued wetlands in the entire town. This wetland contains habitat for at least two state-listed rare animals, and its upland buffer contains at least two state-listed rare plants. Not only does TGP’s proposed plan lack any acknowledgement of these facts, they have not replied to the town’s request to consider alternate routes in this area.

Budget

The preliminary assessments conducted by Dr. Van de Poll for the Towns have been done at Town expense. His ongoing work will involve careful evaluation of the TGP responses to FERC Environmental Data Requests; TGP best management practices and construction techniques and proposals; the TGP filings at NHDES for wetlands, alteration of terrain, shore land and other water related permits; the investigations and data reports generated by NHDES in the permitting processes; and the draft permits resulting from that work. Dr. Van de Poll will likely be required to conduct additional fieldwork, mapping, data gathering and analysis in order to ensure that the pipeline project does not violate federal and New Hampshire water quality standards.

It is not possible for Dr. Van de Poll to provide a detailed budget at this time. His proposed \$85 per hour charge is reasonable given the threat that the project poses to the critical water bodies located within the Towns.

Wherefore

The Towns of Fitzwilliam, Rindge and Pelham request, in accordance with RSA 162-H:10, IV, respectfully move the Site Evaluation Committee for an order requiring TGP to pay for the services

of Dr. Van de Poll. Dr. Van de Poll's expertise and work will ensure TGP fully complies with the CWA and RSA 485-A and will enable the Committee to perform the duties required of it by RSA 162-H:4.

Respectfully submitted,

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Certificate of Service

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Arthur B. Cunningham