

**Appendix I-1**  
**Water Resources**  
**Regulatory Framework**

# Appendix I-1

## Water Resources Regulatory Framework

This Appendix summarizes the federal and state legislation and regulations pertaining to water described in **Section 6-4-7** of the DDR/DEIS.

### FEDERAL

#### Clean Water Act

The objective of the Clean Water Act (CWA) is to restore and maintain the chemical, physical, and biological integrity of waters of the United States. Waters of the United States include streams, rivers, wetlands, mudflats, and sandflats that meet the specified requirements defined in 33 CFR 328.3. The CWA regulates point sources of water pollution (such as discharges of municipal sewage and industrial wastewater and discharges of dredged or fill material into navigable waters and other waters of the United States) and non-point source pollution (such as runoff from streets, agricultural fields, construction sites, and mining). (33 U.S.C. § 1251 et seq.). The CWA is administered by the U.S. Environmental Protection Agency (EPA).

#### *Water Quality Standards and Classifications*

In accordance with the CWA, surface waters in New York State are classified for their best uses (fishing, source of drinking water, etc.) and standards (allowable levels of pollutants) are set to protect those uses. Letter classes and standards range from A to D in descending order of quality. Standards set forth the maximum allowable levels of chemical pollutants, which are used as the regulatory targets for permitting, compliance enforcement, and assessing the quality of the state's waters. These standards can be either narrative (e.g., "none in amounts that will impair ...") or numeric (e.g., "0.001 µg/L") and are found in NYS regulation 6 NYCRR Part 703. The letter classifications and their best uses are described in regulation 6 NYCRR Part 701.

#### *Impaired Waters – CWA Section 303(d)*

The CWA Section 303(d) requires states to identify waterbodies that are not fully supporting their best uses. These waterbodies are then listed on the CWA 303(d) "impaired waters" list. Waterbodies may have been identified as impaired due to fish consumption advisories, public bathing beach closures, or sampling results (high nutrient levels, turbidity, toxic sediments). States must develop total maximum daily load plans (TMDLs) for waterbodies on the 303(d) list to reduce the amount of pollutants entering impaired waterbodies. A TMDL calculates the maximum amount of a single pollutant that a waterbody can receive and still meet water quality standards.

#### *Water Quality Certification of Compliance – CWA Section 401*

Under Section 401 of the CWA, any applicant for a Federal permit or license for an activity that may result in a discharge to navigable waters must provide to the Federal agency issuing a permit a certificate (either from the state where the discharge would occur or from an interstate water pollution control agency) that the discharge would comply with Sections 301, 302, 303, 306, 307, and 316 (b) of the CWA. In New York, this certificate is issued by the New York State Department of Environmental Conservation (NYSDEC).

## **Water Resources Regulatory Framework**

---

### *Discharge of fill – Section 404*

Section 404 of the Act requires authorization from the Secretary of the Army, acting through the U.S. Army Corps of Engineers (USACE), for the discharge of dredged or fill material into Waters of the United States. Activities authorized under Section 404 must also comply with Section 401 of the Act. For this action, any authorization required would be issued from the USACE Buffalo District Office.

### **Rivers and Harbors Act of 1899**

The purpose of this Act is to protect navigation and navigable channels. Any structures placed in or over navigable waters, such as pilings, piers, or bridge abutments up to the mean high water line, are regulated pursuant to this Act.

Section 9 of the Rivers and Harbors Act of 1899 prohibits the construction of any bridge, dam, dike, or causeway over or in navigable waterways of the United States without Congressional approval. Administration of Section 9 has been delegated to the United States Coast Guard (USCG). The USCG administers its Bridge Permit Program under the legislative authority of Rivers and Harbors Act Section 9 as well as the General Bridge Act of 1946 (33 USC §525).

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through USACE, for the construction of any structure in or over any navigable water of the United States, the excavation from or deposition of material in these waters, or any obstruction or alteration in navigable waters of the United States. The USACE Buffalo District Office maintains a list of navigable waterways that are specifically regulated under Section 10.

### **Federal Executive Order 11988, “Floodplain Management”**

This Executive Order requires federal agencies to avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. U.S. Department of Transportation (USDOT) Order 5650.2, “Floodplain Management and Protection,” contains policies and procedures for implementing Executive Order 11988. For actions with a significant encroachment in the floodplain, the USDOT Order requires the Federal Highway Administration (FHWA) to make a finding that the proposed action is the only practicable alternative and that an evaluation was conducted to identify whether other alternatives are available to avoid or reduce adverse impacts on the floodplain. Chapter 23 CFR §650, Subpart A Location and Hydraulic Design of Encroachments in Flood Plains, describes policies and procedures for the location and hydraulic design of highway encroachments on flood plains.

### **Executive Order 11990, “Protection of Wetlands.”**

In accordance with Executive Order (EO) 11990, “Protection of Wetlands,” and USDOT Order 5660.1a, “Preservation of the Nation’s Wetlands,” Federal agencies must avoid undertaking or providing assistance for new construction in wetlands unless there is no practical alternative to such construction and the proposed action includes all practicable measures to minimize harm to the wetland. For this action, the FHWA issues a “Finding” regarding the compliance of the action with EO 11990.

## **Water Resources Regulatory Framework**

---

### **NEW YORK STATE**

#### **Floodplain Management Criteria for State Projects, Article 36, New York Environmental Conservation Law (ECL), Implementing Regulations 6 NYCRR Part 502**

All state agencies are to ensure that the use of state lands, and the siting, construction, administration and disposition of state-owned and state-financed projects involving any change to improved or unimproved real estate are conducted in ways that would minimize flood hazards and losses. Projects are to consider alternative sites on which the project could be located outside the 100-year floodplain, the Flood Hazard Area. Projects to be located within the floodplain are to be designed and constructed consistent with the need to minimize flood damage within the 100-year floodplain and include adequate drainage to reduce exposure to flood hazards. All public utilities and facilities associated with the project are to be located and constructed to minimize or eliminate flood damage. No project may be undertaken unless the cumulative effect of the proposed project and existing developments would not cause material flood damage to the existing developments.

#### **NYS Protection of Waters program, Article 15, Title 5, Implementing Regulation 6 NYCRR Part 608**

NYSDEC is responsible for administering the Protection of Waters (Article 15) Program and regulation 6 NYCRR Part 608 which governs construction activities on “protected” surface waters (rivers, streams, lakes, and ponds), that are classified as A, B, or C(t). Consistent with the Memorandum of Understanding (MOU) between NYSDOT and NYSDEC regarding ECL Articles 15 and 24 dated December 1996, NYSDOT is not required to obtain individual permits for projects regulated by Article 15. As per the MOU, “the NYSDOT and NYSDEC have a common interest and obligation in protecting, enhancing and facilitating access to important floral, faunal, aquatic and wetland resources while recognizing the importance of providing the public with adequate, safe, efficient and environmentally sensitive transportation services at a reasonable cost to the people of the state.”

#### **Freshwater Wetlands Act, ECL Article 24**

The NYSDEC is responsible for implementing New York State’s Freshwater Wetland Regulatory program, which is intended to prevent despoliation and destruction of freshwater wetlands in accordance with the environmental protection regulations of the state. Adjacent areas within 100 feet of mapped NYSDEC freshwater wetlands are also regulated. NYSDEC and NYSDOT have a Memorandum of Understanding (MOU) Regarding Wetland Boundary Delineations (executed August 1996) which details how freshwater wetland boundary delineations are conducted by trained NYSDOT environmental staff, and consultants, for construction and maintenance projects pursuant to Article 24 of the ECL and Part 663 of the Official Compilation of Codes, Rules and Regulations of New York State. In addition, NYSDEC and NYSDOT’s MOU regarding ECL Articles 15 and 24 (December 1996) provides a basis for the current General Permit (GP-0-11-002) which authorizes the NYSDOT to conduct certain activities within the limits of NYSDEC-regulated freshwater wetlands and their regulated adjacent areas under Article 24 .

NYSDEC freshwater wetlands are classified according to their respective functions, values, and benefits. Classifying factors include vegetative cover, ecological associations, special features, hydrological and pollution control features, and distribution and location. Wetlands are classified as

## **Water Resources Regulatory Framework**

---

Class I, II, III, or IV. Class I wetlands provide the most benefits while Class IV wetlands provide fewer benefits. The system for classifying wetlands is described in Article 24, 6 CRR-NY Part 664.5.

### **New York State Pollutant Discharge Elimination System (SPDES) (N.Y. ECL Article 3, Title 3; Article 15, Article 17, Titles 3, 5, 7, and 8; Article 21; Article 70, Title 1; Article 71, Title 19; Implementing Regulations 6 NYCRR Articles 2 and 3.**

Title 8 of Article 17, ECL, Water Pollution Control, authorized the creation of SPDES to regulate discharges to New York State's waters. Activities requiring a SPDES permit include point source discharges of wastewater into surface or groundwater of the state, including the intake and discharge of water for cooling purposes, constructing or operating a disposal system (sewage treatment plant), discharge of stormwater, and construction activities that disturb one or more acres.

Stormwater runoff from paved surfaces and land development generally is considered a "non-point source" discharge. As required by Article 17 – Water Pollution Control, of the NYS ECL Law and by the SPDES General Permit for Stormwater Discharges from Construction Activities (Permit No. GP-0-20-001), non-point source pollution from new development must be captured and treated prior to discharge. Stormwater treatment practices consist of such measures as detention/retention basins, infiltration practices, or green practices designed to minimize the generation of stormwater runoff. Within existing urbanized areas designated as MS4's (municipal separate storm sewer systems), additional measures are required by State and Federal law, including the adoption of local stormwater regulations, maintenance of existing stormwater facilities, education and monitoring.