IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE, CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

DOCKET No. A-004004-25T2

On Appeal From a Final Agency Decision of the New Jersey Tidelands Resource Council

BRIEF AND APPENDIX OF THE APPELLANT, CLEAN OCEAN ACTION, INC.

Submitted: October 30, 2026

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TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED iii

TABLE OF TRANSCRIPTS BELOW iii

INDEX OF APPENDIX iv

TABLE OF CITATIONS OF CASES vi

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 4
1. Tidelands Application 4
2. Tidelands Resource Council 4
3. Decision on Appeal 5
4. License Issuance 5
5. COA's Appeal and Third Circuit Decision 5

STATEMENT OF FACTS 7
a. The Appellant 7
b. Raritan Bay 7
c. The NESE Project 8
d. Permitting History 9
e. The Contested Tidelands Application 10
f. Written Comments of Appellant COA 11
g. The TRC Meeting 16
h. The TRC Minutes 20
i. Water Quality Certificate Voided 21

LEGAL ARGUMENT 23

I. RESPONDENT TRC'S DECISION MUST BE REVERSED BECAUSE, MISCONCEIVING ITS ROLE AS LAND TRADER INSTEAD OF LAND STEWARD, IT FAILED TO MAKE FINDINGS AS TO PUBLIC INTEREST AND FUTURE USE, AS REQUIRED BY N.J.S.A. 12:3-12.1. (Aa34-38) 23

A. Respondent TRC is the Steward of Our Riparian Lands, and as Such, Must Manage This Public Resource in Furtherance of the Public Interest. (Aa34) 23

B. Respondent TRC Made No Findings of Fact Under N.J.S.A. 12:3-12.1, Namely Whether that the Subject License was in the Public Interest or Whether the State May Have a Future Use for Such Lands. (Aa34-38)..... 26

II. RESPONDENT TRC'S DECISION SHOULD BE REVERSED BECAUSE THE PROPOSED PROJECT WOULD SERVE ONLY NEW YORK CUSTOMERS AND IS CONTRARY TO THE PUBLIC INTEREST OF THE PEOPLE OF NEW JERSEY (Aa34-38)..... 37

III. RESPONDENT TRC'S DECISION MUST BE REVERSED BECAUSE UNDER THE NJ STOP OFFSHORE OIL AND GAS ACT, N.J.S.A. 13:19-47 ET SEQ., RESPONDENT TRC LACKS THE AUTHORITY TO ISSUE A TIDELANDS LICENSE FOR A NATURAL GAS PIPELINE IN STATE WATERS (Aa38; T89:6-91:18) 42

IV. FOLLOWING THE THIRD CIRCUIT'S DECISION TO INVALIDATE RESPONDENT TRANSCO'S WATER QUALITY CERTIFICATE, RESPONDENT TRC'S DECISION MUST BE VACATED BECAUSE IT WAS PREDICATED UPON RESPONDENT TRANSCO HAVING ALL NECESSARY REGULATORY APPROVALS AND MEETING ALL ENVIRONMENTAL REGULATORY STANDARDS (Not Argued Below) 44

CONCLUSION 49

TABLE OF JUDGMENTS, ORDERS AND RULINGS BEING APPEALED

Decision of the New Jersey Tidelands Resource Council, as memorialized as the minutes of its May 6, 2026 meeting, and as approved by the New Jersey Department of Environmental Protection on June 12, 2026..... Aa1

TABLE OF TRANSCRIPTS BELOW

May 6, 2026, Meeting of the New Jersey Tidelands Resource Council..... T

INDEX TO APPENDIX

Document **Page(s)**

FINAL AGENCY DECISION
Minutes of the May 6, 2026 Meeting of the New Jersey Tidelands Resource Council, as approved by the TRC (on 06/03/26) and NJDEP (on 06/12/26) Aa1

NOTICE OF APPEAL
Notice of Appeal dated July 20, 2026 ..... Aa12

TRANSCRIPT CERTIFICATION
Certification of Madison Wurst Regarding Transcript, certified on October 26, 2026 ..... Aa16

Ex. A Email chain Re: Transcript Request for May 6 TRC Meeting (commencing May 13, 2026) Aa18

ESSENTIAL RECORD ITEMS
"Tidelands License Application Form" from Transcontinental Gas Pipe Line Company, LLC to State of New Jersey, Department of Environmental Protection, Bureau of Tidelands Management, dated May 21, 2025 ..... Aa19

"Tidelands License Application, Section 4, Written Description of the Project" including two sections: "Project Purpose and Need" and an "Overview of Project Facilities" totaling eleven (11) pages Aa20

COA Comments TRC NESE March 25, 2026; Letter to Tidelands Resource Council from Cindy Zipf, Executive Director and Madison Wurst, Ocean Policy Advocate dated March 25, 2026 RE: Clean Ocean Action Comments on Transcontinental Gas Pipeline Co. - Northeast Supply Enhancement Project Tidelands Utility License (1219-25-0004.1 TDI250001) Aa31

June 3, 2026 Letter to Henry Gajda, Chief of Staff, NJDEP from Randy D. Bearce, Manager, Bureau of Tidelands Management RE: Minutes of the Tidelands Resource Council Meeting on May 6, 2026 (enclosure omitted; see 1a-11a) Aa40

Letter to Transcontinental Gas Pipe Line Company from Randy Bearce RE: Transcontinental Gas Pipe Line Company, Utility License Application, Cheesequake Creek Tributary, Raritan Bay, Lot N/A, Block N/A, Sayreville Boro, Middlesex County w/enclosure…… Aa41

Revocable License prepared by Randy D. Bearce dated 6/15/2026 approved by Assistant Attorney General A. Paul Stofa, dated July 10, 2026, and Maps (2) of Raritan Bay dated 6/15/2026…….. Aa42

COURT DOCUMENTS & OTHER AUTHORITIES CITED

Certification of Cindy Zipf in Support of Appellant's Motion to Accelerate, certified on August 31, 2026 (exhibits omitted)…… Aa52

Scheduling Order (Amended), dated September 15, 2026 …….. Aa58

Order on Motion (for Acceleration), dated September 16, 2026 ……. Aa60

Second Amended Statement of Items Comprising the Record on Appeal, filed October 8, 2026 ……. Aa61

Appellant's Civil Case Information Statement (Amended) dated October 13, 2026 (abridged)…… Aa67

Certification of Counsel in Support of Appellant's Brief, certified on October 27, 2026…… Aa70

Ex. A. Tidelands Resource Council Resolution adopted 10/06/10 establishing Utility or Utility Related Projects Policy …… Aa72

Ex. B. "Tidelands" webpage of the NJDEP website (screenshot) ... Aa77

Ex. C. "Stewardship" definition from Merriam-Webster.com (screenshot) ……..... Aa78

Ex. D. Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026) …… Aa79

TABLE OF CITATIONS OF CASES

Legal Cases **Page(s)**

Application of Plainfield-Union Water Co., 11 N.J. 382 (1953) 28, 29

Arnold v. Mundy, 6 N.J.L. 1 (N.J. Sup. Ct. 1821) 23, 24

Borough of Neptune City v. Borough of Avon-By-the-Sea, 61 N.J. 296 (1972).....23

Chou v. Rutgers, 283 N.J. Super. 524 (App. Div. 1995), certif. denied, 145 N.J. 374 (1996) 37

Crema v. N.J. Dep't of Envtl. Protection, 182 N.J. Super. 445 (App. Div. 1982), aff'd as mod., 94 N.J. 286 (1983) 31

Crema v. N.J. Dep't of Envtl. Protection, 94 NJ 286 (1983) 32, 33

DiMaria v. Board of Trustees, Pub. Employees' Retirement Sys., 225 N.J. Super. 341 (App. Div.), cert. denied, 113 N.J. 638 (1988) 28

Henry v. Rahway State Prison, 81 N.J. 571 (1980) 37

Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994).....34

In re Amendment to Recreation & Open Space Inventory of City of Plainfield, 353 N.J. Super. 310 (App. Div. 2002).....38, 39, 40

In re City of Camden, 429 N.J. Super. 309 (App. Div. 2013) 34

In re Egg Harbor Assocs. (Bayshore Centre), 94 N.J. 358 (1983) 31

In re Issuance of Permit by Dep't of Envtl. Prot. Etc, 120 N.J. 164 (1990) 28

In re P.T. Jibsail Fam. Ltd. P'ship Tidelands License No. 1515-06-0012.1 TDI 190001, 263 N.J. 208 (2026) 25, 26, 27

In re Protest of Coastal Permit Program Rules, 354 N.J. Super. 293 (App. Div. 2002) 30, 31, 32

In re Taylor, 158 N.J. 644 (1999) ……..38

Katz v. Township of Howell, 67 N.J. 51 (1975) ……..28

Lisowski v. Borough of Avalon, 443 N.J. Super. 304 (App. Div. 2015) 24

Matthews v. Bay Head Improvement Ass'n, 95 N.J. 306 (1984).....23

Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85 (1973) ……38

Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026)..... 6, 21, 44, 45

Perez v. Pantasote, Inc., 95 N.J. 105 (1984) ……..28

Pub. Interest Research Group of New Jersey, Inc. v. N.J. Dep't of Envtl. Protection, 152 N.J. Super. 191 (App. Div.), certif. denied, 75 N.J. 538 (1977)……31

SMB Assocs. v. N.J. Dep't of Envtl. Protection, 264 N.J. Super. 38 (App. Div. 1993), aff'd, 137 N.J. 58 (1994)……31

St. Vincent's Hospital v. Finley, 154 N.J. Super. 24 (App. Div. 1977) ……33

Toms River Affiliates v. N.J. Dep't of Envtl. Protection, 140 N.J. Super. 135, 144 (App. Div. 1976) ……31

Statutes and Session Laws **Page(s)**

N.J.S.A. 12:3-12.1 ..... 1, 11, 24, 25, 26, 27, 35
N.J.S.A. 13:1B-10 24
N.J.S.A. 13:1D-150(b)..... 24
N.J.S.A. 13:19-1 et seq. 30
N.J.S.A. 13:19-10 30
N.J.S.A. 13:19-47 et seq. 16, 42
N.J.S.A. 13:19-48(b) 24
N.J.S.A. 13:19-48(e) 43
N.J.S.A. 13:19-49(a)(1).....42
N.J.S.A. 13:19-49(a)(2).....42

N.J.S.A. 13:19-49(b)(2) 42
N.J.S.A. 26:2H-9 33
N.J.S.A. 34:13A-1 et seq. 33
N.J.S.A. 34:13A-16(g)(6) 34
N.J.S.A. 58:1-20 29

Regulations **Page(s)**

N.J.A.C. 7:7-16.9 24

Rules

N.J. Court Rule 2:6-2 4
N.J. Court Rule 2:6-8 4
N.J.R.E. 201 ..... 22, 48
N.J.R.E. 202(b) 22, 48

Other Authorities

Merriam-Webster, "Stewardship", https://www.merriam-webster.com/dictionary/stewardship (last visited Oct. 26, 2026) ……24

N.J. Dep't of Envtl. Protection, *Tidelands*, WATERSHED & LAND MGMT. https://dep.nj.gov/wlm/tidelands/ (last visited Oct. 26, 2026) 23

Tidelands Resource Council Resolution - Adopted 10/06/10: Utility or Utility Related Projects, available at https://dep.nj.gov/wp-content/uploads/wlm/downloads/tidelands/td_012.pdf (last visited Oct. 26, 2026) ……..…17

PRELIMINARY STATEMENT

"The Legislature finds and declares that the Tidelands Resource Council is the public body responsible for the stewardship of the State's riparian lands."
–N.J.S.A. 12:3-12.1

This appeal arises from the New Jersey Tideland Resource Council ("Respondent TRC") functionally abandoning its critical mandate with respect to our public lands by approving a tidelands license in furtherance of the development of a natural gas pipeline across Raritan Bay. Designated as an "estuary of significance", Raritan Bay serves as habitat for 23 federally listed threatened or endangered species. Raritan Bay is also an important commercial and recreational fishing area and supports a robust clamming industry in New Jersey. The submerged pipeline will result in the destruction of miles of important marine benthic habitat, the suspension of toxic sediments, and impacts to marine life and the fishing industry its supports. Moreover, the pipeline will service New York customers exclusively.

A board within the New Jersey Department of Environmental Protection ("Respondent DEP"), Respondent TRC is charged with the ***stewardship*** of our riparian lands, which are lands flowed or formerly flowed by the tides. When riparian lands are sought for private use, Respondent TRC has the ***responsibility*** to determine whether such a transfer is in the ***public interest*** and whether the State may have a ***future use*** for such lands. ***Only if*** Respondent

TRC determines such private use serves the public interest and will not interfere with future public use of the subject lands can Respondent TRC approve of such a transfer.

Unfortunately, in this case, Respondent TRC acted as a land dealer rather than a steward of public lands. Declaring its "job" is dealing with "land transactions," Respondent TRC approved a license for a gas pipeline through Raritan Bay without making findings as to the public interest and future use. Respondent TRC skipped over these statutory criteria and granted a riparian license for a pipeline that has no articulated or perceivable benefit to the people of New Jersey.

Respondent TRC also exceeded its authority by granting a license for an offshore gas pipeline in direct contravention of the so-called New Jersey STOP Offshore Oil and Gas Act, which prohibits the leasing of offshore riparian lands for fossil fuel development.

Finally, Respondent TRC based its grant of this revocable license on the representation the subject pipeline project meets all applicable environmental standards. However, that representation is no longer correct— the Third Circuit has since declared the project's New Jersey Water Quality Certificate to be illegal and void. Despite this ruling, the revocable license still stands, and construction upon the licensed riparian lands remains imminent.

The appellant, Clean Ocean Action, Inc. ("Appellant COA"), is a broad-based coalition of conservation, environmental, fishing, boating, diving, religious, student, surfing, women's, business, civic and community organizations dedicated to the improvement of water quality and defending the marine ecosystem throughout the NY/NJ Bight, including Raritan Bay.

It is beyond the scope of Appellant COA's appeal to determine whose interest Respondent TRC served with respect to the subject license. The very point of this appeal is that **RESPONDENT TRC DID NOT CONCERN ITSELF WITH THE PUBLIC INTEREST OF THE PEOPLE OF NEW JERSEY.** Accordingly, the subject decision of Respondent TRC must be reversed and the subject license voided.

PROCEDURAL HISTORY

The subject license is in support of a natural gas pipeline project with a history of more than ten (10) years. An abbreviated version of this history is amplified in the Statement of Facts. For the sake of brevity, and pursuant to R. 2:6-2, this Procedural History pertains directly to the challenged decision of Respondent TRC.

1. Tidelands Application. On May 21, 2025, Respondent Transcontinental Gas Pipe Line Company ("Respondent Transco") filed an application with Respondent DEP for the subject utility license. (Aa19.)[1]

2. Tidelands Resource Council. From March 2, 2026, through March 25, 2026, Respondent TRC accepted written comments on the application of Respondent Transco for the subject license. (Aa62 at #2; Aa4, fn.3.)

On March 25, 2026, COA submitted comprehensive written comments to Respondent TRC in opposition to Respondent Transco's application. (Aa31-39; Aa64 at #17.) These comments detailed the numerous ways the proposed license would be contrary to the interests of the people of New Jersey, including in terms of ecological and economical damage. (Aa31-39.)

[1] In accordance with R. 2:6-8, "Aa" refers to Appellant's Appendix, which is attached to this brief, and "T" refers to the Transcript of the May 6, 2026 meeting of the New Jersey Tidelands Resource Council.

On May 6, 2026, Respondent TRC conducted a public meeting on Respondent Transco's application for the subject license. (T1:1-11; Aa1.) Despite extensive public opposition (T36:17-169:6), Respondent TRC voted to approve the subject license (T185:5-12).

3. Decision On Appeal. On June 3, 2026, the minutes of Respondent TRC's meeting on May 6, 2026, were approved by Respondent TRC. (Aa10.) These minutes contain the written recommendation of Respondent DEP. (Aa5.)

On June 12, 2026, the approved May 6, 2026 minutes were executed by Respondent DEP. (Aa11.)

4. License Issuance. On or after July 17, 2026, the subject license was transmitted to Respondent Transco by undated letter from Respondent DEP. (Aa42-51.) The license area encompasses 93,894 square feet for an initial annual cost of 15 cents per square foot ($0.15/sq. ft.). (Aa48.) The license was executed by each of the Respondents. (Aa46.)

5. COA's Appeal and Third Circuit Decision. On July 20, 2026, Appellant COA filed a Notice of Appeal of the agency decision to approve the subject license. (Aa12-15.)

On August 31, 2026, Appellant COA filed a Motion to Accelerate Appeal. (Aa60.)

On September 8, 2026, the U.S. Third Circuit Court of Appeals vacated the water quality certificate Respondent DEP granted to Respondent Transco for the NESE pipeline on numerous grounds. See Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026).[2]

On September 15, 2025, the Court issued a Scheduling Order, under which Appellant COA's brief and appendix are due October 30, 2026; the briefs and appendices of the Respondents are due November 30, 2026; and Appellant COA's reply brief is due December 14, 2026. (Aa58-59.)

On September 16, 2026, Appellant COA's motion to accelerate appeal was denied without prejudice. (Aa60.) Notably, the Court advised that after all briefs are filed, any party can move for accelerated consideration. (Aa60.)

On October 8, 2026, the Respondent TRC filed a Second Amended Statement of Items Comprising the Record on Appeal ("SICRA"), which is the current SICRA. (Aa61-66.)

On October 13, 2026, Appellant COA's Case Information Statement was amended to add an issue pertaining to the Third Circuit's invalidation of the water quality certificate issued by Respondent DEP to Respondent Transco. (Aa67-69.)

[2] Copy provided at Aa79-93.

STATEMENT OF FACTS

a. The Appellant. Appellant Clean Ocean Action, Inc. is a 501(3) nonprofit organization engaged in ocean advocacy since 1984. (Aa31.) Appellant COA is a broad-based coalition of conservation, environmental, fishing, boating, diving, religious, student, surfing, women's, business, civic and community organizations dedicated to the improvement of water quality and defending the marine ecosystem throughout the NY/NJ Bight, including Raritan Bay. (Aa31.)

b. Raritan Bay. Raritan Bay is a tidal bay off the coast of Middlesex and Monmouth Counties, in New Jersey. (Aa42, 51; Aa24.) Over the last 40 years, billions of taxpayer dollars have been invested in improving and enhancing the Raritan Bay and associated estuaries. (Aa35.) This improvement has resulted in Raritan Bay being designated an "estuary of significance". (Aa35.) Raritan Bay provides habitat for 23 federally listed threatened or endangered species, and 22 State-listed species, including the Humpback whale. (Aa36-37.)

Raritan Bay is an important commercial and recreational fishing area, and supports a robust clamming industry in New Jersey. (Aa37.) In Highlands, New Jersey, alone, over 20 million clams were processed in 2025 with an estimated 70 boat crews who rely on Raritan Bay for their livelihoods.

(Aa37.) Raritan Bay also supports thriving recreation and tourism industries. (Aa35.) These ecological and economic benefits—which directly benefit New Jersey's public interest—are only possible due to improved water quality and the reduction of contaminants in Raritan Bay. (Aa35, 37.)

c. <u>The NESE Project</u>. Respondent Transco is seeking to expand its existing natural gas pipeline system, a project it refers to as the Northeast Supply Enhancement ("NESE") project. (Aa31; Aa3.) The stated purpose of the NESE project is to bring 400,000 dekatherms per day of fracked methane gas from Pennsylvania directly to New York "**to serve** The Brooklyn Union Gas Company, d/b/a National Grid NY, and KeySpan Gas East Corporation, d/b/a National Grid." (Aa20, <u>emphasis</u> <u>added</u>; Aa31-32.)

The NESE project has three central components, including the Madison Loop and Raritan Loop pipelines. (Aa32.) The Madison Loop will be constructed onshore, but cross tidal rivers and formerly flowed tidelands. (Aa4; Aa25.) The Raritan Loop is a 23.5-mile offshore pipeline crossing Raritan Bay for 6.2 miles before continuing through New York State waters for another 17.3 miles. (Aa32; Aa22.) The Raritan Loop would then connect to an existing offshore pipeline near Rockaway, New York, and delivery fuel sold by the National Grid companies to New York customers. (Aa32; Aa22.)

The NESE pipeline will utilize tidal and submerged lands in Raritan Bay and Cheesequake Creek. (Aa32; Aa25.) Approximately 93,843 square feet of tidelands will be negatively impacted by the Raritan Loop and Madison Loop. (Aa32.) The NESE pipeline will cause damage beyond the lease area, as a much larger area of the Raritan Bay and connected waterways will be impacted. The dredging and trenching activities for the entire 23.5 miles of the Raritan Loop will disturb 87.8 acres directly. (Aa32.) An additional 9,474 acres of seafloor would also be disturbed by backfilling and excitation and thus affected by the resuspension and redisposition of toxic-laden sediments, impacting turbidity over this area. (Aa32.)

d. <u>Permitting History</u>. Respondent Transco has repeatedly applied for regulatory permits for the NESE pipeline, the initial permit applications being filed in July of 2017. (Aa20; Aa33.) Subsequent applications were submitted in June of 2018, June of 2019, October of 2019, and January 21, 2020. (Aa33.) Each and every one of these permit applications were denied by Respondent DEP and the State of New York due to reasons including the environmental harm of a project of this scope, as well as concerns about the expanded use of fossil fuels. (Aa33.)

On May 29, 2025, Transco filed a petition with the Federal Energy Regulatory Commission ("FERC") seeking reissuance of its expired certificate

of public convenience and necessity, authorizing Respondent Transco to construct and operate the NESE pipeline. (Aa33.)

On August 28, 2025, Transco received a new certificate from FERC, which was fast-tracked and granted in just three (3) months. (Aa33.) Then, Transco re-filed its permit applications in both New Jersey and New York. (Aa33.) On November 7, 2025, after nearly ten (10) years of consistent and considered rejection of the NESE project, New Jersey and New York suddenly approved the regulatory permits for NESE in a coordinated announcement. (Aa33.) Prior to this announcement, it had been widely reported that President Trump and NY Governor Kathy Hochul struck a deal for the NESE project to be built in return for federal support of the Empire Wind 1 offshore wind project. (Aa33, fn.9-11.)

e. <u>The Contested Tidelands Application</u>. In May of 2025, Respondent Transco applied for a tidelands license from Respondent TRC. (Aa19.) Respondent Transco's license application contained a short statement concerning "Project Purpose and Need". (Aa20-21.) The statement does not mention the State of New Jersey or its residents. (Aa20-21.) Instead, the statement describes Respondent Transco's desire to reinstate its private contracts for the purchase of natural gas to be delivered to New York via the NESE pipeline. (Aa20-21.)

Not surprisingly, members of the public in New Jersey vigorously opposed the license application. Prior to its meeting on the license application, Respondent TRC received 597 written comments, 591 (99%) of which were in opposition to the license. (Aa62 at #2; Aa56 at ¶14.) COA received an additional 115 statements in opposition to the application. (T45:24-46:1.)

f. <u>Written Comments of Appellant COA</u>. In March 2026, Appellant COA also submitted written comments in advance of Respondent TRC's meeting on the subject application. (Aa64 at #17; Aa31-39.) In its written comments, Appellant COA first reminded Respondent TRC of its role as the steward of our riparian lands:

> Under the Public Trust Doctrine, the submerged and tidally flowed lands the applicant seeks to occupy are vested in the State and are to be held in trust for the people of New Jersey. The Tidelands Resource Council functions as the trustee of this trust. As such, "it is the responsibility of the council to determine whether applications for the lease, license, or grant of riparian lands are in **the public interest**; that it is the responsibility of the council to determine, in assessing applications for the lease, license, or grant of riparian lands, whether the State may have a future use for such lands." (Aa34, <u>quoting</u> <u>N.J.S.A.</u>12:3-12.1; <u>emphasis</u> <u>in</u> <u>original</u>).

Appellant COA then explained that the subject license was not in the public interest:

> We start with a very straight forward observation: **the subject project serves no articulable interest of the people of New Jersey**. The proposed pipeline is intended to deliver *unneeded* fossil fuel to New York and therefore is not intended to benefit the residents of New Jersey, which will experience all the burdens and none of the benefits.

> What's more, the burdens are numerous and substantial, as set forth in detail below. (Aa34; emphasis in original.)

Appellant COA's comments and analysis were largely based upon the Final Environmental Impact Statement prepared by FERC in furtherance of its review of the NESE project. (Aa32-38.) Although Appellant COA frequently cited this document in its comments, Respondent TRC apparently elected not to review same, as it did not include that document in its SICRA. (Aa61-66.) A summary of Appellant COA's comments follows below.

Environmental Harm. Appellant COA advised Respondent TRC that construction of the NESE Project would result in significant resuspension of over one (1) million cubic yards of toxin-laced sediments. (Aa35.) These contaminants include lead, mercury and arsenic, PCBs, PAHS, dioxins and furans, all of which are present in the sediment at levels exceeding reference materials. (Aa36.) The resuspension of sediments and pollutants will result in significantly decreased water quality which will negatively impact fishing and shell fishing in the area. (Aa35.)

Dredging-up buried industrial toxins (like arsenic, lead, zinc and mercury) and organic compounds (PCBs, DDT, and dioxins) from the seabed will poison fish, shellfish and marine life in the Raritan and Sandy Hook Bays. (Aa35.) Dredged-up toxins will affect aquatic migration, clog fish gills, interfere with breeding, and contribute to harmful algae blooms. (Aa35.)

Furthermore, the redistribution of sediments that fall from suspension, will bury benthic and demersal species, resulting in mortality of eggs and other life stages, including winter flounder that spawn in shallow, inshore waters in the project area. (Aa35.)

The excavation of the pipeline trench through Raritan Bay and NY Harbor will disturb hundreds of acres of sediments, creating increased sediment disturbance in the water. (Aa35.) The dredging and trenching activities for the entire 23.5 miles of the Raritan Loop will disturb 87.8 acres directly. (Aa35.) An additional 9,474 acres of seafloor would also be disturbed by backfilling and excitation and thus affected by the resuspension and redisposition of toxic sediment, impacting turbidity over this area. (Aa35.)

The resulting increase in the turbidity of the water threatens marine life since the clarity of water is critical to the ability of many species to navigate, find food, and avoid predators. (Aa35.) The sediments will also disperse with tides, wind, and currents spreading throughout the region and into the ocean. (Aa35.) Moreover, impacts also include temporary loss of habitat and foraging areas. (Aa35.)

Additionally, Respondent Transco's contaminant modeling does not account for bioaccumulation or synergistic effects to organisms, which can

impact public health. (Aa36.) Small organisms absorb pollutants, are eaten by larger species, and ultimately these toxins can reach high levels in fish and shellfish consumed by humans. (Aa36.) There is direct harm to the organisms, including reproduction and genetic abnormalities, exposed to these toxins as they are absorbed. (Aa36.) In a system like the Raritan Bay, where fishing and recreational harvesting are common, this raises direct public health concerns. (Aa36.) Exposure to bioaccumulated toxins has been linked to a range of adverse health effects, including neurological damage, developmental disorders, endocrine disruption, and increased cancer-risk. (Aa36.)

Harm to Marine Mammals and Endangered Species. Appellant COA's comments raised concerns regarding harm to wildlife, including marine mammals and endangered species, in and around the licensed area. (Aa36-37.) Respondent Transco obtained an incidental harassment authorization ("IHA") from the National Oceanic and Atmospheric Administration, which allows for the disturbance or injury of marine mammals in a given project area. (Aa37.) Respondent Transco's IHA authorizes the disturbance of over 10,000 marine mammals a year, including dolphins and endangered whales. (Aa37.)

Economic Harm to the Clamming Industry. Appellant COA further advised Respondent TRC that the proposed license would be detrimental to those whose livelihoods dependent upon Raritan Bay, particularly those

working in the clamming industry. (Aa37.) Due to the above-referenced resuspension of sediments, economically important clamming and fishing areas will be negatively impacted. (Aa38.) It is estimated that over 134 acres of hard clam beds would receive some level of additional sedimentation, with 76 acres receiving more than 1.2 inches of sedimentation. (Aa38.) This sedimentation will have clear impacts on the clams by affecting oxygen levels and food in the water column. (Aa38.) Importantly, this sediment will also contain toxic chemicals that will accumulate in the clams and make them potentially dangerous for human consumption. (Aa38.) Both scenarios will cause irreparable harm to those who depend on Raritan Bay for their livelihoods. (Aa38.)

Future Use of the License Area. In its comments, Appellant COA further addressed the issue of the future use of the license area. (Aa38.) Tidelands, both now and in the future, perform priceless ecological processes that continuously benefit the public. (Aa38.) Wetlands, dunes, and nearshore habitats act as natural buffers against storm surge and sea level rise, protecting nearby communities while enhancing biodiversity. (Aa38.) These also sequester carbon, improve water quality and provide critical habitat for fish, birds, and other wildlife. (Aa38.) The NESE project, which would destroy tens of thousands of square feet of benthic habitat and resuspend a cocktail of

pollutants into Raritan Bay, would compromise these natural benefits. (Aa38.) Accordingly, the subject tidelands have a clear future use: the continuation of present ecological functions that provide a multitude of benefits for the marine ecosystem and the people of New Jersey. (Aa38.)

The STOP Act. Appellant COA also advised Respondent TRC that the Shore Tourism and Ocean Protection from Offshore Oil and Gas Act, N.J.S.A. 13:19-47 et seq., prohibits Respondent TRC from leasing or approving of any license of any tidal or submerged lands in State waters for the purpose of natural gas development. (Aa38.)

Respondent TRC did not provide any direct response to the comments of Appellant COA or the negative impacts of the NESE project detailed by Appellant COA. (Aa61-66; Aa1-11; T1:1-186:3.)

g. The TRC Meeting. Due to significant public interest in the subject application, Respondent TRC twice rescheduled its meeting on the subject application and eventually held a meeting exclusively for the subject application on May 6, 2026. (Aa56-57 at ¶15.) At that meeting, Respondent DEP presented its staff recommendation in favor of the application. (T4:9.) Respondent DEP made no statement regarding whether the subject license was in the public interest. (T4:9-14:9.) Rather, Respondent DEP's recommendation was "based on the fact that [the NESE project] has the

necessary regulatory permit approvals, and that it also meets current utility policy established by the TRC." (T14:5-9.) The aforementioned utility policy, adopted in 2010, merely addresses compensation for utility licenses.[3]

Richard Scott, attorney for Respondent Transco, next advised Respondent TRC that "the project was designed to provide an additional supply of natural gas to National Grid [a private company] for its customers in New York City and Long Island area." (T33:19-23.) Mr. Scott further stated Respondent Transco had received permits from Respondent DEP and was in compliance with New Jersey's Coastal Zone Management rules "and all the applicable regulations for the project." (T34:20-22.) Although Mr. Scott omitted any mention of it (T31:4-35:17), federal litigation to invalidate those permits was pending at that time (Aa84, T37:15-38:21).

Respondent TRC then heard from 45 speakers, 43 (96%) of whom voiced their opposition to the license. (T36:13-169:10.) As reflected in the meeting transcript previously filed by Appellant COA, the opposition to license application came from actual members of the New Jersey public, including fishermen, boaters, environmentalist and residents, who voiced a common theme: this license would damage (not serve) the public interest of

[3] See Tidelands Resource Council Resolution - Adopted 10/06/10: Utility or Utility Related Projects, available at https://dep.nj.gov/wp-content/uploads/wlm/downloads/tidelands/td_012.pdf (last visited Oct. 29, 2026). Copy provided at Aa72-76.

the people of New Jersey, particularly those interests supported by Raritan Bay. (T36:13-169:10.)

Cindy Zipf, the Executive Director of Appellant COA, participated in the May 6, 2026 meeting. She reminded Respondent TRC of its "remarkable and essential mandate" to "protect New Jersey's public interest in the tidelands." (T42:14-43:20.) She advised the Respondent TRC of the public's enjoyment of Raritan Bay following publicly funded cleanup efforts:

> these waters came back and they're now thriving. And was once an uncommon site, is now very common. Dolphins and whales in the lower bay. Bird watching, seal watching, baymen and clammers in the waters at JT White Depuration Plant for clamming, they processed over 20 million clams last year.
>
> There are hundreds of fishing boats. People are actually able to eat the fish they're catching due to less contaminants. And beaches in the Bayshore are packed with thousands of beach goers and swimmers . . . . (T43:22-44:10.)

Ms. Zipf told Respondent TRC that "NESE is not in New Jersey's public interest" and "does the opposite, it destroys and will undermine much of the marine environment that we have worked so hard to protect." (T43:5-11.)

Madison Wurst, Ocean Policy Advocate for Appellant COA, also participated. Ms. Wurst summarized the statements received by Appellant COA after the comment period closed, which included, without limitation:

Two elected officials concerned about air and water quality impacts;

A lifelong Raritan Bay commercial fisherman, who warned that this pipeline would damage natural clam beds and disrupt fish migration, directly threatening both commercial and recreational fishing livelihoods.

An environmental scientist and medical doctor who studies the adverse effects of chemical pollutants, highlighted the significant threats to New Jersey's coastal resources and public health issues associated with the project.

A New York resident, who spoke to the lack of need and demand for this gas in New York, a sentiment shared by many New Yorkers who have been betrayed by their governor.

The past commodore of the Keyport Yacht Club, who spoke to the recreational opportunities and use that will be sacrificed by this project.

A boat captain who has fished the waters of Raritan Bay his entire life, who stressed the devastating, negative financial impacts to the businesses in Monmouth County, including his own.

A Bayshore resident who has lived, raised her sons, fished, swam, and boated on the Raritan Bay, and over the years, has fought to clean up and ensure a safe bay for her grandchildren and marine life. (T46:8-48:15.)

Counsel for Appellant COA also presented and advised Respondent TRC that the STOP Act prohibits Respondent TRC from leasing or approving of any license of any tidal or submerged lands in State waters for the purpose of natural gas development. (T89:6-91:18.)

Daniel Greenhouse of the Eastern Environmental Law Center presented and made Respondent TRC aware of the pending legal challenges to the water quality certificates for the NESE project issued by Respondent NJDEP and New York State. (T37:15-21.) Mr. Greenhouse warned of "a very real

possibility that the meritorious challenges brought in these federal cases may result in significant changes to or reversal of the current permits required for the project." (T38:14-19.) He suggested that Respondent TRC hold its decision until the federal litigation is decided. (T38:19-21.)

Notwithstanding significant public opposition to the application, Respondent TRC member Joseph Grabas moved to approve the application. (T181:10-17.) Mr. Grabas then addressed his follow Respondent TRC members:

> Before we go forward with the vote, I do want to say this, what's before the Council is an application for a license. The permits have already been issued. We are relying upon the work of the DEP and FERC and the other individuals. We are not the experts in that area. **We deal with land transactions. That is our job.** (T182:20-183:2; emphasis added.)

Respondent TRC then voted to approve the license application without making any findings as to the public interest or future uses of the licensed area. (T183:9-185:25.) The only fact Respondent TRC seemed concerned with was that Respondent Transco had "all necessary regulatory approvals" and met all "environmental regulatory standards" (Aa4, 5, 9), notwithstanding its awareness of pending federal litigation challenging those approvals. (T37:15-38:21; T169:8-13.)

h. The TRC Minutes. On June 3, 2026, the minutes of Respondent TRC's meeting on May 6, 2026, were approved by Respondent TRC, and

approved by Respondent DEP on June 12, 2026. (Aa10-11.) These minutes serve as the decisional document on the subject application. (Aa61-66.) The minutes of the meeting and the meeting transcript are devoid of any findings or consideration by Respondent TRC as to whether the proposed license would serve the public interest or conflict with a future use of the subject riparian lands. (Aa1-11; T1:1-186:3.) In fact, the terms "public interest" and "future use" do not appear in the minutes of the meeting. (Aa1-11.)

i. Water Quality Certificate Voided. Following the issuance of the subject license in July 2026, the U.S. Third Circuit Court of Appeals vacated the water quality certificate Respondent DEP granted to Respondent Transco for the NESE pipeline on numerous grounds. See Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026). As set forth above, Respondent TRC expressly based its decision to grant the subject license upon Respondent Transco having "all necessary regulatory approvals" and meeting all "environmental regulatory standards" (Aa4, 5, 9), notwithstanding its awareness of this legal challenge (T37:15-38:21; T169:8-13). Nevertheless, Respondent TRC has not revoked the license, apparently opting instead to collect its annual fee of $0.15/square foot.

Respondent TRC announced at its October 2026 meeting that it would not take any action with respect to same because the matter is being litigated.[4] Upon information and belief, as of the date of this brief, Transco still does not have a Water Quality Certificate and yet the subject license remains in place.

[4] We respectfully ask the Court to take judicial notice of these facts as they cannot reasonably be the subject of dispute. See N.J.R.E. 201, 202(b).

LEGAL ARGUMENT

I. RESPONDENT TRC'S DECISION MUST BE REVERSED BECAUSE, MISCONCEIVING ITS ROLE AS LAND TRADER INSTEAD OF LAND STEWARD, IT FAILED TO MAKE FINDINGS AS TO PUBLIC INTEREST AND FUTURE USE, AS REQUIRED BY N.J.S.A. 12:3-12.1. (Aa34-38)

A. Respondent TRC is the Steward of Our Riparian Lands, and as Such, Must Manage This Public Resource in Furtherance of the Public Interest. (Aa34)

In New Jersey, land seaward of the mean high-water mark (called "riparian land" or "tidelands") is owned by the State and held in trust for the benefit of the people of New Jersey. See Arnold v. Mundy, 6 N.J.L. 1, 21-22 (N.J. Sup. Ct. 1821); Borough of Neptune City v. Borough of Avon-By-the-Sea, 61 N.J. 296, 303-304 (1972); see also N.J. Dep't of Envtl. Protection, *Tidelands*, WATERSHED & LAND MGMT. https://dep.nj.gov/wlm/tidelands/ (last visited Oct. 26, 2026) ("state-owned tidelands are held in trust for the people of the state").[5] This principle—called the Public Trust Doctrine—recognizes the rights of people of New Jersey to access and use our tidal waters and shores for a range of recreational and commercial purposes, including fishing, boating, surfing, swimming and sunbathing. See Matthews v. Bay Head Improvement Ass'n, 95 N.J. 306, 321 (1984). The Public Trust Doctrine has been New Jersey law since the 1821 opinion in Arnold v. Mundy, 6 N.J.L. 1

[5] Copy provided at Aa77.

(N.J. Sup. Ct. 1821), is recognized in State statutes, see e.g., N.J.S.A. 13:1D-150(b) and N.J.S.A. 13:19-48(b), and has been the subject of DEP regulations since the early 1980s, see N.J.A.C. 7:7-16.9. Within this framework, the significance of Respondent TRC's role as the steward of our riparian lands is apparent.

A Governor-appointed board within Respondent DEP, see N.J.S.A. 13:1B-10, Respondent TRC is responsible "for the stewardship of the State's riparian lands." Lisowski v. Borough of Avalon, 443 N.J. Super. 304, 309 (App. Div. 2015) (quoting N.J.S.A. 12:3-12.1). "Stewardship" is "the careful and responsible management of something entrusted to one's care." Merriam-Webster, "Stewardship", https://www.merriam-webster.com/dictionary/stewardship (last visited Oct. 26, 2026).[6] Accordingly, Respondent TRC is entrusted with the careful and responsible management of our riparian lands.

> In its role as steward of our riparian lands, our Legislature determined:
>
> [1] that it is the **responsibility** of the council to determine whether applications for the lease, license, or grant of riparian lands are in the **public interest**; [2] that it is the responsibility of the council to determine, in assessing applications for the lease, license, or grant of riparian lands, whether the State may have a **future use** for such lands; [and 3] that the council must obtain the fair market value for the lease, license or grant of riparian lands. . . . N.J.S.A. 12:3-12.1 (emphasis added).

[6] Copy provided at Aa78.

Our Supreme Court has explained "[i]t is the responsibility of the TRC 'to determine whether applications for the lease, license, or grant of riparian lands are in the public interest' and, ***if so***, to 'obtain the fair market value for the lease, license or grant.'" In re P.T. Jibsail Fam. Ltd. P'ship Tidelands License No. 1515-06-0012.1 TDI 190001 ("In re Jibsail"), 263 N.J. 208, 218 (2026) (quoting N.J.S.A. 12:3-12.1; emphasis added.) Respondent TRC is therefore required by statute to make factual determinations with respect to any application for a grant, lease or license: (1) whether the application is in the public interest, and (2) whether the State may have a future use for such lands. ***If and only if*** those factual determinations support such an application, Respondent TRC may then approve of a grant, lease or license for fair market value. See N.J.S.A. 12:3-12.1, and In re Jibsail, supra, 263 N.J. at 218.

However, here, Respondent TRC neither perceived itself as a steward of a public resource nor functioned as one. The members of Respondent TRC did not concern themselves with the question of the public interest or any future use. To the contrary, one member of Respondent TRC, Joseph Grabas, publicly advised his fellow members before the vote:

> what's before the Council is an application for a license. The permits have already been issued. We are relying upon the work of the DEP and FERC and the other individuals. We are not the experts in that area. **We deal with land transactions. That is our job**. (T182:22-183:2.)

Mr. Grabas does not serve as legal counsel to the TRC. His advice to Respondent TRC, which was seconded by another TRC member (T183:9-10), is inconsistent with the statutory role of Respondent TRC as the steward of the State's riparian lands, and the arbiter as to whether a license is in the public interest.

Immediately following the vote to approve the subject license, Respondent TRC Chairperson Mary Pat Robbie thanked the council for its "perseverance" through a "long meeting." (T185:13-15.) This sentiment is incompatible with the role of a steward. Public comments are not something Respondent TRC must persevere through; rather they should be carefully evaluated in the development of findings regarding the public interest and future use. In this instance, Respondent TRC did not appreciate the scope of its duties owed to the public as the beneficiaries of public lands held in trust by the State under the Public Trust Doctrine.

B. Respondent TRC Made No Findings of Fact Under N.J.S.A. 12:3-12.1, Namely Whether that the Subject License was in the Public Interest or Whether the State May Have a Future Use for Such Lands. (Aa34-38)

Our Supreme Court has explained that Respondent TRC must make factual determinations under N.J.S.A. 12:3-12.1 before any grant, lease or license can issue. See In re Jibsail, supra, 263 N.J. at 218. As recited above,

"[i]t is the responsibility of the TRC 'to determine whether applications for the lease, license, or grant of riparian lands are in the public interest' and, ***if so***, to 'obtain the fair market value for the lease, license or grant.'" Id. (emphasis added) (quoting N.J.S.A. 12:3-12.1). Under N.J.S.A. 12-3:12.1, Respondent TRC must make findings of fact as to the public interest and future use of the subject riparian lands before placing such public lands into the hands of a private actor. And yet, Respondent TRC made no such findings. Accordingly, we respectfully submit the subject license must be vacated and the matter remanded to Respondent TRC for further proceedings consistent with its role as steward of our riparian lands.

Declaring its "job" was dealing with "land transactions" (T182:1-2), Respondent TRC granted a license for gas pipeline through Raritan Bay without making findings as to (1) the public interest served by the subject application, and (2) future use of the subject riparian lands. (T181:8-185:12; Aa8-9.) Respondent TRC skipped over these statutory criteria and approved a riparian license (T185:6-12) for a pipeline that has no articulated or perceivable benefit to the people of New Jersey.

New Jersey courts have consistently ruled that statutory criteria cannot simply be ignored by governmental agencies. Rather, an agency must take care to engage in fact-finding to the extent required by statute or regulation.

See In re Issuance of Permit by Dep't of Envtl. Prot. Etc, 120 N.J. 164, 173 (1990) (ruling DEP failed to engage in fact-finding required by the Clean Water Act regulations in issuing a discharge permit to Ciba-Geigy). Fact-finding ensures agencies act within the scope of their delegated authority and facilitates judicial review. See id. Failure to do so typically results in reversal of the contested decision and a remand to the agency. See id. (citing DiMaria v. Board of Trustees, Pub. Employees' Retirement Sys., 225 N.J. Super. 341, 347 (App. Div.), cert. denied, 113 N.J. 638 (1988); Perez v. Pantasote, Inc., 95 N.J. 105 (1984) (disability case remanded because Judge of Compensation failed to set forth adequate fact-findings); and Katz v. Township of Howell, 67 N.J. 51 (1975) (remanding matter to Division of Workmen's Compensation to make specific findings regarding extent of disability)).

Over 70 years ago, our Supreme Court stressed the importance of making credible findings under statutory criteria, and did so in a case, akin to our appeal, concerning an application for the private use of a public resource. In Application of Plainfield-Union Water Co., 11 N.J. 382 (1953), the New Jersey Water Power and Supply Council ("Supply Council") approved a plan for the daily diversion of 1.75 million gallons of water from public aquifers by a private water company, notwithstanding public opposition. See id. at 386. The Supply Council was compelled by statute to make numerous

determinations, including as to whether the proposed plan was justified by public necessity and whether the plans are equitable given to the present and future water supply needs of residents in other municipalities. Id. at 387 (quoting former N.J.S.A. 58:1-20).

After conducting the requisite hearing on the application, the Council received, reviewed and relied upon an undisclosed engineer's report and approved the proposed diversion. See id. at 389. The objectors were unaware of this report until taking judicial appeal. See id.

Because the Supply Council based its findings under N.J.S.A. 58:1-20 upon a report that was not part of the hearing record, the court ruled the findings were not satisfactory. See id. at 396. In the absence of credible findings, the Supply Council's approval of the diversion plan was reversed and the matter remanded for further proceedings in accordance with the court's opinion. See id. at 396. In so doing, the court emphasized that factual findings are required to (1) confine the Council to the evidence and (2) facilitate judicial review. See id. at 395. The Court further advised the requirement of findings insures against arbitrary action and ultra vires acts. See id.

The Appellate Division has also struck down agency regulations that would have allowed Respondent DEP to circumvent statutory criteria in the

issuance of environmental permits. In the case of In re Protest of Coastal Permit Program Rules, 354 N.J. Super. 293 (App. Div. 2002), environmental groups argued that a newly adopted regulation was unlawful because it allowed DEP to avoid making specifically-enumerated findings required by N.J.S.A. 13:19-10 before issuing a permit under the Coastal Area Facility Review Act ("CAFRA"), N.J.S.A. 13:19-1 et seq. The Appellate Division agreed and invalidated the regulation.

Under CAFRA, DEP may issue a development permit only upon finding that the proposed development met numerous environmental criteria, including compliance with all applicable water quality criteria and air quality standards. See id. at 330-331 (quoting former N.J.S.A. 13:19-10). In contrast, the challenged regulation read:

> The Department shall not issue a permit under CAFRA unless the application complies with all of the policy and substantive standards of N.J.S.A. 13:19-2 and 13:19-10 as expressed in the Coastal Zone Management rules at N.J.A.C. 7:7E. See id. at 328.

The appellants contended that the regulation limited the scope of the statutory criteria to only those factors incorporated in the Coastal Zone Management ("CZM") rules. See id. at 327.

Agreeing with the appellants, the court ruled, "[e]ver since CAFRA was first enacted, our courts have required that DEP, even in light of the CZM Rules and DEP's broad power to regulate the coastal zone, specifically meet

the criteria in N.J.S.A. 13:19-10 before issuing any CAFRA permit." See id. at 331-332 (citing Toms River Affiliates v. N.J. Dep't of Envtl. Protection, 140 N.J. Super. 135, 144 (App. Div. 1976) (N.J.S.A. 13:19-10 sets forth specific criteria which must be met for the issuance of a permit for a proposed facility); Pub. Interest Research Group of New Jersey, Inc. v. State, Dep't of Envtl. Prot., 152 N.J. Super. 191, 210-11 (App. Div.), certif. denied, 75 N.J. 538 (1977) (Section 10 was an adequately defined checklist for the guidance of the agency); Crema v. N.J. Dep't of Envtl. Protection, 182 N.J. Super. 445, 453 (App. Div. 1982), aff'd as mod., 94 N.J. 286 (1983) (N.J.S.A. 13:19-10 confines DEP's power to issue a permit to cases where enumerated, specific findings are made regarding the development's impact on the environment); In re Egg Harbor Assocs. (Bayshore Centre), 94 N.J. 358, 373 (1983) (N.J.S.A. 13:19-10 lists specific findings that the agency must make in its determination to issue a permit); SMB Assocs. v. N.J. Dep't of Envtl. Protection, 264 N.J. Super. 38, 41 (App. Div. 1993), aff'd, 137 N.J. 58 (1994) ("[t]he Commissioner . . . may not issue a permit unless he finds that the statutory standards have been met.") Accordingly, the court ordered DEP to amend the regulation to set forth a requirement that it make the statutory findings prior to issuing a permit. See id. at 332.

New Jersey courts have also reversed agency decisions, including by Respondent DEP, where statutory criteria were ignored as they were in this instant matter. In Crema v. N.J. Dep't of Envtl. Protection, 94 NJ 286 (1983), the New Jersey Supreme Court affirmed the reversal of a development permit issued by DEP where the agency failed to make factual findings required by the same CAFRA statute (N.J.S.A. 13:19-10) at issue in In re Protest of Coastal Permit Program Rules, supra, 354 N.J. Super. 293. There, DEP claimed the challenged permit was a "conceptual approval" and sought to defer the necessary findings under the statutory criteria of N.J.S.A. 13:19-10 until "some later time." See id. at 296. Commercial fishermen and nonprofit groups challenged the permit as unlawful. See id. at 289.

Affirming the Appellate Division, our Supreme Court ruled the DEP lacked the authority to issue a permit without making the requisite factual findings under the statutory criteria. The Supreme Court stated, "[t]he special importance that attaches to the public interests such as health and the quality of life that are implicated by the agency's adjudication in this case cannot be overemphasized." Id. at 302. DEP's actions undermined the public interest because its "determination will effectively imprint a considerable amount of environmentally sensitive and unique coastal land, with continuing widespread effects upon the public at large for the indefinite future." Id. For this and

other reasons, the Supreme Court affirmed the Appellate Division's reversal of the challenged permit. See id. at 303.

In St. Vincent's Hospital v. Finley, 154 N.J. Super. 24 (App. Div. 1977), the Appellate Division reversed a decision of the New Jersey Health Care Administration Board for failure to adequately evaluate applicable statutory criteria. See id. at 34- 35. There, the board denied plaintiff's application for a certificate of need, even though the hearing officer's report recommended approval. See id. at 26, 29.

Under N.J.S.A. 26:2H-9, the statutory criteria for the issuance of a certificate of need by the Board include consideration of the availability of facilities or services which may serve as alternatives or substitutes. See id. at 34. Nevertheless, the Board's decision was devoid of any findings regarding "bed need" and the "merger of facilities", factors relevant to the "availability of services" criterion. See id. at 34. Accordingly, the Appellate Division reversed the denial of the certificate of need and remanded to the Board with specific instructions to evaluate the application with reference to the statutory criteria. See id. at 34- 35.

Our courts have similarly emphasized the importance of statutory criteria with respect to interest arbitration concerning public employees. Under the Compulsory Interest Arbitration Act, N.J.S.A. 34:13A-1 et seq.,

arbitrators are required to consider and explain numerous statutory factors in making an award. Such awards can have significant financial impact on a municipality, its residents and taxpayers, which is one of the statutory factors. N.J.S.A. 34:13A-16(g).

In Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), our Supreme Court affirmed the vacation of an arbitrator's award for failure to identify the relevant statutory factors, analyze the evidence pertaining to those factors, and explain why other factors were not relevant. See id. at 82. There, the arbitrator "unduly emphasized" a single factor—the comparison with police salaries in other communities. See id. at 86. The Supreme Court noted that the reasoned explanation of the statutory factors was missing from the award. See id. at 86.

In In re City of Camden, 429 N.J. Super. 309 (App. Div. 2013), an arbitration award providing for a salary increase for the city's firefighters was vacated because the arbitrator's written opinion failed to provide the required analysis of the statutory criteria to support his conclusions. See id. at 335. The arbitrator's discussion of the statutory factors was essentially limited to a discussion of the parties' positions as to each factor. See id. The arbitrator further failed to identify which factors he deemed relevant or explain why any factor was not relevant to his determination. See id.

All of the above cases regard matters of great public import—our environment, health care facilities, and financial resources—and the public representatives designated to manage same. In each instance, statutory criteria were intended to guide the decision-making process. And in each instance, our courts affirmed the critical importance of fact-finding under the statutory criteria, including ensuring actions are reviewable and not ultra vires.

The instant appeal also deals with a matter of great public importance, which is our public riparian lands being relegated to private use and exploitation. The statute is clear that Respondent TRC—as the steward of these public lands—must make findings as to whether the proposed relegation (a license in this case) is in the public interest and whether there is a future use for the subject riparian lands. Here, the record is clear that Respondent TRC made no such findings. Under the above-cited precedents, Respondent TRC has left this Court with no option but to vacate Respondent TRC's unsubstantiated approval of the subject license.

Notwithstanding the clear directive contained in N.J.S.A. 12:3-12.1, Respondent TRC here failed to make a finding of public interest. We have no statement from Respondent TRC as to how or why the subject license—the purpose of which to allow private companies the ability to delivery fossil fuel to consumers in New York—benefits the interest of the people of New Jersey.

In fact, during the 4.5-hour meeting on the subject application, Respondent TRC never mentioned the phrase "public interest" at any time. (T1:1-186:3.)

Similarly, the record does not contain any statements from Respondent DEP as to how tearing up Raritan Bay for this application is in the interest of the people of New Jersey. (T1:1-186:3.) Respondent DEP participated in Respondent TRC's meeting on the subject application and did not make any such statement. (T4:9-14:9.) Nor does Respondent DEP's "Staff Recommendation" to Respondent TRC, as contained in the meeting minutes, contain any mention of the application serving an interest of the people of New Jersey. (Aa5.)

Respondent TRC ignored its duty, as the steward of our riparian lands, to make findings required by its authorizing statute, including as to whether the subject license would be in the public interest. The case law is clear that in such instances, the resulting decision is to be vacated. Accordingly, we ask this Court to vacate Respondent TRC's approval of the tidelands license in support Respondent Transco's NESE pipeline project.

II. RESPONDENT TRC'S DECISION SHOULD BE REVERSED BECAUSE THE PROPOSED PROJECT WOULD SERVE ONLY NEW YORK CUSTOMERS AND IS CONTRARY TO THE PUBLIC INTEREST OF THE PEOPLE OF NEW JERSEY (Aa34-38)

Not only did the TRC fail to determine the subject license was in the public interest, but the record also clearly demonstrates no such finding could be made. An immutable fact here is that the subject pipeline will not supply any New Jersey customers. (T33:19-33:23.) The people of New Jersey will derive no benefit from the pipeline, but will bear the environmental costs and economic consequences of same. The record demanded Respondent TRC reject the application, and therefore its decision to grant same should be reversed as arbitrary, capricious and unreasonable.

The Appellate Division is empowered to reverse the decision of an administrative agency "if it is arbitrary, capricious or unreasonable or it is not supported by substantial credible evidence in the record as a whole." Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). Notwithstanding the deference generally afforded to agencies, appellate review of an agency decision is "not simply a *pro forma* exercise in which we rubber stamp findings that are not reasonably supported by the evidence . . . ." Chou v. Rutgers, 283 N.J. Super. 524, 539 (App. Div. 1995), certif. denied, 145 N.J. 374 (1996). Rather, the Appellate Division is to undertake a "careful and

principled consideration of the agency record and findings . . . ." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973). In instances where the record does not support the action, or the agency reaches a conclusion which could not have been made upon a showing of the relevant factors, reversal is appropriate. See In re Taylor, 158 N.J. 644, 656 (1999).

In re Amendment to Recreation & Open Space Inventory of City of Plainfield, 353 N.J. Super. 310 (App. Div. 2002), the Appellate Division reversed action by the DEP Commissioner that was not supported by the record. There, the City of Plainfield sought and received permission from DEP to remove city property "erroneously" listed its Recreational and Open Space Inventory ("ROSI"). See id. at 313. This action would allow the property to be developed for commercial use rather than be preserved as parkland. See id.

The subject property was designated for commercial redevelopment in 1959 but remained undeveloped through 2000. See id. at 314, 319. In 1991, the City used public funds to upgrade the site into a public park with recreational facilities. See id. at 316. Accordingly, the City listed the property on its 1992 ROSI, but the property was curiously omitted from subsequent ROSIs even though property continued to be used for public recreation and cultural events through 2000. See id. at 317-318.

In 2000, the City entered into an agreement for the commercial redevelopment of the property, and a subsequent title search located Green Acres parkland restrictions due to the 1992 ROSI listing. See id. at 319-320. The City sought relief from DEP, claiming the property was never intended or designated as parkland. See id. at 320. Finding that the 1992 ROSI listing had been made in error, the DEP Commissioner allowed the property to be released from the Green Acres parkland restrictions. See id. at 321. A group of residents and the Sierra Club appealed. See id. at 313.

The Appellate Division reversed the DEP Commissioner's decision because the critical finding that the 1992 ROSI listing was erroneous was not supported by the record. The Court first ruled that the DEP Commissioner gave insufficient weight to the actual use of property for recreation and conservation purposes from 1992 to 2001. See id. at 330. The DEP Commissioner's characterization of such use—unapproved use of the site without the condonation and authorization of the municipality—was firmly contradicted by the record. See id. at 332. The Court also rejected the DEP Commissioner's conclusion that the property was listed in its 1992 ROSI without investigation of whether the site in fact qualified as parkland. See id. at 332. The record controverted this finding as well: the City had received a sizable grant to turn the property into a park and was applying for additional

Green Acres funding. See id. at 332. The Court further found that the record contain no evidence to suggest—as the DEP Commissioner had found—that the removal of the property from later ROSIs was because the 1992 ROSI listing was erroneous. See id. Accordingly, the Court reversed the DEP's decision to remove the property from the ROSI. See id.

Here, the record would not and cannot support a finding that the subject application was is the public interest. The record contains no evidence that the NESE pipeline—designed to serve private companies and customers in New York—has any benefit for the people of New Jersey. (T33:19-23.) Many of the speakers before Respondent TRC asserted the license would not be in the public interest of the people of New Jersey[7] without any correction from Respondents TRC, DEP or Transco. The lack of any discernible public interest was also argued in written comments submitted by Appellant COA to Respondent TRC in advance of the hearing. (Aa34-39.)

Moreover, the record contains significant evidence that the license is contrary and injurious to the interests of the people of New Jersey. As set

[7] See, e.g., T38:22-40:16 (Daniel Greenhouse, environmental attorney); T42:13-44:23 (Cindy Zipf, Executive Director of Respondent COA); T56:13-57:25 (Carol Kuehn, resident), T61:19-63:14 (Susan Mikitas, resident); T67:19-69:3 (Charlie Kratovil); T75:5-77:18 (Patty Cronheim, resident and Program Director of ReThink Energy New Jersey); T81:20-85:2 (Diane Heyer, resident); T99:2-101:18 (Kirk Frost); T119:9-22 (Kin Gee, President of Consumers Helping Affect Regulation of Gas and Electric); T142:20-143:21 (Anshul Gupta, resident and Director for New Yorkers for Clean Power).

forth at length in the above Statement of Facts, the record is filled with impacts to Raritan Bay and its marine life. Buried sediments containing pollutants from a prior industrial age along the Bayshore will be resuspended, jeopardizing the health of marine life and the commercial fishing industry supported by Raritan Bay. (Aa34-38.) Seafood consumers may be exposed to injurious levels of pollutants. (Aa38.) Marine mammals, including dolphins and endangered whales will also be harmed. (Aa36-37.) Simply put, this NESE project is all harm, no benefit to the people of New Jersey. Under such conditions, Respondent TRC—as the steward of our riparian lands—lacks the authority to grant a license.

III. RESPONDENT TRC'S DECISION MUST BE REVERSED BECAUSE UNDER THE NJ STOP OFFSHORE OIL AND GAS ACT, N.J.S.A. 13:19-47 ET SEQ., RESPONDENT TRC LACKS THE AUTHORITY TO ISSUE A TIDELANDS LICENSE FOR A NATURAL GAS PIPELINE IN STATE WATERS (Aa38; T89:6-91:18)

In April 2018, New Jersey Governor Phil Murphy signed into law the Shore Tourism and Ocean Protection from Offshore Oil and Gas Act ("STOP Act"), N.J.S.A. 13:19-47 et seq. Enacted in response to threat of opening the Atlantic Coast to offshore drilling, the STOP Act prohibits oil and natural gas exploration, development and production in State waters. See N.J.S.A. 13:19-49(a)(1).

Regarding riparian lands, the STOP Act specifically provides:

> No tidal or submerged lands in State waters shall be leased for the purposes of oil or natural gas exploration, development or production…. N.J.S.A. 13:19-49(a)(2).

Respondent DEP (of which Respondent TRC is apart) is also prohibited from issuing any permit, approval, or otherwise authorizing any oil or natural gas exploration, development, or production in State waters. See N.J.S.A. 13:19-49(b)(2).

The Legislature explained its reasoning for circumscribing the TRC's authority:

> oil and natural gas exploration, development, and production . . . in New Jersey waters . . . poses a serious and unacceptable risk to the coastal resources of the State, the water quality of State waters, and the

> continued viability of the State's shore tourism and commercial fishing industries. N.J.S.A. 13:19-48(e).

The record contains references to some of the reasons natural gas developments pose a "serious and unacceptable risk". Over the last 20 years, the United States has experienced over 1,400 documented gas transmission pipeline accidents. (T91:3-6.) These incidents have caused 37 deaths, 150 injuries and over 2.5 billion dollars in property damage. (T91:4-8.) That data does not include massive pipeline explosion in Edison, New Jersey in 1994. (T91:8-10.)

Accordingly, by enacting the STOP Act, our policy makers wisely prohibited the development of natural gas pipelines in our important and sensitive coastal waters. Eager to drive home another land transaction, Respondent TRC ran this stop sign. Respondent TRC had no authority to issue the subject license in furtherance of the development of a gas pipeline through Raritan Bay. Respondent TRC's decision to approve the subject license was, therefore, ultra vires.

IV. FOLLOWING THE THIRD CIRCUIT'S DECISION TO INVALIDATE RESPONDENT TRANSCO'S WATER QUALITY CERTIFICATE, RESPONDENT TRC'S DECISION MUST BE VACATED BECAUSE IT WAS PREDICATED UPON RESPONDENT TRANSCO HAVING ALL NECESSARY REGULATORY APPROVALS AND MEETING ALL ENVIRONMENTAL REGULATORY STANDARDS (Not Argued Below)[8]

Respondent TRC expressly based its decision to issue a tidelands license—above significant opposition and environmental concerns—based upon the representation that the NESE project had all necessary regulatory approvals and met all environmental regulatory standards. (T34:20-22; Aa4, 5, 9.) This fact, which permeated Respondent TRC's decision making, is no longer true. Accordingly, its decision is arbitrary, capricious and no longer supported by the record.

On September 8, 2026, the Third Circuit Court of Appeals vacated the water quality certificate Respondent DEP granted to Respondent Transco on numerous grounds. See Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026). The Third Circuit ruled:

[8] This issue was not ripe for argument below. However, during the agency proceedings, Respondent TRC was made aware of the federal litigation and the "very real possibility" of Respondent Transco's environmental permits being voided, as detailed herein. (T38:3-38:21.) Respondent TRC elected to proceed with its approval of Respondent Transco's application notwithstanding this possibility. (T185:6-12.)

> Because material monitoring and response terms remained unresolved and no later NJDEP approval was required before dredging could begin, we conclude that NJDEP acted arbitrarily and capriciously in issuing the Water Quality Certification . . . The Water Quality Certification is deficient in another respect. Even apart from the deferred plans, NJDEP's decisional documents do not adequately explain its conclusion that Transco's dredging will comply with New Jersey's water quality standards. See id. at *24-25 (Aa87-88.)

The invalidation of Respondent Transco's water quality certificate establishes that the basis for the subject tidelands license is no longer valid. Respondent TRC predicated its approval of the subject license upon the applicant having been issued "all necessary regulatory approvals" and therefore meeting all "environmental regulatory standards." (Aa4, 5, 9.) This perceived legal compliance is no longer the case; in fact, it was never the case.

The minutes of the May 6, 2026 meeting of Respondent TRC, as approved on June 12, 2026 by Respondent DEP, very clearly documents Respondent TRC's reliance upon Respondent Transco having all regulatory approvals, including the now voided water quality certificate, for its NESE project. Referring to the NESE project, the minutes recite:

> This project has all the necessary regulatory approvals including the DEP land use permits as well as the federal approvals such as FERC approval and therefore it meets the environmental regulatory standards. (Aa4.)

The minutes memorialize Respondent Transco's attorney reiterating the NESE project had "all the necessary regulatory approvals…and complies with the

State's coastal zone management rules." (Aa5.) This, of course, is no longer true.

The minutes reflect that Respondent DEP's recommendation to Respondent TRC in favor of license issuance was similarly predicated upon these approvals. The minutes state:

> STAFF RECOMMENDATION: Based on the fact that it has the necessary regulatory permit approvals and follows the current Council policy, staff recommended approving a 24-year Utility License . . . . (Aa5.)

This, too, is no longer true.

The minutes further reflect that the issuance of approvals were integral to Respondent TRC's deliberations and its vote. The minutes record that during deliberations on Respondent Transco's application, Councilmember Grabas stated:

> the required land use permits and approvals have already been issued and that the TRC members are relying upon the work of the DEP, FERC, and other regulatory agencies in making their decision. (Aa9.)

The minutes further document Councilman Grabas' statement that the vote of Respondent TRC on the subject application would be "based on the various permit approvals, and the Council's established policies." (Aa9; T182:20-183:8.) These "facts" announced by Councilmember Grabas shortly before Respondent TRC voted to approve the subject license are no longer true.

Finally, Respondent TRC was aware of the federal litigation challenging the legitimacy of the very approvals it was relying upon. (T37:15-38:21; T169:8-13.) At the May 6, 2026 meeting, Daniel Greenhouse of the Eastern Environmental Law Center made Respondent TRC aware of the pending legal challenges to the water quality certificates issued by New Jersey and New York to Respondent Transco for the NESE project. (T37:15-21.) Mr. Greenhouse warned Respondent TRC of " a very real possibility that the meritorious challenges brought in these federal cases may result in significant changes to or reversal of the current permits required for the project." (T38:14-19.) He suggested that Respondent TRC hold its decision until the federal litigation is decided. (T38:19-21.) Ignoring the very real possibility of Respondent Transco's environmental approvals being vacated by the federal courts, Respondent TRC nevertheless voted to approve Respondent Transco's application. (T185:6-12.)

The vacation of the water quality certificate issued by Respondent DEP means that the tidelands file, the staff recommendation, and Respondent TRC's vote were all based upon a critical fact that is no longer true. Now that the water quality certificate has been voided, Respondent Transco does not possess all necessary regulatory approvals and

does not meet all environmental regulatory standards. The decision to issue the tidelands license cannot be justified on such grounds.

We submit this Court can take judicial notice of the fact that the subject license has not been revoked, and further that Respondent TRC announced at its October 2026 meeting that it would not take any action with respect to same because the matter is being litigated. These facts cannot reasonably be the subject of dispute. See N.J.R.E. 201, 202(b).

To conclude, Respondent TRC—the steward of our riparian lands—issued a license for an activity which has not demonstrated its compliance with our State's surface water quality regulations. Respondent TRC based its decision on such perceived compliance, but it has not altered its decision now that said basis has become a fallacy. Respondent TRC's decision has a thoroughly broken foundation, thereby rendering it arbitrary, capricious and unsupported by the record.

CONCLUSION

For all of the reasons set forth above, we respectfully request this Court reverse the decision of Respondent TRC to approve the subject license. Respondent TRC ignored its duty, as the steward of our riparian lands, to make findings required by its authorizing statute, including as to whether the license would be in the public interest. Supporting a gas pipeline that will exclusively serve New York customers, the license, of course, has no benefit to the people of New Jersey. The record is clear that the gas pipeline will damage the marine environs of Raritan Bay and the public interest therein. Respondent TRC further ignored a statutory prohibition against any approval for natural gas development in State waters, including Raritan Bay. Finally, Respondent TRC based its decision on the applicant having all environmental approvals, and yet the license persists notwithstanding the invalidation of the Respondent Transco's water quality certificate. Clearly, this unfounded, unlawful and deleterious decision should be reversed.

Respectfully submitted,

LITWIN & PROVENCE, LLC
Attorneys for the Appellant,
Clean Ocean Action, Inc.

By: _____
Andrew J. Provence

Dated: October 30, 2026

APPELLANT'S APPENDIX

INDEX TO APPENDIX

Document **Page(s)**

FINAL AGENCY DECISION
Minutes of the May 6, 2026 Meeting of the New Jersey Tidelands Resource Council, as approved by the TRC (on 06/03/26) and NJDEP (on 06/12/26) Aa1

NOTICE OF APPEAL
Notice of Appeal dated July 20, 2026 ..... Aa12

TRANSCRIPT CERTIFICATION
Certification of Madison Wurst Regarding Transcript, certified on October 26, 2026 ..... Aa16

Ex. A Email chain Re: Transcript Request for May 6 TRC Meeting (commencing May 13, 2026) Aa18

ESSENTIAL RECORD ITEMS
"Tidelands License Application Form" from Transcontinental Gas Pipe Line Company, LLC to State of New Jersey, Department of Environmental Protection, Bureau of Tidelands Management, dated May 21, 2025 ..... Aa19

"Tidelands License Application, Section 4, Written Description of the Project" including two sections: "Project Purpose and Need" and an "Overview of Project Facilities" totaling eleven (11) pages Aa20

COA Comments TRC NESE March 25, 2026; Letter to Tidelands Resource Council from Cindy Zipf, Executive Director and Madison Wurst, Ocean Policy Advocate dated March 25, 2026 RE: Clean Ocean Action Comments on Transcontinental Gas Pipeline Co. - Northeast Supply Enhancement Project Tidelands Utility License (1219-25-0004.1 TDI250001) Aa31

June 3, 2026 Letter to Henry Gajda, Chief of Staff, NJDEP from Randy D. Bearce, Manager, Bureau of Tidelands Management RE: Minutes of the Tidelands Resource Council Meeting on May 6, 2026 (enclosure omitted; see 1a-11a) Aa40

Letter to Transcontinental Gas Pipe Line Company from Randy Bearce RE: Transcontinental Gas Pipe Line Company, Utility License Application, Cheesequake Creek Tributary, Raritan Bay, Lot N/A, Block N/A, Sayreville Boro, Middlesex County w/enclosure…… Aa41

Revocable License prepared by Randy D. Bearce dated 6/15/2026 approved by Assistant Attorney General A. Paul Stofa, dated July 10, 2026, and Maps (2) of Raritan Bay dated 6/15/2026…….. Aa42

COURT DOCUMENTS & OTHER AUTHORITIES CITED

Certification of Cindy Zipf in Support of Appellant's Motion to Accelerate, certified on August 31, 2026 (exhibits omitted)…… Aa52

Scheduling Order (Amended), dated September 15, 2026 …….. Aa58

Order on Motion (for Acceleration), dated September 16, 2026 ……. Aa60

Second Amended Statement of Items Comprising the Record on Appeal, filed October 8, 2026 ……. Aa61

Appellant's Civil Case Information Statement (Amended) dated October 13, 2026 (abridged)…… Aa67

Certification of Counsel in Support of Appellant's Brief, certified on October 27, 2026…… Aa70

Ex. A. Tidelands Resource Council Resolution adopted 10/06/10 establishing Utility or Utility Related Projects Policy …… Aa72

Ex. B. "Tidelands" webpage of the NJDEP website (screenshot) ... Aa77

Ex. C. "Stewardship" definition from Merriam-Webster.com (screenshot) ……..... Aa78

Ex. D. Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026) …… Aa79

FINAL AGENCY DECISION
5/6/26 TRC Meeting Minutes
Approved 06/03/26 & 06/12/26

MINUTES

TIDELANDS RESOURCE COUNCIL
DEPARTMENT OF ENVIRONMENTAL PROTECTION
MEETING OF MAY 6, 2026

COUNCILMEMBERS PRESENT[1] :
Mary Pat Robbie, Chairperson
Thomas Voltaggio, Vice Chairperson
Zoe Baldwin
Stuart Challoner[2]
Edward (Ned) Gaine
Joseph Grabas
Andrew Raichle

ABSENT:
Ed (Skip) Harrison
Lori Hohenleitner
Martha Maxwell-Doyle
Anjuli Ramos

ALSO PRESENT:
Nicolas Seminoff, DAG to Council
Johnathan Allen, DAG to Council

Bureau of Tidelands Management and other DEP staff:
Randy Bearce, Manager
Henry Gajda, Chief of Staff
Robert Schuster, Director
Peter DeMeo, Assistant Director
Melissa Miller, Martin Mosen, Kelly DeMilio, Kristina Kravit, Jennifer Desmond, Anthony Deon, Danielle Fischer, Emma Cusano, Danielle Ronquillo, Nishika D'Souza, Eva Tillett, Jaclyn Bernstein, Marila Xie, Natasha Boyd, Christina Albizati, Mike Cuccia, Matthew Lashendock, Bhavya Yampati, Gloria Toleno, Jasmine Flanders, Nicola Fiorey.

[1] Note: There are currently only 11 members on the Council; therefore, a total of at least 6 votes is required for a quorum and approval on an action. There were enough members and votes for a quorum for this meeting.
[2] Arrived late, was not present and did not vote for approval of the April 23, 2026 minutes, but was present for the full Transco matter.

Members of the public:
Dan Greenhouse, Zachary Klein, Ken Dolsky, Cindy Zipf, Diane Heyer, Susan Mikaitis, Elizabeth Roedell, Christopher LaMonica, Andrew Provence, Evan Leong, Richard Scott, Barbara Cuthbert, Madison Wurst, Kevin Corcoran, Christine Roy, Rita (guest), Jessie Lindsay, Rhianna Bozzi, Kin Gee, Jane Fasulo, Taylor McFarland, Paige Pinckney, Steve Machalaba, Jill Aquino, Patty Cronheim, JK Canepa, Erika Attanasio, Suzanne Golas, Conor Lyman, Suzanne (Guest), Tom Irving, Nancy Griffeth, Amie Kalac, Pablo Salazar, Sabeen Masih, Greg Remaud, Jasmine Metellus, Charlie Kratovil, Mona Zhang, James Stuart, Larry Shapiro, Linda Powell, Andrea (Guest), Celeste (Guest), Sophie Nieto-Munoz, Milena Bimpong, Stephen Miller, Donna Lisi, Nidhi Kulkarni, Richard Jones, David Temple, Matt Hartman, Kaila SBU, Jane Califf, Alissa Pecora, Virginia Wardell, Facundo Moreno, Allison McLeod, Linda Garfinkel, Dennis Hart, Edyta Salata, Francesca Ciliberti Ayres, Carolyn Jones, Steven MacLeod, Paula Rogovin, Lois (Guest), Nicholas Stalnecker, Joan Nemeth, Don Greenberg, Michael Atchie, Stephen Kellogg, Linda Stehlik, Tim Powell, Sue (Guest), Cheryl (Guest), Tom Koster, Kristine Gunningham, Mike (Guest), Kirk Frost, Jay Weisbond, Donald Wolfe, Michelle (Guest), Steve (Guest), JT (Guest), Suzy Brindley, Andrea Rojas, Harsh Bhargava, Steven Mitchell, Akhtab Mujahid, Jesse Sutherland, Anthony Antonucci, Kathryn Fisher, Marina Romo, Frank Ogrodowski, Kip Cherry, Javier Perez, Joseph Smugeresky, Kirsty Cronin, John (Guest), Neil (Guest), David Usechak, Lilly (Guest), Capt. Paul Eidman, Teresa Anderson, Kate Wister, Ray Cantor, Kyle (Guest), Terrence Thompson, William (Guest), Matthew Smith, Scarlette Knight, Lucia Middleton, Matt Garrido, Ruth Darlington, Alexandra Horn, Blake Clements, M. Little, Anthony (Guest), Nicole (Guest), Joseph Dean, Susan Nowelsky, Anshul Gupta, Patrick McClusky, Audrey (Guest), Stephanie (Guest), Sharon (Guest), Andy Yesaitis, Mitchell Heisler, Eric L., Dan Merz, Dana DiFilippo, Eileen Eisenberg, Brian Toro, JJ (Guest), Jackie Greger, Maegan Kuhlmann, Jordan Viana, David Pringle, Kari Martin, Anthony Campisi, Trey Barrow, David (Guest), S. Knight, E. (Guest), K. (Guest), Rita (Guest), Knight (Guest), Randy (Guest), 2 Guests on the Website, and 38 Unidentified Call-ins.

APPROVAL OF THE APRIL 23, 2026 TIDELANDS RESOURCE COUNCIL MEETING MINUTES (May 6, calendar):
A motion by Councilmember Voltaggio, seconded by Councilmember Gaine, passed by a vote of 6-0 to approve the April 23, 2026 minutes. Councilmember Challoner was not present for this vote.

FILE:

1219-25-0004.1 TDI250001
APPLICANT: **Transcontinental Gas Pipe Line Company**
PURPOSE OF APPLICATION: **Utility License**
May 6, 2026 Calendar

PROPERTY LOCATION: WATERWAY: Cheesequake Creek Tributary & Raritan Bay
LOT(S): N/A BLOCK(S): N/A
MUNICIPALITY: Sayreville Borough COUNTY: Middlesex
TOTAL AREA OF APPLICANT'S PARCEL: N/A
AREA CLAIMED BY STATE: 93,894 sq. ft.
FORMERLY FLOWED: 95 sq. ft.
CURRENTLY FLOWED: 93,799 sq. ft.

TIDELANDS MAP:	SOURCE:	ADOPTED:	REMNANTS:
#588-2106	1977 PAN	5/27/ 1982	N/A
#588-2112	1977 EPI-IRC, Current Scene	5/27/82	N/A
#595-2112	1977 EPI-IRC, Current Scene	5/27/82	N/A

COST OF LICENSE: $14,084.00 for year 1 with a 2.5% increase per year

Transco is seeking a new Tidelands Utility License for portions of its Northeast Supply Enhancement Project that are located within NJ tidelands. This is for the construction of a new 26” diameter gas pipeline. A small portion of the pipeline will cross underground where a few formerly flowed mapped claimed streams were located, and one crossing of a current creek (Cheesequake Creek Tributary), then cross into the Raritan Bay at Sayreville adjacent to where an existing gas line installed in the 1960s is located. That existing pipeline received a Tidelands one-fee license in 1967 and was installed in 1968. For the new pipeline, only portions of the Raritan Bay Loop will be located in New Jersey Waters. The total linear feet of the Raritan Bay Loop in NJ is 32,701 feet. From the Sayreville shoreline, the proposed pipeline runs 10,696.78 feet to the NJ/NY state line. The pipeline then dips back into NJ waters north of Sandy Hook and then runs for another 22,0003.93 feet in NJ and then back into NY waters. There is also a cathode protection line (CP Loop) that helps prevent corrosion that extends approximately 1,800 linear feet into the bay. The Tidelands license fee applied to those portions of the pipeline that crosses claimed and/or currently flowed tidelands based on the total area of the structure which includes the 26” diameter pipe, and any concrete casing or other structure(s) that make up the utility line. Slides were shown of the pipeline route.

The total square footage for the structures to occupy tidelands is listed at the top and the price calculation is based on the square footage multiplied by the current rate or base fee of $0.15 sq. ft. utility fee in 2026 established in the current TRC utility policy. There is a 2.5% inflator increase applied against the base rate so the cost of the license will increase accordingly with the increase in the base rate. The license fee will begin at $14,084.00 per year and increase overtime. The current utility license policy is for a 24-year license term period.

Overall, the project will expand the existing interstate natural gas pipeline system in Pennsylvania and NJ and the existing offshore natural gas pipeline system in NJ and NY waters. Areas of the pipeline intersecting with tidelands will include 3 "Loop" portions: The Madison Loop runs through the uplands which only crosses approximately 44 linear feet of tidelands claimed streams as it nears the Raritan Bay. The Raritan Bay Loop which runs offshore from Sayreville but only a portion of the line will run through NJ waters as noted above; and the Cathodic Protection ("CP") power cable is 1,831 feet long and is associated with the Raritan Bay Loop. According to the applicant this is for expanded capacity for the national grid.

The project has received a NJDEP Land Use permit under file #0000-25-0012.1 LUP250001, approved on November 7, 2025. A copy of the permit and environmental report have been provided to the Councilmembers. The line running through the bay was laid out to avoid environmental impacts and/or avoid contamination sites.

All upland owner permissions where the pipeline crosses over State owned Tidelands have been received.

In a portion of the Raritan Bay Loop, the proposed pipeline will cross an existing cable, the Neptune Regional Transmission Cable. There are two proposed scenarios for the crossing – a shallow crossing and a deep crossing. The final placement for the proposed Transco pipeline will be determined based on the depth of the Neptune Cable. Both crossing options are approved under the issued permit #0000-25-0012.1 LUP250001.

This Tidelands Utility License is being processed based on the square footage of the license area for the shallow crossing scenario, where a larger square footage will be required due to the placement of additional concrete mattresses needed to protect the pipeline at this shallower crossing depth. If it is determined that the deep crossing (which is preferred by the applicant) is possible, the total license area would be reduced from 93,894 sq. ft. to 83,865 sq. ft. due to the smaller overall size of concrete mattresses needed. The license will include a condition for a post-construction plan to identify which crossing was utilized and what the final square footage is. The license fee can be amended in future years if the overall square footage of the license area is lower based on the post construction information.

This license will also include a condition that the issuance of the license does not give the right to exclude other future crossing of the pipeline, provided those lines received all necessary approvals.

It was noted that there are people from the public who wished to comment on the application and the Council has been provided additional background materials[3].

This project has all the necessary regulatory approvals including the DEP land use permits as well as the federal approvals such as FERC approval and therefore it meets the environmental regulatory standards. The license also complies with the Council's Utility or Utility Related Projects policy (Adopted 10/06/10) which is posted on the Tidelands website under the Forms and Documents page at https://dep.nj.gov/wlm/forms/#tdl .

[3] This case was originally on the agenda for the April 1, 2026, TRC meeting which was cancelled. Prior to that meeting there was a public comment period where comments were received via email. The Council was provided with those comments. There was also a list of people from the public who previously indicated they wished to speak during the meeting to provide comment. The commentors included objectors and supporters of the project.

STAFF RECOMMENDATON: Based on the fact that it has the necessary regulatory permit approvals and follows the current Council policy, staff recommended approving a 24-year Utility License for a consideration of $14,084.00 for the first year with a 2.5% increase applied to the based rate (as provided on the TRC's website), based on the shallow crossing scenario. The license will include a condition that it can be amended if the deep crossing is utilized and the overall license square footage is decreased.

After the staff's summary presentation of the project description, Council Chairperson Robbie asked if there were any questions or comments from the Council. Councilmember Raichle commented that the license should include a condition to remove the pipeline if they do not build the project or cease using it, and it should also require an as-built plan. Manager Bearce noted that there are standard conditions for removal of structures if they cease being licensed, but that the license can include special language that would satisfy the Council's concerns for this project. Councilmember Gaine had a question about the existing pipeline (built in the 1960s) vs the route of this new proposed pipeline, commenting that the older pipeline ran in a straighter more direct path and why this new pipeline was more circuitous.

The applicant's representatives, including their agent, Richard Scott, Esq. and project director Stephen Kellogg, responded that new route was selected as part of the alternative analysis with oversight from the various regulatory agencies to choose the best route to limit environmental impacts, anchorage areas, and cross the Ambrose Channel at a desired location due to the dynamic conditions of the bay. Councilmember Gaine also asked about the depths of the pipeline, particularly the shallower crossing vs the deeper crossing of the Neptune cable which was answered by Richard Scott.

Councilmember Raichle suggested conditions for reporting requirements for the status of the pipeline, that the Council be provided with copies of any regulatory required reporting information such as inspection reports with a consideration that some information may be non-public for safety or security reasons.

Chairperson Robbie then asked if the applicant wished to speak. Agent Scott provided a short summary about Transco corporation, other pipelines in NJ, and this project, noting that it has all the necessary regulatory approvals, meets the required safety standards, and complies with the State's coastal zone management rules and request Council approve the license.

Chairperson Robbie then noted that there are many people wishing to speak and set ground rules because of the number of speakers. Each speaker would be limited to three (3) minutes to comment. A list of known speakers was already generated and posted in the slide presentation. Those not already on the list but wishing to speak could sign up by adding their names to the chat in Teams. Bureau staff would call out the names of the speakers in order and monitor their time. The objector's comments ranged from claims about general overall impacts, impacts to the marine environment, impacts to water quality, impacts during construction, impacts in the uplands including the compressor station, the project was not needed, and the project will not benefit the public. Two speakers commented in support of the project on behalf of the business and industry groups the speakers represented. This is not an exhaustive list of the comments received, see the meeting transcripts for details.

The following people spoke in the order listed below:[4]

[4] There was a list of speakers with their names presented on a slide. These were people who indicated they wished to speak in advance of the April 1, 2026, meeting that was cancelled. The names on the list for numbers 5 – 22 were names provided by Clean Ocean Action prior to the April 1 meeting. All the names on the list were called but several of the people on the list did not appear at the May 6 meeting. The rest of the people in attendance were

1. Daniel Greenhouse, Senior Staff Attorney, from the Eastern Environmental Law Center, on behalf Food & Water Watch, Sierra Club, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, and Central Jersey Safe Energy Coalition. He stated that they submitted written comments including letters dated August 15 and September 25, 2025[5]. Greenhouse said there is pending litigation in opposition to the project and objected to the project.
2. Next staff called on Honorable Philip Kramer, Mayor of Franklin Township, who was second on the list from the cancelled April 1 meeting. However, he was not present.
3. Cindy Zipf, Clean Ocean Action, Executive Director – objected to the project.
4. Madison Wurst, Clean Ocean Action - objected to the project.
5. Taylor McFarland, NJ Sierra Club, conservation program manager – objected to the project.
6. Rachel Dawn Davis, Waterspirit - objected to the project.
7. Next staff called on Matt Gove, Surfrider Foundation who was on the list provided by Clean Ocean Action from the cancelled April 1 meeting – not present.
8. Rupali Chakravati, Princeton Manor who was on the list provided by Clean Ocean Action from the cancelled April 1 meeting - not present.
9. Carol Kuehn, resident Franklin Twp - objected to the project
10. Leslie Mangold, Save the Whales who was on the list provided by Clean Ocean Action from the cancelled April 1 meeting – not present
11. Donna Player, Resident who was on the list provided by Clean Ocean Action from the cancelled April 1 meeting – not present.
12. Greg Remaud, NY/NJ Baykeeper - objected to the project.
13. Susan Mikaits, Resident, Atlantic Highlands - objected to the project.
14. Kip Cherry, Resident, Conservation Chair for the Central Group of the Sierra Club, New Jersey - objected to the project.
15. Danielle McCulloch, American Littoral Society who was on the list provided by Clean Ocean Action from the cancelled April 1 meeting – not present.
16. Charlie Kratovil, Food and Water Watch - objected to the project.
17. Linda Powell, Resident - objected to the project.
18. Patty Cronheim, ReThink Energy NJ - objected to the project.
19. Milena Bimpong, New Jersey League of Conservation Voters - objected to the project.
20. Diane Heyer, Resident, High Gate Manor - objected to the project.
21. Jenna Reynolds, Save Coastal Wildlife who was on the list provided by Clean Ocean Action from the cancelled April 1 meeting – not present.
22. Louise Usechak, League of Women Voters - objected to the project.
23. Andrew J. Provence, NJ resident and environmental attorney - objected to the project.

instructed during the meeting that if they wished to speak to add their names to the chat in Teams and they would be called on in order. Updated slides were provided during the meeting with a running tally of the list of names so that people would know the order and where they were on the list. The names and titles were provided by the speakers.

[5] These letters were provided to the TRC in advance of the meeting.

24. Kristine Gunningham, resident - objected to the project.
25. Allison McLeod, NJ League of Conservation Voters - objected to the project.
26. Celeste Racano - objected to the project.
27. Kirk Frost – objected to the project.
28. Nidhi Kulkarni, Middlesex County resident - objected to the project.
29. Ray Cantor, New Jersey Business and Industry Association (NJBIA) – commented in support of the project on behalf of the NJBIA.
30. Judith Canepa, Vet board member and Energy Conservation Committee Chair in New York City – objected to the project.
31. Dennis Hart, Executive Director of the Chemistry Council of New Jersey - commented in support of the project on behalf of the manufacturers he represents.
32. Jill Aquino, Sussex County resident and nurse - objected to the project.
33. Jessie Lindsay - objected to the project.
34. Kin Gee, president of the grassroots group called CHARGE, Consumers Helping Affect Regulation of Gas and Electric - objected to the project.
35. Paige Pinckney, New York resident - objected to the project.
36. Richard Jones, Highlands, New Jersey resident - objected to the project.
37. Don Greenberg, Bradley Beach, New Jersey resident, and the at-large chair of the Surfrider Foundation - objected to the project.
38. Harsh Bhargava - objected to the project.
39. Anshul Gupta, NJ resident and Policy and Research Director for New York Research Clean Power Organization Energy Solutions - objected to the project.
40. Paula Rogovin, Food and Water Watch - objected to the project.
41. Stephanie Startz, resident of Hudson County - objected to the project.
42. Ken Dolsky, Empower New Jersey, chair of the Best New Jersey and vice president of New Jersey Forest Watch - objected to the project
43. Steven Mitchell, Somerville, Somerset County resident - objected to the project.
44. Pablo Salazar, Mercer County resident and college student - objected to the project.
45. John Conklin, Borough Council President, Rumson, NJ - objected to the project.
46. Dr. Donna Lisi, clinical pharmacist, Franklin Township, Somerset County resident, and chair of the Franklin Township Board of Health Advisory Council - objected to the project.
47. Elizabeth Roedell, South Brunswick resident - objected to the project.
48. Jane Califf, secretary of 350 NJ Rockland in NY - objected to the project.
49. Virginia Wardell, Policy Director of Climate Revolution Action Network - objected to the project.
50. Donald Wolfe, NJ resident - objected to the project.
51. Eileen Eisenberg, NJ resident - objected to the project.
52. Scarlette Knight, NJ resident, high school student - objected to the project.

That concluded the public speakers.

During the public comments, Councilmember Baldwin commented that it would be helpful if Council received further guidance on the TRC's authority and decision-making process. After the last speaker, Council Chairperson Robbie made a motion that they go into executive session before further discussion about this matter, to seek further guidance and legal advice from the Council's Deputy Attorney General (DAG) because there were comments or questions from Council about their authority and questions about potential litigation.

EXECUTIVE SESSION

The motion by Councilmember Robbie, seconded by Councilmember Baldwin to go into executive session.

Before going into executive session, DAG Seminoff read the following statement:

> The Council has voted to go into executive session so that I, Nicholas Semenoff, the Deputy Attorney General advising the Council, can provide legal advice to them. The Open Public Meetings Act provides that a public body such as the Tidelands Resource Council may meet in closed executive session to discuss any pending or anticipated litigation in which the public body is or may become a party. Whereas the Tidelands Resource Council desires to retire to closed session to discuss attorney-client privilege issues related to anticipated litigation related to the Transco gas pipeline application. Now, therefore, be it resolved that the Tidelands Resource Council shall at this time meet in closed session to discuss the above-mentioned matter. The substance of the closed session will be disclosed publicly only when the threat of litigation is passed or when such release would not breach an attorney-client privilege.

END EXECUTIVE SESSION

Upon returning to the regular meeting, Council Chairperson Robbie stated that Councilmembers have questions for the applicant. Councilmember Grabas asked if Transco has ever done horizontal directional drilling (HDD) before. Richard Scott and Stephen Kellogg representing Transco responded that they have done both in-water and shore to water drills successfully. Grabas asked about the core treatment to test the pipeline when it is installed, the pipeline run through the Raritan Bay slag superfund site, and the resuspension of sediments during construction. The applicant's representatives including Richard Scott and Steven MacLeod, environmental consultant, responded that the core treat is approved and will not harm the environment, and that the pipeline will cross the slag site by HDD about 90 feet below the bottom of the bay.

Councilmember Grabas made a motion to approve the staff's recommendation and approve the issuance of the license but with the proviso that it is limited to seven (7) years, after which it would be reviewed again for renewal, and the conditions recommended and concurred by Councilmember's Raichle and Gaine; to provide as-built drawings once constructed, provide the Council with copies of any regulatory required inspection reports related to the pipe integrity, and that if the pipeline is abandoned it be removed and restored to the previous condition.

Councilmember Grabas also stated that the TRC approval concerns the application for a license, which is a type of land transaction, noting that the required land use permits and approvals have already been issued and that the TRC members are relying upon the work of the DEP, FERC, and other regulatory agencies in making their decision. That the Council reviewed the information provided, the comments received, and that the vote is based on the various permit approvals, and the Council's established policies.

The applicant's agent Scott accepted the conditions but asked the reason for a 7-year license rather than a 24-year license which is the standard utility license term according to the current policy, noting the existing pipeline in the bay has been there since 1968, and the commitment for the grid is to maintain the pipeline and service or at least 20 years. Council Chairperson Robbie stated that the 7-year term would give the Council the opportunity to review the project in 7 years in the event there are changes to the current utility policy.

Therefore, a motion by Councilmember Grabas, seconded by Councilmember Voltaggio, passed by a vote of 7-0 to approve a 7-year utility license for the project based on the fee and with the conditions as noted above.

That concluded this calendar.

Adjournment

A motion by Councilmember Grabas, seconded by Councilmember Voltaggio, passed by a vote of 7-0 to adjourn the meeting.

The next regularly scheduled monthly meeting is scheduled for June 3, 2026. All meetings will be held remotely until further notice. See the Departments web site for the Tidelands Resource Council at https://www.nj.gov/dep/landuse/tl_main.html for notices and links to future meetings. In each matter that came before the Council at this meeting, the Council determined that the action it took is in the public interest. However, the Council's action on each of these matters does not release the public trust interest in the State's presently flowed or formerly flowed tidelands within record title.

I certify that this is a true copy of the minutes of the Tidelands Resource Council meeting of May 6, 2026, approved by the Council at the June 3, 2026 meeting.



6/3/2026
Date

Randy D. Bearce
Manager
Bureau of Tidelands Management

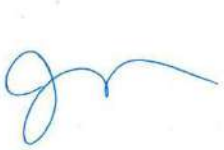
The actions taken by the Tidelands Resource Council at its meeting on May 6, 2026 are hereby approved pursuant to N.J.S.A. 13:1B-13 (Supp. 1998), except for the following:

[x] There are no exceptions.

[ ] There are exceptions. See attached MEMORANDUM.

Each approval may be reexamined just before delivery of the instrument to ensure that the transaction is proper under the law. The State has not conveyed or assigned its title until approval by all the authorized state officials and actual delivery. Until actual delivery, this approval may be revoked.

As to the approval of the April 23, 2026 TRC meeting minutes (approved at the May 6, 2026 meeting):

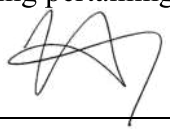


6/9/26

Date

Jennifer L. Moriarty, Assistant Commissioner
Watershed & Land Management

As to the approval of the May 6, 2026 TRC meeting pertaining to the Transco matter (file 1219-25-0004.1 TDI250001):



6/12/26

Date

Henry Gajda, Chief of Staff, NJDEP

Tidelands Resource Council-Opening of Meeting

(I call this meeting of the Tidelands Resource Council to order.) In accordance with the Open Public Meetings Act, written notice of this meeting was provided in the annual notice of meetings, by publication at least 48 hours in advance notice of the time, date, and location in a number of newspapers of general circulation in New Jersey, the Secretary of State, and anyone who requested it. The list of newspapers can be found in the Council's annual meeting notice and in our minutes.

The Tidelands Resource Council is a quasi-legislative body and does not hold public hearings in the usual sense of the word. For individual applications, our procedure is to first hear from the staff, who will provide a summary of the application and its recommendation. At which time, the Council may ask questions regarding the summary. Then the Council will hear from the applicant; and we welcome comments from anyone else who wishes to speak on the application. People who speak before the Council are not sworn witnesses, and we do not allow cross examinations by other members of the public. The Council and staff may ask further questions of the applicant and others who speak.

When the staff has notice of that any particular application will be contested, the Council requires that the applicant provide a Certified Shorthand Reporter for the portion of the meeting and requires that the applicant provide a copy of the transcript to the Bureau of Tidelands Management.

NOTICE OF APPEAL
Filed on 07/20/26

New Jersey Judiciary
Superior Court - Appellate Division

Notice of Appeal

TITLE IN FULL (AS CAPTIONED BELOW)	ATTORNEY / LAW FIRM / PRO SE LITIGANT
IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE, CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY	NAME: **ANDREW J PROVENCE, Esq.** STREET ADDRESS: **108 SOUTH FINLEY AVE** CITY: **BASKING RIDGE** STATE: **NJ** ZIP: **07920** PHONE NUMBER: **973-642-1801** EMAIL ADDRESS: **aprovence@litprolaw.com**

ON APPEAL FROM

TRIAL COURT JUDGE	TRIAL COURT OR STATE AGENCY	TRIAL COURT OR AGENCY NUMBER
		1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE

Notice is hereby given that **CLEAN OCEAN ACTION, INC.** appeals to the Appellate Division from a ☐ Judgment or ☐ Order entered on _____ in the ☐ Civil ☐ Criminal or ☐ Family Part of the Superior Court ☐ Tax Court or from a ■ State Agency decision entered on **06/12/2026**

If not appealing the entire judgment, order or agency decision, specify what parts or paragraphs are being appealed.

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a ☐ conviction ☐ post judgment motion ☐ post-conviction relief ☐ pre-trial detention
If post-conviction relief, is it the ☐ 1st ☐ 2nd ☐ other _____ (specify)

Is defendant incarcerated? ☐ Yes ☐ No

Was bail granted or the sentence or disposition stayed? ☐ Yes ☐ No

If in custody, name the place of confinement:

Defendant was represented below by:

☐ Public Defender ☐ self ☐ private counsel _____ (specify)

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Notice of appeal and attached case information statement have been served where applicable on the following:

	Name	Date of Service
Trial Court Judge		
Trial Court Division Manager		
Tax Court Administrator		
State Agency	**ENVIRONMENTAL PROTECTION**	**07/20/2026**
Attorney General or Attorney for other Governmental body pursuant to *R.* 2:5-1(b)(4)		**07/20/2026**

Other parties in this action:

Name and Designation	Attorney Name, Address and Telephone No.	Date of Service
ENVIRONMENTAL PROTECTION	**SOOKIE BAE-PARK, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625-0112 609-984-3900 dol.appeals@law.njoag.gov (DOLAPPEALS@LPS.STATE.NJ.US; DOLAPPEALS@LPS.STATE.NJ.US)**	**07/20/2026**
NEW JERSEY TIDELANDS RESOURCE COUNCIL	**NICOLAS G SEMINOFF, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625-0112 609-984-3900 nicolas.seminoff@law.njoag.gov**	**07/20/2026**
TRANSCONTINENTAL GAS PIPE LINE COMPANY	**RICHARD G SCOTT, Esq. RUTTER & ROY, LLP 2052 ROUTE 35, SUITE 103 RIVERS EDGE PROFESSIONAL BUILDING WALL NJ 07719 732-462-1990 rscott@rutterroy.com; croy@rutterroy.com; fmiele@rutterroy.com**	**07/20/2026**
NEW JERSEY OFFICE OF THE ATTORNEY GENERAL	**JENNIFER LYNN DAVENPORT, Esq. ATTORNEY GENERAL LAW 25 MARKET ST PO BOX 112 TRENTON NJ 08625-0112 609-984-3900**	**07/20/2026**

(*) truncated due to space limit. Please find full information in the additional pages of the form.

(ocs@njoag.gov)

Attached transcript request form has been served where applicable on the following:

	Name	Date of Service
Transcript Office		
Clerk of the Tax Court		
State Agency	**ENVIRONMENTAL PROTECTION**	**07/20/2026**

Exempt from submitting the transcript request form due to the following:

☐

■ Transcript in possession of attorney or pro se litigant (four copies of the transcript must be submitted along with an electronic copy).

List the date(s) of the trial or hearing:

05/06/2026 **ADMINSTRATIVE AGENCY** **ENVIRONMENTAL PROTECTION**

☐ Motion for abbreviation of transcript filed with the court or agency below. Attach copy.

☐ Motion for transcripts at public expense filed with the court below. Attach copy.

I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by *N.J.S.A.* 22A:2 has been paid.

07/20/2026
Date

s/ **ANDREW J PROVENCE, Esq.**
Signature of Attorney or Pro Se Litigant

BAR ID # **042401998** EMAIL ADDRESS **aprovence@litprolaw.com**

(*) truncated due to space limit. Please find full information in the additional pages of the form.

New Jersey Judiciary
Superior Court - Appellate Division
Notice of Appeal

Additional appellants continued below

Additional respondents continued below

Respondent's Attorney Email Address: **nicolas.seminoff@law.njoag.gov**

☐ Plaintiff ☐ Defendant ■ Other (Specify) **STATE AGENCY**

Name	Client
NICOLAS G SEMINOFF, Esq.	**NEW JERSEY TIDELANDS RESOURCE COUNCIL**

Street Address	City	State	Zip	Telephone Number
25 MARKET ST PO BOX 112	**TRENTON**	**NJ**	**08625-0112**	**609-984-3900**

Respondent's Attorney Email Address: **rscott@rutterroy.com; croy@rutterroy.com; fmiele@rutterroy.com**

☐ Plaintiff ☐ Defendant ■ Other (Specify) **PETITIONER**

Name	Client
RICHARD G SCOTT, Esq.	**TRANSCONTINENTAL GAS PIPE LINE COMPANY**

Street Address	City	State	Zip	Telephone Number
2052 ROUTE 35, SUITE 103 RIVERS EDGE PROFESSIONAL BUILDING	**WALL**	**NJ**	**07719**	**732-462-1990**

Respondent's Attorney Email Address: **(ocs@njoag.gov)**

☐ Plaintiff ☐ Defendant ■ Other (Specify) **STATE AGENCY**

Name	Client
JENNIFER LYNN DAVENPORT, Esq.	**NEW JERSEY OFFICE OF THE ATTORNEY GENERAL**

Street Address	City	State	Zip	Telephone Number
25 MARKET ST PO BOX 112	**TRENTON**	**NJ**	**08625-0112**	**609-984-3900**

Additional parties continued below

Appellant's attorney email address continued below

Respondent's attorney email address continued below

PARTY NAME: NEW JERSEY TIDELANDS RESOURCE COUNCIL ATTORNEY NAME: NICOLAS G SEMINOFF, Esq.
nicolas.seminoff@law.njoag.gov
PARTY NAME: TRANSCONTINENTAL GAS PIPE LINE COMPANY ATTORNEY NAME: RICHARD G SCOTT, Esq.
rscott@rutterroy.com
croy@rutterroy.com
fmiele@rutterroy.com
PARTY NAME: NEW JERSEY OFFICE OF THE ATTORNEY GENERAL ATTORNEY NAME: JENNIFER LYNN DAVENPORT, Esq.
(ocs@njoag.gov)

Additional Party's attorney email address continued below

Andrew J. Provence - #042401998
LITWIN & PROVENCE, LLC
108 South Finley Avenue
Basking Ridge, NJ 07920
(973) 642-1801
Attorneys for the Appellant
Clean Ocean Action, Inc.

IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPELINE COMPANY, UTILITY LICENSE CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX CO.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

On Appeal From Final Decision of the Tidelands Resource Council

Docket No. A-004004-25T2

CERTIFICATION OF MADISON WURST REGARDING TRANSCRIPT

I, Madison Wurst, being of full age, do hereby certify as follows:

1. I am the Ocean Policy Advocate of Clean Ocean Action, Inc. ("Appellant COA"), a non-profit organization with offices in Long Branch (Monmouth County), New Jersey. In such capacity, I am familiar with the matters described herein.

2. I attended, via Microsoft Teams, the May 6, 2026 meeting of the New Jersey Tidelands Resource Council, at which the application of Respondent Transcontinental Gas Pipe Line Company ("Respondent Transco") was heard.

3. At that meeting, Respondent Transco provided a court reporter to

prepare a transcript of the proceeding.

4. On May 13, 2026, I requested a copy of said transcript from Respondent New Jersey Department of Environmental Protection ("Respondent DEP") by sending an email to Randy Bearce, who is the Manager of the Bureau of Tidelands Management within Respondent DEP. A true and correct copy of this email is contained in Exhibit A, which is hereto attached.

5. On or about June 15, 2026, Mr. Bearce supplied to me, by email, a copy of the transcript as provided to Respondent DEP by Respondent Transco. A true and correct copy of this email (without the attachments) is contained in Exhibit A, which is hereto attached.

6. I personally forwarded the transcript provided by Mr. Bearce to our attorney in the above-captioned litigation, who has since filed same with the Court on behalf of Appellant COA.

I do hereby certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 26, 2026

Madison Wurst

Madison Wurst

EXHIBIT A

Outlook

RE: Transcript Request for May 6 TRC Meeting

From Bearce, Randy [DEP] <Randy.Bearce@dep.nj.gov>
Date Mon 6/15/2026 2:55 PM
To Madison Wurst (Clean Ocean Action) <MWurst@CleanOceanAction.org>

2 attachments (4 MB)
2026 06 May Signed.pdf; Transcripts Tidelands Resource COUNCIL MEETING - 05-06-2026.pdf;

Madison,

Per your request, see the attached meeting minutes and the transcripts provided by the applicant.

Randy Bearce, Manager
Division of Watershed Protection and Restoration
Bureau of Tidelands Management
P.O. Box 420 Code 501-02B
Trenton, NJ 08625-0420
Office Tel. # 609-292-2573
Work Cell # 609-422-7011
Fax # 609-777-3656
Randy.bearce@dep.nj.gov

NJDEP NJDEP Facebook pages NJDEP Twitter NJDEP Instragram pages Discover DEP-YouTube Channel

NOTE: This E-mail is protected by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521. This E-Mail and its contents, may be Privileged & Confidential due to the Attorney-Client Privilege, Attorney Work Product, and Deliberative Process or under the New Jersey Open Public Records Act. If you are not the intended recipient of this e-mail, please notify the sender, delete it and do not read, act upon, print, disclose, copy, retain or redistribute it.

From: Madison Wurst (Clean Ocean Action) <MWurst@CleanOceanAction.org>
Sent: Wednesday, May 13, 2026 9:51 AM
To: Bearce, Randy [DEP] <Randy.Bearce@dep.nj.gov>
Cc: Cindy Zipf (Clean Ocean Action) <zipf@cleanoceanaction.org>
Subject: [EXTERNAL] Transcript Request for May 6 TRC Meeting

Hi Randy,

We are inquiring on how we can obtain a certified transcript of the May 6th Tidelands Resource Council meeting pertaining to the TRANSCONTINENTAL GAS PIPELINE COMPANY tidelands utility license for Cheesequake Creek Tributary & Raritan Bay in Sayreville Boro, Middlesex County (1219 -25-0004.1 TDI250001). You had stated during the meeting that due to the nature of the application and the public interest, a court reporter was present. Kindly advise.

Best,

Madison Wurst
Ocean Policy Advocate
49 Avenel Blvd
Long Branch, NJ 07740
(p) 732.872.0111 (f) 732.872.8041
www.cleanoceanaction.org
Give to support a clean ocean!
Like us on Facebook | Follow us on Twitter

Think Green! Only print this e-mail if necessary.

SICRA ITEM #20
License Application
Dated May 21, 2025

State of New Jersey
Department of Environmental Protection
Bureau of Tidelands Management
P.O. Box 420 Code 501-02B
Trenton, NJ 08625-0420

TIDELANDS LICENSE APPLICATION FORM

PLEASE INCLUDE SIGNATURES OF ALL PERSONS LISTED ON THE CURRENT RECORDED DEED
ATTACH A *SIGNATURE ADDENDUM PAGE* IF MORE THAN TWO SIGNATURES ARE REQUIRED

Title Holder(s)

Name: **Transcontinental Gas Pipe Line Company, LLC**

Mailing Address: **2800 Post Oak Boulevard** City: **Houston** State: **Texas**

Zip Code: **77056** Daytime Telephone Number: Email Address:

Site Location

Address: **See Attachment** Municipality: **Sayreville** County: **Middlesex**

Block: **See Attachment** Lot: **See Attachment** Waterway: **Crossway Creek, Cheesequake Creek, and Raritan Bay**

Purpose of Application

Please select all that apply:

☐ Fixed Structure License, Bulkhead Extension License and/or Yacht or Boat Club License

☐ Marina License

☐ Dredging License

☒ Utility or Utility-related License

☐ Bridge License

☐ Modification of Existing License File#_____

Agent Information (optional)

Agent Name: **Richard G. Scott, Esq.**

Mailing Address: **2052 Route 35, Suite 103** City: **Wall** State: **New Jersey**

Zip Code: **07719** Telephone Number: **732-462-1990** Email Address: rscott@rutterroy.com

Signatures

I, the undersigned, hereby request a Tidelands License from the State of New Jersey. I understand that construction may not be performed until said License is delivered. I also understand that the State has the right to revoke any License as set forth in N.J.S.A 12:3-10. Furthermore, I agree to abide by the terms and conditions contained in the License Document.

☐ *I agree to act as my own representative in all matters pertaining to my Tidelands License.*

☒ *I authorize the person named above to act as my agent in all matters pertaining to my Tidelands License. I understand that the Bureau of Tidelands Management will correspond only with this agent. Furthermore, I understand that I should direct future questions or concerns regarding my conveyance to my agent. This agreement will remain in effect unless I submit written notification to the Bureau of Tidelands Management.*

Signature of Title Holder: Timothy L. Powell Date: 5/21/2025

Print Name: **Timothy L. Powell**

Signature of Title Holder: Date:

Print Name:

* * * * * *

WRITTEN DESCRIPTION OF THE PROJECT

Transcontinental Gas Pipe Line Company, LLC (Transco), a subsidiary of Williams Partners L.P. (Williams), is proposing to expand its existing interstate natural gas pipeline system in Pennsylvania and New Jersey and its existing offshore natural gas pipeline system in New Jersey and New York waters. The purpose of the Project remains consistent with the 2020 applications – to provide 400,000 dekatherms per day of incremental firm transportation capacity from Transco's Station 195 in York County, Pennsylvania, to the existing Rockaway Delivery Point (located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York) to serve The Brooklyn Union Gas Company, d/b/a National Grid NY, and KeySpan Gas East Corporation, d/b/a National Grid (collectively, National Grid or Project Shippers).

Transco is seeking a new Tidelands Utility License for portions of its Northeast Supply Enhancement Project ("Project") within New Jersey tidelands, including (1) a portion of its approximately 3.43 mile, 26-inch natural gas pipeline, known as the Madison Loop, under Crossway Creek and Cheesequake Creek in the Borough of Sayreville, Middlesex County, New Jersey; (2) a portion of its approximately 23.49 mile, 26-inch natural gas pipeline, known as the Raritan Bay Loop; and (3) a portion of a 1,831-foot-long Cathodic Protection ("CP") power cable associated with the Raritan Bay Loop.

Project Purpose and Need

Transco is proposing to expand its existing interstate natural gas pipeline system in Pennsylvania and New Jersey and its existing offshore natural gas pipeline system in New Jersey and New York waters. The purpose of the Project remains consistent with the 2020 applications – to provide 400,000 dekatherms per day of incremental firm transportation capacity from Transco's Station 195 in York County, Pennsylvania, to the existing Rockaway Delivery Point (located approximately three miles offshore of the Rockaway Peninsula in Queens Borough, New York) to serve the Brooklyn Union Gas Company, d/b/a National Grid NY, and KeySpan Gas East Corporation, d/b/a National Grid (collectively, National Grid or Project Shippers).

By way of background, Transco previously executed binding precedent agreements with the Project Shippers for 100% of the firm transportation service to be provided under the Project. The Federal Energy Regulatory Commission (FERC) ultimately issued a certificate of public convenience and necessity on May 3, 2019, which was amended by an Order Amending Certificate, dated July 16, 2020 (collectively, "Certificate Order"). However, given the permit denials in 2020 by the New York State Department of Environmental Conservation (NYSDEC) and New Jersey Department of Environmental Protection (NJDEP), and the eventual lapse in the Certificate Order, the precedent agreements were terminated in accordance with their terms.

Despite the lapse in the Certificate Order, the need for the Project, including the more affordable and reliable energy it can make available to New York, has only increased over the last five years. Reliability concerns continue to plague downstate New York and the urgent need exists for additional natural gas supply to serve families and businesses in the region. Projects that were

anticipated to obviate the need for the Project have not come to fruition while demand continues to grow in New York.

As recently highlighted in the Northeast Power Coordinating Council's (NPCC) *Northeast Gas/Electric System Study*, existing gas infrastructure in New York is unable to meet the demand for most electric generators during a cold snap.[1] The same is true for extreme heat waves. While many generators in downstate New York—where the Project is intended to serve—are dual-fuel capable, very few electric generators have firm transportation entitlements, exposing electric generation to risk in the event of an extreme weather event or a pipeline outage.[2] The addition of new firm transportation capacity would immediately improve the resiliency and reliability of gas service to residential and commercial loads—and help to reduce gas prices—in New York City, including during peak demand days. It would also reduce the need for electric generators to rely on oil as a backup.

This fact is reinforced by the President's Executive Order, *Unleashing Energy* and *Declaring a National Energy Emergency*, issued on January 20, 2025. The urgent need for energy transportation infrastructure must be met, as detailed in the Executive Order, with actions to facilitate and support infrastructure development, including the permitting and construction of interstate pipelines—particularly in regions lacking such development in recent years—i.e., the northeastern United States. This is why the Administration is looking to New York, as well as New Jersey and Pennsylvania, to permit the Proposed Project without delay.

Transco and the Project Shippers are in discussions to reinstate the precedent agreements in their entirety. Just as before, these precedent agreements would represent 100% of the firm transportation capacity created by the Project, which show strong market need for the Project. Transco plans to file a Petition with FERC requesting the reissuance of the Certificate Order authorizing Transco to construct and operate the Project

Overview of Project Facilities

Onshore Pipeline Facilities

Quarryville Loop (Pennsylvania)

- 10.17 miles of 42-inch-diameter pipeline from MP1681.00 near Compressor Station 195 to MP1691.17 co-located with the Transco Mainline in Drumore, East Drumore, and Eden Townships, Lancaster County, Pennsylvania. Once in service, the Quarryville Loop will be referred to as Mainline D.

Madison Loop (New Jersey)

- 3.43 miles of 26-inch-diameter pipeline from Compressor Station 207 at MP8.57 to MP12.00 southwest of the Morgan meter and regulating ("M&R") Station on the Lower New York Bay Lateral Loop C in Old Bridge Township and the Borough of Sayreville, Middlesex County, New Jersey. Once in service, the Madison Loop will be referred to as Lower New York Bay Lateral Loop F.

[1] Northeast Power Coordinating Council, *Northeast Gas/Electric System Study*, at 5 (Jan. 21, 2025).
[2] *Id*. at 5-6.

Raritan Bay Loop (New Jersey onshore only)

- 0.16 mile of 26-inch-diameter pipeline from MP12.00 west-southwest of the Morgan M&R Station to the Sayreville shoreline at MP12.16. Additionally, a CP power cable will be installed from a rectifier located at the existing Transco Morgan M&R Station near MP12.10 and extending to a connecting point on the proposed 26-inch-diameter pipeline at MP12.00. The approximately 545-foot-long power cable will be installed by horizontal directional drill ("HDD").

Offshore Pipeline Facilities

Raritan Bay Loop (New Jersey and New York)

- 23.33 miles of 26-inch-diameter pipeline from MP12.16 at the Sayreville shoreline in Middlesex County, New Jersey, to MP35.49 at the Rockaway Transfer Point in the Lower New York Bay, New York, south of the Rockaway Peninsula in Queens County, New York. Additionally, a 1,831-foot-long CP power cable will be installed via HDD from a rectifier at the existing Transco Morgan M&R Station near MP12.10 to an offshore anode sled located approximately 1,200 feet north of MP12.32. Once in service, the Raritan Bay Loop will be referred to as Lower New York Bay Lateral Loop F.

Aboveground Facilities

New Compressor Station 206 (New Jersey)

- Construction of a new 32,000 ISO (International Organization for Standardization) horsepower (hp) compressor station and related ancillary equipment in Franklin Township, Somerset County, New Jersey, with two Solar Mars® 100 (or equivalent) natural gas-fired, turbine-driven compressors.

Modifications to Existing Compressor Station 200 (Pennsylvania)

- Addition of one electric motor-driven compressor (21,902 hp) and related ancillary equipment to Transco's existing Compressor Station 200 in East Whiteland Township, Chester County, Pennsylvania.

Modifications to Existing Mainline Valve Facilities (Pennsylvania and New Jersey)

- Existing Valve Site 195-5 – Installation of a new mainline valve, launcher/receiver and tie-in facilities at the start of the Quarryville Loop (MP1681.00).
- Existing Valve Site 195-10 – Installation of a new mainline valve, launcher/receiver, and tie-in facilities at the end of the Quarryville Loop (MP1691.17).
- Existing Valve Site 200-55 – Installation of a new mainline valve, launcher/receiver, and tie-in facilities at the start of the Madison Loop (MP8.57).

New Mainline Valve Facilities (Pennsylvania and New Jersey)

- Proposed Valve Site 195-8 – Installation of a new intermediate mainline valve for the Quarryville Loop (MP1687.86).
- Proposed Valve Site 200-59 – Installation of a new mainline (isolation) valve for the Madison Loop (MP11.90).

Access Roads

Transco will use existing roads and construct new roads to access Project workspaces. Transco will require a total of 13 temporary access roads[3] and 5 permanent access roads, 2 of which are existing access roads, to construct and operate the Project. Transco will construct temporary access roads as part of the construction phase of the Project and will then restore temporary access roads to pre-construction conditions following Project completion. New temporary and permanent access roads are expected to be approximately 20 to 25 feet wide. Transco will maintain new permanent access roads for use when operating the Project.

Additional Temporary Workspace

Typically, pipeline construction requires additional temporary workspace (ATWS) areas at road crossings, wetlands, waterbodies, agricultural land locations, and in areas where specialized construction techniques are required, such as on steep slopes. The configurations and sizes of ATWS areas are site-specific and vary in accordance with the construction method, crossing type, and other construction needs.

Pipeline Rights-of-Way

In order to minimize the Project footprint, Transco will co-locate the pipeline facilities with existing Transco facilities to the extent possible. 100% of the Madison Loop will be co-located (adjacent to and partially overlapping) existing Transco ROW. Permanent ROW adjacent to the existing ROW is proposed where needed to accommodate a 25-foot offset between pipe centerlines. Transco is proposing to use a 90-foot-wide construction ROW for installation of the 26-inch-diameter Madison Loop. In wetland areas, the construction ROW will be reduced to 75 feet, where feasible [in accordance with OSHA regulations (29 CFR 1926.650-1926.652, Subpart P) and the Interstate Natural Gas Association of America's (INGAA) workspace guidelines (INGAA 1999)].

The land disturbance associated with the onshore portion of the Raritan Bay Loop will be confined to the workspace required for the upland HDD entry location for the pipeline and HDD entry for the CP power cable and the exit location for the onshore only portion of the CP power cable, the HDD tracking wires (monitoring corridor), and the tie-in with the Madison Loop.

Tracking wires for the installation of the Madison, and onshore portion of the onshore Raritan Bay Loop HDD crossings will be placed on the surface along the proposed alignment in the area of the

[3] Transco's previously submitted permit applications to NJDEP reflect 12 temporary access roads. Transco has since included an additional access road. Transco's permit applications will be updated to reflect this change in future submissions to NJDEP. The number of access roads may further change during the permitting review process. Transco will keep NJDEP apprised of any additional changes.

HDD crossings. During construction, the land surface associated with these activities will be used for HDD tracking wires only; therefore, construction impacts will be limited to foot traffic. Transco will not clear these areas (other than minor hand cutting to provide line of sight) during construction - nor conduct vegetative maintenance in these areas during operation of the Project. Temporarily disturbed areas which are not part of the permanent ROWs will be restored to preconstruction contours, stabilized, and revegetated in accordance with approved restoration plans following construction. Permanent ROWs will be maintained in an herbaceous state for the operational life of the pipeline [with the exception of forested wetlands].

Once offshore, the Raritan Bay Loop will not be co-located with the existing LNYBL. A linear segment of underwater land measuring approximately 23.33 miles will be needed for the offshore Raritan Bay Loop from MP12.16, seaward of the Morgan shoreline in Sayreville, Middlesex County, New Jersey, to the interconnect with the Rockaway Transfer Point at MP35.49. From MP12.16 to MP12.24 Transco will require a 125-foot-wide construction ROW for the pipeline and a 45-foot-wide construction ROW for the CP. At MP12.24 the construction ROW expands to a width of 2,500 feet to accommodate workspaces needed for the offshore operations. Transco proposes a 5,000-foot-wide temporary workspace for the remainder of the offshore Raritan Bay Loop. Additional temporary workspace will also be needed near MP26.94 to MP29.64 west-southwest of the Ambrose Channel HDD to allow for pipeline stringing operations. Transco proposes to use conventional anchorspread techniques rather than dynamic positioning because of the relatively shallow depths of the Project area. This construction ROW workspace is needed to allow room for the anchor spread of the various barges and support vessels during all phases of offshore construction and provide room for security and escort boats to monitor and alert non-Project vessels approaching the construction area.

Transco proposes a 30-foot-wide permanent easement in the portions of the Raritan Bay Loop that cross New Jersey waters. Transco will use the area within the permanent easement as workspace to access the offshore pipeline if maintenance is required.

Table 1
Summary of NJ Pipeline Facilities

Facility	Size	Onshore/ Offshore	State	County	Length (miles)
Madison Loop	26-inch-diameter pipeline	Onshore	New Jersey	Middlesex County	3.43
Raritan Bay Loop	26-inch-diameter pipeline	Onshore	New Jersey	Middlesex County	0.16
Raritan Bay Loop	26-inch-diameter pipeline	Offshore	New Jersey	Middlesex County	1.86
Raritan Bay Loop	26-inch-diameter pipeline	Offshore	New Jersey	Monmouth County	4.09

Table 2 (below) summarizes the Project components subject to the NJ Coastal Zone Management Rules at N.J.A.C. 7:7. Locations are also depicted on the Permit Plans, included as part of this application.

Table 2
NJ Coastal Zone Management Areas

Project Component	Approximate Milepost	Proposed Activity	Regulated Area(s)	Surface Water Crossing(s)	Plan Sheet ID
Madison Loop	10.7	Pipeline Installation (trenching & associated workspace)	Mapped Coastal Wetlands	N/A	32
Madison Loop	11.48	Pipeline Installation (HDD, entry point & associated workspace)	Mapped Coastal Wetlands; Upland Waterfront Development; Waterfront Development below MHW	Unnamed Tributary to Crossway Creek, Crossway Creek	35
Madison Loop	11.48 – 11.83	Pipeline Installation (HDD – Foot traffic/hand trimming only)	Mapped Coastal Wetlands; Upland Waterfront Development; Waterfront Development below MHW	Unnamed Tributary to Crossway Creek, Crossway Creek	35 - 36
Madison Loop	11.75	Hydrotest Withdrawl and Discharge Location	Mapped Coastal Wetlands; Waterfront Development below MHW	Cheesequake Creek	36
Madison Loop	11.83	Pipeline Installation (HDD, exit point & associated workspace)	Mapped Coastal Wetlands; Upland Waterfront Development	N/A	36
Madison Loop	11.83 – 12.0	Pipeline Installation (trenching)	Upland Waterfront Development	N/A	36
Raritan Bay Loop	12.0 – 12.5	Pipeline Installation (HDD)	Upland Waterfront Development; Waterfront Development below MHW	Raritan Bay	37
Raritan Bay Loop	12.5 – 14.00 (NJ/NY State Boundary)	Pipeline Installation (trenching and associated workspace)	Waterfront Development below MHW	Raritan Bay	1
Raritan Bay Loop	26.55 – 30.40	Pipeline Installation (trenching and associated workspace)	Waterfront Development below MHW	Raritan Bay/Ambrose Channel	5 - 6
Raritan Bay Loop	30.40	Pipeline Installation (HDD entry pit and associated workspace)	Waterfront Development below MHW	Raritan Bay/Ambrose Channel	6
Raritan Bay Loop	30.40 – 30.64 (NJ/NY State Boundary)	Pipeline Installation (HDD)	Waterfront Development below MHW	Raritan Bay/Ambrose Channel	6

Madison Loop Lockwood Marina HDD:

The section of the Madison Loop that impacts tidelands will be installed using the HDD method. HDD will be used to install the pipeline crossing in three steps: drilling a pilot hole, opening or reaming the hole, and pulling back the HDD pipe. The HDD pipeline will be pulled through the pre-drilled HDD hole from the exit (east) point at approximately MP11.48 to the HDD entry (west) point at approximately MP12.00. The HDD method of drilling a hole significantly below conventional pipeline depth and pulling the pipe through the pre-drilled hole allows trenchless construction across an area. An HDD feasibility summary for the proposed Lockwood Marina HDD is provided in "HDD Preliminary Feasibility Report", and dated March, 2017 (Section 1, Appendix D, Correspondence). The Onshore HDD Contingency Plan outlines the measures that Transco will take in the event that there is a failure during the pilot hole drilling, hole reaming, swabbing, or pullback process. In the event that one of these elements of the HDD process is unsuccessful, Transco will review an alternative crossing profile or location for the HDD.

To prepare for initiating the pilot hole operation, the entry/exit pits will be excavated and the excavated material will be deposited next to the entry/exit pits. HDD equipment will then be set up to drill a pilot hole through to the pre-excavated exit pit. The HDD entry and exit pits will collect any drilling fluid released in the containment pit at the end of the pilot hole phase. Through the reaming and pullback stages drilling fluid will be recycled during HDD operations. The entry side of the drill workspace usually consists of the drill rig and entry hole, control cab, drill string pipe storage, site office and storage trailers, power generators, bentonite storage, bentonite mixing equipment, pump, cuttings separation equipment, cutting return/settlement pit, water trucks and water storage, and the heavy construction equipment necessary to support the operation.

The exit side consists of the exit hole and containment pit, cuttings return/settlement pit, cuttings separation and reclamation equipment, drill string pipe storage, and heavy construction equipment necessary to support the operation. In addition to the drill operations in the exit side workspace, ATWS adjacent to the construction ROW will be needed to provide a straight corridor for handling pipe at HDD locations where the ROW changes direction (see RR 8 for a description of the ATWS that will be needed for the Lockwood Marina HDD provided to NJDEP on April 7, 2017). This allows the pipe to be prefabricated into one or more sections in preparation for the pull-back operation. Once assembled, the pipe is placed on rollers so that it can be conveyed into the drill hole.

To facilitate a HDD, an electric guidewire coil (tracking wire) is typically placed along the ground surface between each HDD entry and exit point, where possible, and is used to track the location of the down-hole drilling equipment and to determine steering inputs when advancing the pilot bore. Wireline guidance systems for HDD crossings typically require two guide wires that parallel the centerline of an installation, with a variable spacing or offset on each side of the centerline, depending on the depth of the HDD installation. Transco will place these wires prior to beginning the HDD and remove them once the HDD is complete. The wires will be laid and removed with the assistance of flagmen. The wires are small and can be placed across active roadways without disruption to or from traffic. The HDD tracking wires will be laid using foot traffic only and would not require any excavation and only limited hand trimming of vegetation (if necessary).

Alternatively, an HDD guidance system that uses a full inertial navigation system (INS) located close to the drill head may be used. The INS is a tracking aid that uses a computer, motion sensors (accelerometers), and rotation sensors (gyroscopes) to continuously calculate via deadreckoning the position, orientation, and velocity (direction and speed of movement) of a moving object without the need for external references. Transco may use one or both of these guidance systems for the Lockwood Marina HDD crossing.

Following completion of the pilot hole, reaming tools are used to enlarge the hole to accommodate the pipe diameter that will be installed. The reaming tools are attached to the drill string at the exit pit and simultaneously rotated and drawn back to enlarge the pilot hole incrementally. During this process, drilling mud consisting of bentonite clay and water is continuously pumped into the pilot hole to remove cuttings and maintain the integrity of the hole. Multiple reaming passes may be required to achieve the desired hole diameter for the pipeline.

After the reaming operations are complete, a swab pass will be completed to help condition the enlarged HDD hole and to evaluate whether it is ready for the pipeline (i.e., the "HDD pipe string") to be installed. When the hole has been sufficiently enlarged, a prefabricated segment of pipe is attached behind the reaming tool on the exit side and pulled back through the drill hole towards the drill rig. The pipe segment will be protected from damage during pullback by the ARO coating on the pipe.

Raritan Bay Loop (Onshore HDD):

Transco is proposing to construct a new 26-inch-diameter pipeline loop beginning at MP12.00 of the proposed Madison Loop, west-southwest of the Morgan M&R Station, on the Lower Bay Loop C in Middlesex County, New Jersey. This new pipeline loop will include a 0.16-mile onshore component, including a portion of a land-to-water HDD, extending from MP12.00 southwest of the Morgan M&R Station to the Sayreville shoreline in Middlesex County, New Jersey (MP12.16).

This section of pipe will be installed using the HDD method. A section of pipeline will be pulled through the pre-drilled HDD hole from the subsea exit point at approximately MP12.50 to the onshore HDD entry point at approximately MP12.00 and connected onshore with the proposed Madison Loop.

Raritan Bay Loop (Offshore):

The offshore Raritan Bay Loop will extend from the Sayreville shoreline (MP12.16), with a land-to-water HDD, approximately 23.33 miles across Raritan Bay and Lower New York Bay to the Rockaway Transfer Point. Approximately 5.95 miles of the offshore Raritan Bay Loop route crosses New Jersey waters, while the remaining 17.38 miles cross New York waters. The offshore pipeline in New Jersey will extend from the Sayreville shoreline at MP12.16 to MP14.02 and from MP26.55 to MP30.64.

The trenched section of offshore pipeline in New Jersey will extend from the exit pit for the Morgan Shore Approach HDD crossing at MP12.50 to MP14.02, where it crosses into New York waters; from MP26.55 to the exit pit of the Ambrose Channel HDD crossing at MP29.52; and from the entry pit for the HDD Ambrose Channel crossing at MP30.40 to MP30.64, where it

again crosses back into New York waters. This section of the pipeline will be externally coated with concrete-weight coating. Transco will then bury the pipe to a minimum depth of 4 feet and in accordance with any permit conditions as directed by the U.S. Army Corps of Engineers ("USACE"). If Transco cannot achieve the required burial depth, (e.g., at the Neptune Cable crossing near offshore MP13.88), then the pipeline will be covered with concrete (or equivalent) mattresses.

Trenching for the offshore (subsea) pipeline will take place between MP12.50 and MP29.52. One clamshell dredge and its supporting scows will be mobilized to first excavate a pit at the offshore HDD exit point for the Morgan Shore Approach HDD crossing, then proceed eastward to excavate a trench from the offshore HDD exit pit to approximately MP16.6. The bottom of the trench in this area will extend to a minimum depth required for safe installation of the pipeline as directed by the USACE. After trenching between the HDD exit point and approximately MP16.6 is complete and the pipe has been pulled through the Morgan Shore Approach HDD, a pipelay barge will install pipeline in this section of trench, and a clamshell dredge will backfill the trench.

A clamshell dredge consists of a clamshell bucket attached to a crawler excavator or cable crane. The barge carrying the clamshell dredge will be equipped with differential global positioning system survey equipment for positioning and an echo sounder for excavation monitoring. The barge will be moored using three or four anchors placed at pre-selected locations by a support tug or using spuds. The seabed elevation for clamshell dredge activity ranges from approximately -7 feet mean lower low water ("MLLW") near the Morgan shore to -40 feet MLLW in the Raritan Bay Channel.

Transco will use a jet barge at approximately MP30.40 and proceed eastward towards MP35.49 to cut and remove existing, inactive cables. NJHPO has provided input (see NJHPO correspondence July 12, 2017) indicating none of the cables with the construction Area of Potential Effect (APE) have historical significance. If Transco identifies any additional active cables during the course of construction, divers will remove sediment covering the cable and install concrete mattresses on either side of the cable to create a bridge above it. At approximately MP35.19, the divers from the jet barge will remove sediment covering the second Neptune Cable crossing, and the barge-mounted crane, with assistance from divers, will install concrete mattresses (or the equivalent) on either side of the cable.

For the Morgan Shore Approach HDD (offshore portion from MP12.16 to MP12.50), Transco will mobilize a marine-support barge loaded with the HDD equipment and crew to the HDD exit point location in Raritan Bay. A clamshell dredge will excavate the exit point and then a vibratory device will be used to install piles ("goal posts") at the exit pit. Transco will assemble the HDD pipe string on the pipelay barge, lay the pipe string on the seafloor, and then complete a hydrostatic test of the pipeline segment. Following drilling, reaming, and swabbing of the borehole, the HDD pipe string will be pulled through the borehole towards the onshore HDD entry point. All offshore HDD activities will take place 24 hours per day, while activities associated with rigging up at the onshore entry workspace will take place during daylight shift. The pipelay barge will then proceed to assemble the pipeline towards approximate MP16.6.

For the Ambrose Channel crossing (MP29.52 to MP30.40), Transco will mobilize a clamshell dredge mounted on a crane barge and two liftboats with drilling equipment to the Lower New York Bay. Transco will require additional workspace on the west side of the Ambrose Channel to lay

and park the prefabricated pipe for the HDD. This prefabricated HDD string will be hydrotested and remain parked on the seabed awaiting pull-back into the reamed HDD hole. Partial burial of this HDD string or other temporary means of stabilization will be required to stabilize the HDD string on the seafloor in this high current area. The 5,875-foot Ambrose HDD string will consist of the length of the approximately 4,655 feet of HDD pipe, a 1,140-foot 'tail' length to allow S-lay retrieval and continuation of pipelay by the lay barge once the pull-in is completed, and an additional 80-foot length of pipe to allow for the tie-in on the east side of the HDD. The dredge will excavate pits at the entry point and the exit point and then a vibratory device will be used to install piles ("goal posts") on opposite sides of the Ambrose Channel. Following the goal post installation, liftboats will be set up at both HDD entry and exit points, and dolphin/fender piles and a casing will be installed at the entry point.

Transco will conduct the Ambrose Channel HDD, including drilling, reaming, and swabbing of the borehole 24 hours per day until completion. During the Ambrose Channel HDD, an anchored lay barge will be set up near the Ambrose Channel HDD exit point to assemble the HDD pipe string, lay the pipe string near the HDD exit, and then complete a hydrostatic test of the pipeline segment. Following drilling, reaming, and swabbing of the borehole, Transco will remove the casing and pull the pipe string through the borehole.

Following assembly and installation of the Ambrose Channel HDD described above, an anchored pipelay barge will begin laying pipe on the seafloor beginning at MP29.52 (Ambrose Channel HDD exit point) extending in a westerly direction to approximate MP16.6 (exiting NJ waters at MP26.55). After Transco has laid the pipeline segment, Transco will use a jet sled to lower the pipeline and the clamshell dredge will be used to backfill. The anchored pipelay barge will then relocate to lay pipe on the seafloor east of the Ambrose Channel entry HDD point, towards MP35.49 and then use a jet sled to lower the pipeline.

A jet sled is equipped with surface liquid pumps, surface air pumps, hoses, tow rigging, and is deployed overboard and straddles the pre-laid pipeline. Surface liquid pumps then send pressurized seawater through a series of nozzles located throughout the jet sled. This process emulsifies the sediments. Air lift features on the jet sled then direct the fluidized sediment upward and the pipe is lowered while the jet sled traverses the pipeline route. Steering is normally accomplished by vessel offset or tow angle of the vessel or by articulated steering. A jet sled is not equipped with any cutting edges, digging arms, or excavating tools.

Material excavated in this manner cannot be directed; it is dispersed and in general not completely recovered for backfill in most instances. Differing jet sled designs and/or sediment conditions may warrant the need to make multiple passes down the pipeline route in order to achieve the Project defined depth requirements.

After the pipe has been laid in the trench, the clamshell dredge will backfill the trench between the Ambrose Channel exit HDD point and approximate MP16.6 and between the Ambrose Channel HDD entry point and MP35.49 (tie-in to the Rockaway Transfer Point in New York waters). Transco will bury the pipe to a minimum depth of 4 feet and in accordance with any permit conditions as directed by the USACE. Supplemental backfill will be used as needed following completion of commissioning activities. Transco will use a clamshell dredge for supplemental backfill activities.

Raritan Bay CP System

Installation of the CP system will require two HDDs. The first will begin at MP12.10 and will end approximately 1,200 feet from the pipe centerline seaward of the Morgan shoreline in Sayreville, New Jersey, near MP12.32. Transco will mobilize a marine support barge to the HDD exit point location in Raritan Bay to the north of MP12.32 and a dredge will excavate the area where the anode sled will connect to the CP power cable.

Following drilling of the borehole, the CP power cable will be pulled through towards the onshore HDD entry point. The offshore HDD activities will take place 24 hours per day until the HDD is complete, while activities associated with rigging up at the onshore entry workspace will take place during daylight shifts. Following completion of the HDD, the anode sled will be installed and backfilled to a minimum depth of 4 feet. Following completion of the CP HDD east of MP12.10, a second CP HDD will begin, starting at MP12.10 and ending at a connecting point on the junction between the Raritan Bay Loop and Madison Loop at MP12.00. These activities associated with the onshore drilling will take place 24 hours per day until the HDD is complete, while activities associated with rigging up at the onshore entry workspace will take place during daylight shifts.

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Ocean Advocacy Since 1984

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March 25, 2026

RE: Clean Ocean Action Comments on Transcontinental Gas Pipeline Co. – Northeast Supply Enhancement Project Tidelands Utility License (1219-25-0004.1 TDI250001)

Dear Chair Mary Pat Robbie and Tidelands Resource Council members,

Clean Ocean Action writes in strong opposition to the Transcontinental Gas Pipeline Co. – Northeast Supply Enhancement Project (NESE) Tidelands Utility License application. Clean Ocean Action (COA) works as broad-based coalition of conservation, environmental, fishing, boating, diving, religious, student, surfing, women's, business, civic and community organizations dedicated to the improvement of water quality and defending the marine ecosystem throughout the NY/NJ Bight, including Raritan Bay.

The proposed license would not serve a single public interest for the residents of New Jersey. The purpose of the proposed pipeline expansion is to deliver fossil fuel to New York for corporate profit, despite it being independently proven the gas is not needed.[1] There is no benefit to New Jersey, but there are plenty of harms, including, the destruction of miles of important marine benthic habitat, the suspension of toxic sediments, and impacts to marine life. The State of New Jersey holds in trust for the people of this state the submerged lands the applicant seeks to exploit. We respectfully submit that the granting of the proposed license would be a clear and detrimental violation of this trust.

BACKGROUND

The (Once Again) Proposed Project. As you know, the NESE Project is a proposed fossil fuel expansion project, built upon the existing Transco Pipeline system. The alleged purpose of the project is to bring 400,000 dekatherms per day of fracked methane gas from Pennsylvania to

[1] Mattei, S. (2025, September 10). *The Williams NESE gas pipeline is not better the second time around*. Institute for Energy Economics and Financial Analysis. https://ieefa.org/articles/williams-nese-gas-pipeline-not-better-second-time-around

New York, again, despite it being independently proven the gas is not needed.[2] The project has three central components. First, the Lancaster Loop, which consists of 10.2 miles of 42-inch pipeline in Lancaster County, Pennsylvania. Second, the Madison Loop, which includes the development of 3.4 miles of 26-inch pipeline in Middlesex County, New Jersey, as well as the development of Compressor Station 206 in Somerset County, New Jersey. Third, the Raritan Bay Loop, which is a 23.5-mile segment of pipeline crossing offshore through 6.2 miles of New Jersey state waters, and 17.3 miles of New York State waters.

New Jersey's offshore portion of the Raritan Loop would be sited off Middlesex and Monmouth Counties, through Raritan Bay. In New York, the pipeline would be sited offshore in Queens and Richmond Counties, just south of Staten Island, Coney Island, and the Rockaways, through three connected waterbodies—Raritan Bay, Lower New York Bay, and the New York Bight section of the Atlantic Ocean.[3] The NESE pipeline would then connect to an existing offshore pipeline, the Rockaway Delivery Lateral, at a location known as the Rockaway Transfer Point in Queens, New York.

As stated in this license application, the NESE fossil fuel pipeline will utilize the Raritan Bay and Cheesequake Creek Tributary tidelands. According to documents obtained from the New Jersey Tidelands office, an estimated 93,843 square feet of tidelands will be impacted by NESE. This is the area that will be sacrificed along the 9.54 miles of pipeline that will rip through the area.[4] While this is the area being leased, a much larger area of the Raritan Bay and connected waterways will be destroyed. The dredging and trenching activities for the entire 23.5 miles of the Raritan Loop will disturb 87.8 acres directly.[5] An additional 9,474 acres of seafloor would also be disturbed by backfilling and excitation and thus affected by the resuspension and redisposition of toxic sediment, impacting turbidity over this area.[6]

Project Component	**Square Feet**
Raritan Bay Loop	80,626
Concrete Mattresses	11,634*
Cathodic Protection Cable	1,314
Cathodic Protection Anode Sled	225
Madison Loop	44
Total	**93,843**
* Note: there is some overlap with the pipeline and the mattresses for the 642 feet length of mattresses (see above cross section), so there may need to be an adjustment. This would be 642ft x 2.5 feet = 1,605 sq. ft.)	

Table 1
Summary of NJ Pipeline Facilities

Facility	Size	Onshore/ Offshore	State	County	Length (miles)
Madison Loop	26-inch-diameter pipeline	Onshore	New Jersey	Middlesex County	3.43
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Raritan Bay Loop	26-inch-diameter pipeline	Offshore	New Jersey	Monmouth County	4.09

Table 2 (below) summarizes the Project components subject to the NJ Coastal Zone Management Rules at N.J.A.C. 7:7. Locations are also depicted on the Permit Plans, included as part of this application.

[2] Federal Energy Regulatory Commission, Northeast Supply Enhancement Project - Final Environmental Impact Statement, Docket No. CP17-101-000, at 1-3 (2019) [hereinafter "EIS"].
[3] EIS at 4-50.
[4] Open Public Records Act (N.J.S.A. 47:1A-1 et seq.) Request Tracking # 392836.
[5] EIS at 2-11
[6] *Id.*

Permitting History. Transco has repeatedly applied for NESE with initial permit applications being filed on July 26, 2017. Subsequent applications were submitted on June 20, 2018, June 12, 2019, October 28, 2019, and January 21, 2020. All these permit applications were denied by the State of New York and New Jersey Department of Environmental Protection (NJDEP) for reasons including the environmental harm of a project of this scope, as well as concerns about the expanded use of fossil fuels.

On May 29, 2025, Transco filed a petition with the Federal Energy Regulatory Commission (FERC) seeking reissuance of its certificate of public convenience and necessity, as amended, authorizing Transco to construct and operate as previously approved.[7] In this petition Transco cites President Trump's executive order released on January 20, 2025, declaring a national "energy emergency" as justification for restarting the NESE project.[8] This order directs agencies to "identify and use all relevant lawful emergency and other authorities available to them to expedite the completion of all authorized and appropriated infrastructure." [4] The Trump administration and the federal government agencies made it clear that they want this project to move forward and have started applying pressure at the state level to do so.

In May 2025, it was widely reported that President Trump and NY Governor Kathy Hochul struck a deal for the NESE pipeline to be built in return for federal support of the Empire Wind 1 Offshore Wind construction.[9] While Governor Hochul and her administration deny this deal, both the White House and Doug Burgum, the Secretary of the Interior, have publicly described details of the agreement. News reports also reported a shift in Governor Hochul's energy position as being open to natural gas expansion in NY.[10,11] While nothing is confirmed, NY's apparent newfound support of this project does not appear to stem from a newly articulated policy need or new scientific assessment but from political pressure.

In addition to the FERC certificate, which was fast-tracked and granted on August 28, 2025, just three (3) short months after their renewed petition on May 30, 2025, Transco re-filed its permit applications in both New Jersey and New York to begin construction of the project by the end of 2025. Unfortunately, on November 7, 2025, New Jersey and New York, in a coordinated announcement, approved the land use permits for NESE. In New Jersey, these permits include a Freshwater Wetlands Individual Permit, Coastal Wetlands Permit, Flood Hazard Area Individual Permit, Flood Hazard Area Verification, In-Water and Upland Waterfront Development Permits and a Water Quality Certificate. This was a devastating unexpected flip-flop after nearly 10 years of consistent opposition and rejection of the project by the states.

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[7] Transcontinental Gas Pipeline Co., LLC; Notice of Petition and Establishing Intervention Deadline, 89 Fed. Reg. 24,272 (June 9, 2025).
[8] Exec. Order No. 14156, 90 Fed. Reg 8433 (Jan. 20, 2025).
[9] Kinniburgh, C. (2025, August 8). *Major pipeline moves closer to approval in New York as critics decry 'bargain' with Trump*. New York Focus. Retrieved from https://nysfocus.com/2025/08/08/donald-trump-new-york-hochul-pipeline-fossil-fuel-offshore-williams-constitutionnd.
[10] Politico. (2025, May 20). Offshore wind, Empire Wind 1, pipeline, Kathy Hochul, Trump. New York Playbook PM. Politico. Retrieved from https://www.politico.com/newsletters/new-york-playbook-pm/2025/05/20/offshore-wind-empire-wind-1-pipeline-kathy-hochul-trump-00360247.
[11] Soraghan, M. (2025, May 27). *White House claims Hochul 'caved' on gas pipelines to save Empire Wind*. E&E News. Retrieved from https://www.eenews.net/articles/white-house-claims-hochul-caved-on-gas-pipelines-to-save-empire-wind/.

Tidelands Application, Final Step. In order the assess the compliance of Transco's application, COA reviewed the Tidelands Act. Under the Public Trust Doctrine, the submerged and tidally flowed lands the applicant seeks to occupy are vested in the State and are to be held in trust for the people of New Jersey.[12] The Tidelands Resource Council functions as the trustee of this trust. As such, "it is the responsibility of the council to determine whether applications for the lease, license, or grant of riparian lands are in **the public interest**; that it is the responsibility of the council to determine, in assessing applications for the lease, license, or grant of riparian lands, whether the State may have a future use for such lands."[13]

As the applicant's land use permits recite:

> *Prior to the construction of any structures and/or the placement of fill within any tidelands areas authorized under this permit, the permittee must apply to the NJDEP's Bureau of Tidelands Management for a tidelands instrument (e.g., a license or lease) for the use and occupation of said tidelands. Tidelands staff will provide further guidance upon review for the timing of construction. All decisions concerning the issuance of any tidelands instrument is solely up to NJDEP's Bureau of Tidelands Management following the Tidelands Resource Council policy.*[14]

These permits additionally state, "the issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties."[15]

To fulfill these requirements, Williams/Transco submitted a tidelands utility license application to the NJDEP Bureau of Tidelands on May 30, 2025. This now leaves the decision made by the Tidelands Resource Council (TRC) the last before construction can begin on this destructive project.

For the reasons described below, the NESE project is not in the public interest and there are better future best public uses of the land that would benefit New Jersey. As such, this project fails to meet both requirements for the conveyance of riparian lands. The TRC should deny this utility license to protect New Jersey tidelands.

NESE IS NOT IN THE PUBLIC INTEREST

We start with a very straight forward observation: **the subject project serves no articulable interest of the people of New Jersey**. The proposed pipeline is intended to deliver *unneeded* fossil fuel to New York and therefore is not intended to benefit the residents of New Jersey, which will experience all the burdens and none of the benefits. What's more, the burdens are numerous and substantial, as set forth in detail below.

1. The Proposed License Would be Detrimental to Marine Life in the Raritan Bay

There are significant harmful effects NESE will have on New Jersey tidelands and marine life. These effects will extend far beyond the initial disturbance and will have long-term ramifications, which the Final Environmental Impact Statement (FEIS) did not adequately access. Despite being significantly flawed, it still shows there will be harmful impacts.

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[12] See e.g., N.J.S.A. 13:1D-150(b), N.J.S.A. 13:19-48(b).
[13] NEW JERSEYRev Stat § 12:3-12.1 (2024) (emphasis added).
[14] DLRP File No. 0000-25-0012.1 LUP250001 Transcontinental Gas Pipeline Company, Page **3** of **25.**
[15] *Id.* Page **21** of **25.**

From the outset, it must be highlighted that over the last 40 years, billions of taxpayer dollars have been invested in improving and enhancing the Raritan Bay and associated estuaries. This improvement has been made possible by the NY/NJ Harbor Estuary Program, being designated an estuary of significance, improvement of sewage treatment, elimination of industrial discharges, and the closing of the Fresh Kills landfill, to name a few. This leadership and commitment has resulted in a healthier ecosystem and billions of dollars of return from thriving recreation and tourism. This incredible transformation must not be violated, especially for a private, for-profit company.

Construction of the NESE Project would result in significant resuspension of about 1,091,734 cubic yards of toxin-laced sediments at levels which exceed New Jersey State Water Quality Standards (SWQS). The FIES reveals that resuspension of contaminants in the water column will exceed New Jersey standards for at least two (2) contaminants—mercury and copper.[16] The NJDEP has explicitly acknowledged this in both the June 2019 denial, and the November 2019 notice of withdrawn applications. Furthermore, it is likely that the project will result in resuspension of other toxins which would exceed SWQS.

The resuspension of the sediment in New Jersey waters will, of course, be exacerbated by the applicant's resuspension of sediment in adjacent New York waters. The close proximity to the states' borders combined with the counterclockwise movement of the estuary will result in the dominant flow of water along with the re-suspended sediments into Raritan Bay, where they will likely accumulate as the tide fluctuates.

The resuspension of sediments and pollutants will result in significantly decreased water quality which will negatively impact fishing and shell fishing in the area. Dredging-up buried industrial toxins (like arsenic, lead, zinc and mercury) and organic compounds (PCBs, DDT, and dioxins) from the seabed will poison fish, shellfish and marine life in the Raritan and Sandy Hook Bays. Dredged-up toxins will affect aquatic migration, clog fish gills, interfere with breeding, and contribute to harmful algae blooms. Furthermore, the redistribution of sediments that fall from suspension, will bury benthic and demersal species, resulting in mortality of eggs and other life stages, including winter flounder that spawn in shallow, inshore waters in the project area. The FEIS specifically notes that eggs and larva of this species could be directly affected by excavation or by being smothered in toxic-laden sediments during construction.

Additionally, the excavation of an 8- to 15-foot-deep trench for 23.5 miles will disturb hundreds of acres of sediments, creating increased sediment disturbance in the water. As stated above, the dredging and trenching activities for the entire 23.5 miles of the Raritan Loop will disturb 87.8 acres directly.[17] An additional 9,474 acres of seafloor would also be disturbed by backfilling and excitation and thus affected by the resuspension and redisposition of toxic sediment, impacting turbidity over this area.[18]

The resulting increase in the turbidity of the water threatens marine life since the clarity of water is critical to the ability of many species to navigate, find food, and avoid predators. The sediments will also disperse with tides, wind, and currents spreading throughout the region and into the ocean. Moreover, impacts also include temporary loss of habitat and foraging areas.

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[16] Compare EIS, supra note 11, at 4-122 with N.J. Admin. Code § 7:9B-1.14(f)(7).
[17] FERC FEIS at 2-11
[18] *Id.*

The repeated test results provide ample evidence for these concerns. Nevertheless, COA objects to the insufficient sampling along the proposed 23.5-mile offshore pipeline route. Any proposed dredging and remediation should have the minimum number of field samples and dredge material management units (DMMU) that are spatially representative. Here, only 87 vibracore samples were taken, which is less than four (4) samples per mile. Furthermore, the sampling was not evenly spaced throughout the proposed route and no justification for this was provided. Thus, given the length of the proposed route and the unusual nature of this project when compared to previous applications, combined with the history of contamination in the area, more samples should have been taken.

Despite such minimal sampling, a review of the test results indicates that specific "Chemicals of Concern" are indeed in the sediment, which COA has routinely referred to as "bad actors," and exceed the reference materials in numerous instances. Therefore, the presence of these contaminants is clearly a concern, and the higher the levels and the more chemicals found, the greater the concern. In reviewing samples, COA has found the following:

- For heavy metals including lead, mercury, and arsenic: the dredged sediment statistically exceeded levels in reference materials 34 times.
- For PCBs, a known carcinogen: the dredged sediment statistically exceeded reference sediments 36 times for individual congeners, and five (5) times for total PCBs.
- For PAHs, petroleum-based chemicals: the dredged sediment statistically exceeded reference sediments ten (10) times.
- For Dioxins/Furans (some of the most toxic industrial chemicals assessed): the dredged sediment exceeded reference sediments 29 times, and in at least one instance exceeded by more than an order of magnitude.

Alarmingly, Transco's contaminant modeling does not account for bioaccumulation or synergistic effects to organisms, which is a blatant disregard for ensuring public health.

Small organisms absorb pollutants, are eaten by larger species, and ultimately these toxins can reach high levels in fish and shellfish consumed by humans. There is direct harm to the organisms, including reproduction and genetic abnormalities, exposed to these toxins as they are absorbed. Additionally, in a system like the Raritan Bay, where fishing and recreational harvesting are common, this raises direct public health concerns. Exposure to bioaccumulated toxins has been linked to a range of adverse health effects, including neurological damage, developmental disorders, endocrine disruption, and increased cancer risk.**Error! Bookmark not defined.**

There are also many concerns about the wildlife in the area. The FEIS "determined that 23 federally listed species may occur in the Project area."[19] The FEIS states:

> *Of these species, "the Project may affect, but is not likely to adversely affect 12 of the federally listed species; may affect, and is likely to adversely affect 3 federally listed species including the North Atlantic right whale, fin whale, and Atlantic sturgeon, due to potential pile driving noise impacts; and may affect, but is not likely to jeopardize 1 federally proposed threatened species."*[20]

[19] EIS at 5-14.
[20] *Id.*

It is also estimated that, "22 NJ-listed species could occur in the vicinity of the Project."[21]

These species are the Humpback whale, Bald eagle, Osprey, Grasshopper sparrow, Black-crowned night-heron, Yellow-crowned night-heron, Black skimmer, Black tern Least tern, Pied-billed grebe, American bittern, Eastern black rail, Upland sandpiper, Short-eared owl, Peregrine falcon, Red-headed woodpecker, Loggerhead shrike, Sedge wren, Golden-winged warbler, Henslow's sparrow, Torrey's rush and Pine Barrens treefrog.[22]

Transco also requested an incidental harassment authorization (IHA) from the National Oceanic and Atmospheric Administration (NOAA) which was approved on September 19, 2025, just one week after the public comment period closed. An IHA allows for the "taking" of marine mammals in a given project area. This IHA authorizes the "takes" of 10,628 marine mammals from fifteen (15) species by "Level B harassment" over the course of one year, and for a subset of seven (7) of these species by "Level A harassment".[23] This includes over 5,000 dolphins and 43 endangered whales. As stated in the FEIS, these endangered whales will be adversely affected by the Project.

There have not been sufficient investigations into the impact this pipeline will have on endangered species by the NJDEP. There have been specific species including the barred owl that have been investigated by Transco and NJDEP due to public pressure.[24] However, a full investigation has not been completed into the impact on the other listed species. It was simply concluded in the FEIS that endangered species will not be jeopardized so thorough investigations were not conducted.

It is also important to note again that this project has not changed; thus, the same FEIS is being used to assess the environmental impacts almost ten (10) years later. Many ecological and biological factors can change during this amount of time.

All the factors above clearly show that the proposed license will result in harm to Raritan Bay and the ocean and allocates land and resources to a project that will cause more damage through the use of fossil fuels. The TRC should find that the proposed license is **not** in the public interest and deny the subject application.

2. The Proposed License Would Be Detrimental to Livelihoods Dependent Upon the Raritan Bay

The Raritan Bay is an important commercial and recreational clamming and fishing area. In Highlands, New Jersey, alone, 20,576,937 clams were processed last year with an estimated 70 boats relying on these grounds for work.[25, 26] There are other clam plants in the impact zone of

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[21] EIS at 5-15.
[22] EIS at 4-195.
[23] Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Northeast Supply Enhancement Project in Raritan Bay, Lower New York Bay and the Atlantic Ocean, 90 FR 38105 (08/07/2025), https://www.federalregister.gov/documents/2025/08/07/2025-15014/takes-of-marine-mammals-incidental-to-specified-activities-taking-marine-mammals-incidental-to-the
[24] New Jersey Department of Environmental Protection. (2020). *Response to Public Comments, Consolidated 2018-2020*. Retrieved from https://dep.nj.gov/wp-content/uploads/nese/application/nese_DEP_response-to-public-comments_consolidated_2018-2020.pdf
[25] Council President of Highlands, Jo-Anne Olszewski, testimony, 2/25/26
[26] "The Clammers of Highlands," *National Fisherman, October 26,2023*

the NESE project as well, providing additional livelihoods and economic development. This has been made possible by the efforts to improve water quality and eliminate contaminants in the bay. Due to the resuspension of sediments mentioned before, economically important clamming and fishing areas will be negatively impacted. It is estimated that over 134 acres of NJDEP 2014 hard clam beds would receive some level of additional sedimentation, with 76 acres receiving more than 1.2 inches of sedimentation.[27] This sedimentation will have clear impacts on the clams by affecting oxygen levels and food in the water column. Importantly, this sediment will also contain toxic chemicals that will accumulate in the clams and make them dangerous for human consumption. Both scenarios will cause irreparable harm to those who depend on the bay.

It bears reiterating that the State of New Jersey "holds in trust for the people of the State those lands flowed by tidal waters to the mean high water mark so that its residents can use and enjoy the State's tidal waters and adjacent shorelines for recreational uses, including, but not limited to, bathing, swimming, fishing, and other shore-related activities."[28] In 2018, our Legislature spoke to the incompatibility of fossil fuel development with public uses. In the Shore Tourism and Ocean Protection Act, the Legislature found:

> *Oil and natural gas exploration, development, and production both in New Jersey waters . . . poses a serious and unacceptable risk to the coastal resources of the State, the water quality of State waters, and the continued viability of the State's shore tourism and commercial fishing industries.*[29]

The STOP Act expressly provides that no tidal or submerged land in State waters shall be leased for the purposes of, nor shall DEP permit, approve or otherwise authorize, any oil or natural gas development in State waters. CAFRA broadly defines the term "development" to include the construction of any structure.[30]

3. The Proposed License Area Future Use Opportunities

The best public use of these New Jersey tidelands both on the coast and offshore is to leave them be. Let the bay, be the bay. The natural capital generated by the ecological processes is priceless and provides continuous benefits to the public.

Moreover, there are a variety of ways these nearshore tidelands can and are used by the State to benefit New Jersey citizens. The land as it is right now functions in the way it was intended and provides innumerable benefits to New Jersey. For example, wetlands, dunes, and nearshore habitats act as natural buffers against storm surge and sea level rise, protecting nearby communities while enhancing biodiversity. These also sequester carbon, improve water quality and provide critical habitat for fish, birds, and other wildlife. The proposed project, which would destroy tens of thousands of square feet of benthic habitat and resuspend a cocktail of pollutants into Raritan Bay, would compromise these natural benefits.

Should a potential use in the future be determined to be in the public interest, these resources will be intact and unspoiled. In the meantime, they will continue to provide endless benefits for the marine ecosystem and we the people.

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[27] EIS at 4-113
[28] N.J.S.A. 13:19-48(b).
[29] N.J.S.A. 13:19-49.
[30] N.J.S.A. 13:9-3.

CONCLUSION

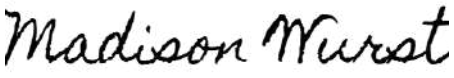
The NESE Project fails to meet the fundamental requirements for the use and conveyance of New Jersey's tidelands. The project is not in the public interest, provides no meaningful benefit to the State, is unnecessary, and poses significant and lasting risks to water quality, marine ecosystems, public health, and surrounding communities. The extensive environmental harm, questionable need, lack of demonstrated economic value to New Jersey, and availability of less damaging alternatives all underscore that this project is an inappropriate and unjustifiable use of public trust resources. This project would sacrifice over 93,843 square feet of tidelands that could be used for the benefit of the people of New Jersey and the marine environment instead of for the benefit of a for-profit company peddling unneeded fossil fuels to New Yorkers.

Furthermore, the strong and consistent opposition from municipalities and residents directly affected by the project reinforces that this proposal does not reflect the will or welfare of the public it would impact. Over the nearly ten-year fight Monmouth Country and twenty-six (26) municipalities have passed resolutions against the NESE project in 2025. These towns include Aberdeen, Atlantic Highlands, Asbury Park, Edison, Franklin (Somerset), Hazlet, Highlands, Keansburg, Keyport, Lawrence, Little Silver, Long Branch, Matawan, Middletown, Monmouth Beach, Montgomery, North Brunswick, Ocean Township, Old Bridge, Princeton, Red Bank, Rocky Hill, Rumson, Sea Bright, South Brunswick, and Union Beach. Thousands of citizens and elected officials have found that this is not in the public interest. The only interest served by this pipeline is Transco's need for more profit.

For all these reasons, Clean Ocean Action respectfully urges the Tidelands Resource Council and Sherrill administration to deny the requested tidelands utility license and uphold its responsibility to protect New Jersey's valuable and irreplaceable coastal resources for present and future generations.

Sincerely,





Cindy Zipf
Executive Director
Clean Ocean Action
zipf@cleanoceanaction.org

Madison Wurst
Ocean Policy Advocate
Clean Ocean Action
advocate@cleanoceanaction.org

SICRA ITEM #4
Cover Memo for 5/6/26 Minutes
Dated June 3, 2026

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATERSHED PROTECTION AND RESTORATION
BUREAU OF TIDELANDS MANAGEMENT
P.O. Box 420, Mail Code 501-02B
Trenton, New Jersey 08625-0420
Tel. (609) 292–2573 • Fax (609) 292-8115
dep.nj.gov/wlm/tidelands

MIKIE SHERRILL
Governor

DALE G. CALDWELL
Lt. Governor

EDWARD POTOSNAK III
Acting Commissioner

TO: Henry Gajda, Chief of Staff, NJDEP
Jennifer L. Moriarty, Assistant Commissioner, Watershed & Land Management

FROM: Randy D. Bearce, Manager, Bureau of Tidelands Management

DATE: 6/3/2026

SUBJECT: Minutes of the Tidelands Resource Council Meeting on May 6, 2026.

As provided in the Administrative Order 2026-01 dated January 23, 2026, continuing all existing Administrative Orders and designations, as Assistant Commissioner Jennifer Moriarty is delegated authority to approve and sign riparian grants, riparian leases, and the minutes of the Council.

As provided in a Memorandum dated February 19, 2026, the Commissioner delegated all authority concerning the Transco Northeast Supply Enhancement Project (Transco NESE) to Deputy Commissioner Joseph Seebode, and in a Memorandum dated March 31, 2026, Deputy Commissioner Seebode delegated his authority concerning Transco NESE to Chief of Staff Henry Gajda.

Attached for review and approval are the minutes of the Tidelands Resource Council Meeting of May 6, 2026 that were approved by the Council at the June 3, 2026 meeting. We recommend Chief of Staff Gajda's approval of the minutes and consequently approval of all actions taken by the Council, except that we recommend Assistant Commissioner Moriarty's approval of the minutes of the Council as to the approval of the April 23, 2026 TRC meeting minutes (approved at the May 6, 2026 meeting and not pertaining to Transco NESE).

If you agree, you may sign the last page of these minutes and have them returned to the Bureau of Tidelands Management.

* * * * *

SICRA ITEM #1
License Cover Letter
Undated

State of New Jersey
DEPARTMENT OF ENVIROMENTAL PROTECTION
DIVISION OF WATERSHED PROTECTION AND RESTORATION
BUREAU OF TIDELANDS MANAGEMENT
P.O. Box 420, Mail Code 501-02B
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MIKIE SHERRILL
Governor

DR. DALE G. CALDWELL
Lt. Governor

ED POTOSNAK
Acting Commissioner

Transcontinental Gas Pipe Line Company
Timothy Powell
2800 Post Oak Blvd
Houston, TX 77056

RE: TRANSCONTINENTAL GAS PIPE LINE COMPANY, Utility License application, Cheesequake Creek Tributary, Raritan Bay, Lot N/A, Block N/A, Sayreville Boro, Middlesex County

FILE: #1219-25-0004.1 TDI250001

Dear Mr. Powell:

Please find the license document for the above-referenced project enclosed with this correspondence.

As stated in the license document, it is the responsibility of the licensee to submit the annual fee within thirty days of the yearly due date. The license contains a clause providing for an annual inflation adjustment of 2.5 percent. This license also takes into account special conditions set forth by the Tidelands Resource Council at the May 6, 2026 meeting.

Prior to the expiration of this license, the licensee is responsible for submitting an application to renew the license. The Tidelands Resource Council will review and may revise the annual fee at the time of renewal. Any changes in the annual license fee introduced after the expiration of this license will be retroactive to the date of termination.

Sincerely,

Randy Bearce
Manager
Bureau of Tidelands Management

RB/kk
encl.
cc: Steven MacLeod
Assistant Vice President
WSP
40 La Riviere Drive
Buffalo, NY 14202

File No. 1219-25-0004.1 TDI250001

REVOCABLE LICENSE
A Rental Agreement from the State of New Jersey

The Tidelands Resource Council in the Department of Environmental Protection, empowered under N.J.S.A. 13:1B-13 to approve licenses of lands owned by the State of New Jersey that are now or were formerly under tidewater, having due regard for the public interest, has approved a license to **TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC**, hereafter referred to as the licensee(s).

The licensee(s) has applied for the right to rent an area of land now or formerly under tidewater across the Cheesequake Creek Tributary and Raritan Bay extending offshore in Sayreville Boro, Middlesex County, New Jersey for the use of a public utility and/or utility related structures. More specifically this is for the installation and continued use and maintenance of a new gas pipeline known as the Northeast Supply Enhancement (NESE) project consisting of a 26-inch diameter natural gas pipeline and any associated construction including the Cathodic Protection (CP) power cable, and concrete mattress as applicable. The license is specifically for the area or square footage of the utility line crossing on, under, or over any formerly or currently flowed tidelands, including portions of the Madison Loop pipeline crossing any formerly or currently flowed tidal creek(s) including the Cheesequake Creek tributary in Sayreville, and the CP cable and those portions of the Raritan Bay Loop pipeline crossing the Raritan Bay within State of New Jersey waters. The licensed activity and licensed area are further described below:

The area to be licensed encompasses a total of 93,894 square feet and is depicted on the two plans entitled, **"NORTHEAST SUPPLY ENHANCEMENT PROJECT PROPOSED 26" MADISON LOOP OLD BRIDGE TOWNSHIP & SAYREVILLE BOROUGH MIDDLESEX COUNTY, NEW JERSEY"**, dated May 21, 2025, prepared by Jason Schooling of PS & S LLC, and plan entitled **"NORTHEAST SUPPLY ENHANCEMENT PROJECT PROPOSED 26" RARITAN BAY LOOP MIDDLESEX & MONMOUTH COUNTY, NEW JERSEY"**, dated May 21, 2025, prepared by Jason Schooling of PS & S LLC, filed with the Bureau of Tidelands Management of the Department of Environmental Protection under file number 1219-25-0004.1 TDI250001. The project must be constructed in compliance with NJDEP Land Use Universal Permit file #0000-25-0012.1 LUP250001 approved on November 7, 2025 with an expiration date of November 6, 2030. The general route of the licensed pipeline is depicted on the **attached Exhibit A and Exhibit B maps.**

The license shall be in effect for a period of seven (7) years from **June 3, 2026 to June 3, 2033.** The license fee shall be **$14,084.00** for the first year but will include **an annual inflation adjustment of two and a half percent. See the attached Schedule A fee schedule.**

The annual rental is due on **June 3** in advance of each year of the license. All payments received thirty days after the due date shall be assessed a late fee of $25.00. All fees or partial fees which remain past due for more than ninety days after said due date shall accrue interest at the rate set by the Tidelands Resource Council until received by the State. Additionally, if a check is returned for non-sufficient funds, a $25.00 charge will be assessed to the licensee(s).

This license may be revoked at any time and for any purpose deemed necessary and reasonable by the Tidelands Resource Council in the Department of Environmental Protection.

The licensee(s) must either apply for a license renewal or remove all structures at the expiration of the said period of seven (7) years. The State of New Jersey is not bound to make any renewal of the license. If a renewal is approved, a new annual fee may be fixed by the Department of Environmental Protection.

Should the license be revoked or should the licensee(s) fail to pay the fee for each year of the license or to renew the license by the end of the expiration date, and/or if the project is not completed, at the end of its service life, and/or the pipeline is abandoned at any time in the future, the licensee(s) must promptly vacate the tidelands at the licensee(s) expense, removing any and all structures within the tidelands in a timely fashion to the satisfaction of the Department of Environmental Protection (including the payment of any fees that may have accrued). Failure to appropriately vacate the tidelands may result in the filing of a lien against the licensee(s) property by the State of New Jersey. The State of New Jersey also reserves the right to pursue additional fees for the continued use and occupation of tidelands by the structures, or any portion thereof, for as long as they remain within tidelands, up until time of their removal regardless if the license or any future license remains in effect.

Should the licensee(s) wish to make any alterations to the license area, the licensee(s) is required to apply for a license modification. If a modified license is approved, a new annual fee may be fixed by the Department of Environmental Protection. Any modification may also require the necessary regulatory permit approvals as a separate obligation as applicable.

This license may be assigned or otherwise transferred by the licensee(s) to any other person or persons with the written consent of the Manager of the Bureau of Tidelands Management of the Department of Environmental Protection. Forms are available from the Bureau for this purpose. The license must be assigned in the event that the licensee(s) sells the entirety of the utility and/or utility related structures prior the expiration date of this license. The annual fee will still be due should the license not be appropriately assigned.

The licensee(s) may not further improve or develop the licensed area unless a permit, as per N.J.S.A. 12:5-3, is obtained for that purpose. The licensee(s) may not appropriate the licensed area for exclusive use.

SPECIAL CONDITIONS:

1. **The rights of the Licensee are exclusive within the Licensed Area and intended use, with the exception that the Council may grant licenses to cross the pipeline at its sole discretion. This License conveys no rights to the Licensee to regulate or restrict activities within State Tideland areas that adjoin the Licensed Area. Therefore, the issuance of the license does not give the right to exclude other future crossing of the pipeline, provided those lines received all necessary approvals and do not interfere with the safe operation of licensee's facilities within the license area.**
2. **Upon completion of the installation of the project, a post construction as-built site plan showing the centerline of the project (including the pipeline and CP line) and the location or segments where any concrete mattress was installed must be prepared and submitted to the Bureau of Tidelands Management.[1] The licensee must also report if there is any change or modification to the overall square footage of the license area (see Schedule A Note: Fee Schedule Amendment).**
3. **The licensee or its successors shall submit copies to the Tidelands Resource Council of any post-construction regulatorily required hydrographic and bathymetric survey reports, and in-line inspection reports required by the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration which will establish the location, depth, and condition of the**

[1] This information will be maintained by the Bureau but may be deemed confidential to comply with any regulatory safety or security requirements as applicable.

pipeline within the license area.[2] Any future license renewal application will also require a pipeline status update.

PREPARED BY: Randy D. Bearce DATE: 6/15/26
Randy D. Bearce
Manager
Bureau of Tidelands Management
N.J.S.A. 46:26A-3

APPROVED BY: DATE: 7/10/2026
Nicolas Seminoff
Deputy Attorney General

[2] This information will be maintained by the Bureau but may be deemed confidential to comply with any regulatory safety or security requirements as applicable.

IN WITNESS WHEREOF, the State of New Jersey has caused these presents to be signed by the Commissioner of Environmental Protection and the Chairperson of the Tidelands Resource Council, and has caused the Great Seal of the State of New Jersey to be hereunto affixed, and has caused these acts to be concurred in by the Attorney General and attested to by the Secretary of State this 17 day of July, 2026

(EGV) Chief of Staff to

6/18/26

Henry Gajda
Chief of Staff
Department of Environmental Protection

Date

6/15/26

Mary Pat Robbie, Chairperson of the Tidelands Resource Council

Date

ATTEST:

7/17/26

~~Dr. Dale G. Caldwell~~ Dr. Julie Brent (EGV)
Chief of Staff to ~~Lieutenant Governor~~/Secretary of State

Date

7/15/2026

Jennifer Davenport
By A. Paul Stofa
Assistant Attorney General

Attorney General

Date

STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER)

BE IT REMEMBERED that on this 17 day of July, 2026 before me, a Notary Public of New Jersey, personally appeared ~~Dr. Dale G. Caldwell,~~ who being by me duly sworn on his oath, says that ~~he~~ she is the ~~Secretary~~ Chief of Staff to State of the State of New Jersey, the LICENSOR named in this instrument; that ~~he~~ she knows the Great Seal of the State of New Jersey; that the Seal affixed to this instrument is that seal and was affixed by him as the act and deed of the LICENSOR; that on the date each signatory executed this instrument each held the office attributed to them, i.e., Jennifer Davenport was the Attorney General, and that the authority to review and sign this LICENSE was delegated to A. Paul Stofa, Assistant Attorney General, and in AAG Stofa's absence, Assistant Attorney General Jessica Palmer, in a document entitled "Tidelands Delegation", dated March 9, 2026, filed with the Secretary of State, with a copy filed in the records of the Tidelands Resource Council recorded March 10, 2026 in Liber L-15 page 184, Mary Pat Robbie was the Chairperson of the Tidelands Resource Council, and Ed Potosnak was the Acting Commissioner of the Department of Environmental Protection, and that he delegated his authority to review, approve, and sign this LICENSE to Henry Gajda, via Memorandum dated March, 31, 2026, filed with the Department, and that he knows their signatures and that they signed this instrument as the act and LICENSE of the State of New Jersey; and that this LICENSE was concurred in by the Attorney General and that the consideration to be paid for this LICENSE is provided in accordance with the attached Schedule A - Annual License Fees.

Dr. ~~Dale G. Caldwell~~ Julie Burt — Date
~~Lieutenant Governor~~/Secretary of State
Chief of Staff to

Sworn to and Subscribed
Before me the date aforesaid

Karen A. Orozco Huete

A Notary Public of the State of New Jersey

(This instrument was reviewed and approved by the Attorney General's Office of the State of New Jersey.)

KAREN A. OROZCO HUETE NOTARY PUBLIC STATE OF NEW JERSEY MY COMM. EXP. 09-18-2030

* * * * *

SCHEDULE A

Annual License Fees

Fee Schedule based on the Utility or Utility Related Projects (Adopted 10/06/10) policy

https://dep.nj.gov/wp-content/uploads/wlm/downloads/tidelands/td_012.pdf

Fee Year	Start Date	End Date	Base Fee	License area (sqft)	Fee Amount
Year 1	06/03/2026	06/03/2027	$0.15	93,894	$14,084
Year 2	06/03/2027	06/03/2028	$0.15	93,894	$14,084
Year 3	06/03/2028	06/03/2029	$0.16	93,894	$15,023
Year 4	06/03/2029	06/03/2030	$0.16	93,894	$15,023
Year 5	06/03/2030	06/03/2031	$0.16	93,894	$15,023
Year 6	06/03/2031	06/03/2032	$0.17	93,894	$15,962
Year 7	06/03/2032	06/03/2033	$0.17	93,894	$15,962

Note: Fee Schedule Amendment (as applicable)

As approved at the May 6, 2026 TRC meeting, The license area for the total square footage of the structures to occupy tidelands is 93,894 square feet and the price calculation is based on the square footage multiplied by the current rate or base fee of $0.15 sq.ft utility fee beginning in 2026 established in the current TRC utility policy. There is a 2.5% inflator increase applied against the base rate so the cost of the license will increase accordingly with the increase in the base rate.

The license fee is based on a total license area of 93,894 sqft and the license fee will begin at $14,084 per year and increase over time as provided in the above fee schedule.

However, in a portion of the Raritan Bay Loop, the proposed pipeline will cross an existing cable, the Neptune Regional Transmission Cable. There are two proposed scenarios for the crossing – a shallow crossing and a deep crossing. The final placement for the proposed Transco pipeline will be determined based on the depth of the Neptune Cable during construction. Both crossing options are approved under the issued NJDEP Land Use permit #0000-25-0012.1 LUP250001.

SCHEDULE A continued

The tidelands utility license area referenced in the above Schedule A is for the shallow crossing scenario, where a larger square footage will be required due to the placement of additional concrete mattresses needed to protect the pipeline at this shallower depth. If it is determined that the deep crossing (which is preferred by the licensee) is possible, the total license area would be reduced from 93,894 sq. ft. to 83,865 sq. ft. due to the smaller area of concrete mattresses needed.

As required under SPECIAL CONDITION 2, the licensee is required to submit a post construction as-built site plan and advise if the license area calculation has changed and provide the revised square footage (if applicable) and the license will be modified with a "Fee Schedule Amendment" to reflect the revised annual fee and fee schedule.

However, there will be no refund or amendment to any prior fees paid or due prior to the Bureau of Tidelands Management being provided with a post construction as-built site plan and notification of any change to the license area.

All the other terms and conditions of the license will remain in effect.

N

1219-25-0004.1 TDI250001
EXHIBIT "A"



Raritan Loop
Madison Loop
CP Loop

0 250 500 1,000 Feet

NOTE:

This exhibit is intended for the property owner's reference and convenience only. This exhibit was not prepared by an NJPLS and is not a survey of the conveyance area.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF TIDELANDS MANAGEMENT
MAP SHOWING
LANDS UNDER TIDE-WATER SITUATE
IN THE BOROUGH OF SAYREVILLE
IN THE COUNTY OF MIDDLESEX
LICENSE TO:
WILLIAMS/TRANSCO NESE

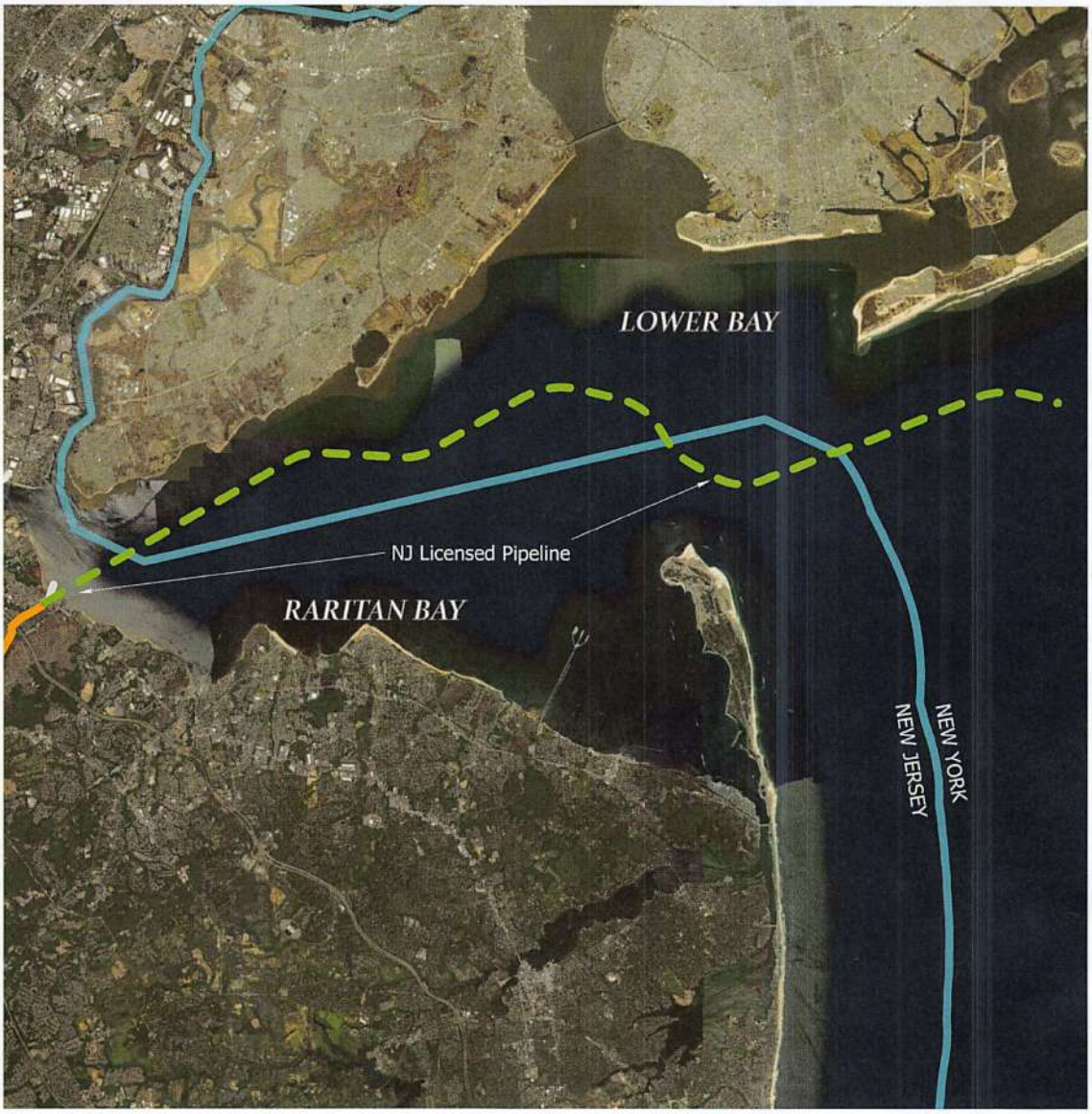
DATED: 6/15/26

COMPUTED & DRAWN BY E.T. DATE: 6/1/2026 2:11 PM

Manager, Bureau of Tidelands Management

N

1219-25-0004.1 TDI250001
EXHIBIT "B"



- Raritan Loop
- Madison Loop
- CP Loop
- NJ/NY State Boundary Line

0 1 2 4 Miles

NOTE:

New Jersey licensed segment includes those portions within New Jersey waters only.

This exhibit is intended for the property owner's reference and convenience only. This exhibit was not prepared by an NJPLS and is not a survey of the conveyance area.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF TIDELANDS MANAGEMENT
MAP SHOWING
LANDS UNDER TIDE-WATER SITUATE
IN THE BOROUGH OF SAYREVILLE
IN THE COUNTY OF MIDDLESEX
LICENSE TO:
WILLIAMS/TRANSCO NESE

DATED: 6/15/26

COMPUTED & DRAWN BY E.T. DATE: 6/1/2026 2:16 PM

Manager, Bureau of Tidelands Management

C. Zipf Certification
Filed on 08/31/26

Andrew J. Provence - #042401998
LITWIN & PROVENCE, LLC
108 South Finley Avenue
Basking Ridge, NJ 07920
(973) 642-1801
Attorneys for the Appellant
Clean Ocean Action, Inc.

IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPELINE COMPANY, UTILITY LICENSE CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX CO.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

On Appeal From Final Agency Decision of the Tidelands Resource Council and the Department of Environmental Protection

Docket No. A-004004-25

CERTIFICATION OF CINDY ZIPF IN SUPPORT OF APPELLANT'S MOTION TO ACCELERATE

I, Cindy Zipf, being of full age, do hereby certify as follows:

1. I am the Executive Director of Clean Ocean Action, Inc. ("COA"), a non-profit organization with offices in Long Branch (Monmouth County), New Jersey. Having been deeply involved in reviewing and opposing the Northeast Energy Supply Extension (NESE) pipeline since 2018, I make this certification in support of COA's motion to accelerate the above-captioned appeal.

2. On or about August 4, 2026, Respondent Transcontinental Gas Pipe Line Company ("Respondent Transco") filed a construction schedule with the Federal Energy Regulation

Commission that indicated construction of the NESE pipeline is to begin on October 1, 2026. This portion of the pipeline is referred to as the Madison Loop, a 3-mile inland pipeline that runs through tributaries of Cheesequake Creek. A true and correct copy of said construction schedule is hereto attached as Exhibit A.

3. On or about August 6, 2026, Respondent Transco filed a construction schedule with the Federal Energy Regulation Commission that indicated construction of a large compression station in Franklin Township, NJ called Compressor Station 206 will also begin on October 1, 2026. A true and correct copy of said construction schedule is hereto attached as Exhibit B.

4. The Madison Loop, which includes tidelands areas, will connect with the Raritan Loop, a 23.5-mile natural gas pipeline through Raritan Bay and New York waters before terminating off Long Island, where it will exclusively service New York customers.

5. Respondent Transco has not yet announced a start date for the construction of the Raritan Loop, but from its recent Weekly Construction Status Report to the Federal Energy Regulatory Commission dated August 21, 2026, Respondent Transco appears to have received all approvals necessary for the construction of the Raritan Loop. (Exhibit C at A-1 and A-2).

A tur and correct copy of said Weekly Construction Report is hereto attached as Exhibit C.

6. On its website, Respondent Transco states that the NESE project will be operational in Q4 of 2027. See https://www.williams.com/expansion-project/northeast-supply-enhancement/?tab=timelinetab-1 (last visited Aug. 27, 2026).

7. The Final Environmental Impact Statement for the NESE project, at Table 2.3.3-1, indicates that dredging operations for the Raritan Loop will take at least 187 days, which would require construction to begin in the second quarter (April-June) of 2027 or earlier for the NESE project to be operational by Q4 of 2027. A true and correct copy of Table 2.3.3-1 is hereto attached as Exhibit D.

8. The Madison Loop will cause significant environmental impacts to Cheesequake Creek and its tributaries, which empty into Raritan Bay. The Madison Loop requires trenching and pipeline installation through tributaries and wetlands of Cheesequake Creek, which will damage and impair the functionality of these sensitive and biologically productive areas.

9. As stated in COA's written comments dated and submitted to the TRC on March 25, 2026, the construction of the Madison and Raritan Loops will cause over one (1) million cubic yards of toxin-laced sediments to be resuspended at levels that

exceed New Jersey State Water Quality Standards (SWQS), including for mercury and copper. (Exhibit E at 5.) A true and correct copy of COA's written comments to the TRC are hereto attached as Exhibit E.

10. As noted in COA's comments, the resuspension of sediments and pollutants, including long-buried industrial toxins (e.g., arsenic, lead, zinc and mercury) and organic compounds (e.g., PCBs, DDT and dioxins) will poison marine life in Raritan and Sandy Hook Bays and negatively impact fishing and shell fishing throughout New York/New Jersey Harbor. (Exhibit E at 5.)

11. The sediments churned up during construction of the Madison and Raritan Loops will be dispersed by currents and tides over extensive areas and then settle onto the bay floor and bury benthic and demersal species, resulting in contamination of the food chain, mortality of eggs and other life stages, including winter flounder, as well as risks to public health and loss of economic potentialities of local commercial fishermen. (Exhibit E at 5.)

12. The Raritan Loop will be responsible for most of this damage, as the Raritan Loop will tear up 23.5 miles of bay bottom, destroying any benthic life and environs in its path and in its wake. (Exhibit E at 2, Table 1.)

13. Raritan Loop construction activity is both within and proximate to the Raritan Bay Slag Site, which is particularly concerning. The Raritan Bay Slag Site is a designated by U.S. Environmental Protection Agency ("USEPA") as a Superfund Site, thus one of the Nation's worst hazardous waste sites. According to USEPA's website, the site is contaminated with lead, arsenic and other toxic heavy metals that leached into Raritan Bay from bayfront metal smelting operations in the 1960s and 1970s. (https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup &id=0206276#bkground, last visited Aug. 28, 2026). Lead is the highest priority hazard at the site because it absorbs into the human body easily, and can cause permanent neurological damage among other human health hazards.

14. There is significant public interest in the NESE project, as demonstrated by the public outcry against the subject license application made to Respondent New Jersey Tidelands Resource Council ("Respondent TRC"). Prior to its meeting on the license application, Respondent TRC received 597 written comments, 591 (99%) of which were in opposition to the license. COA learned this through an OPRA Request #402113 it filed with the TRC on or about July 17, 2026, a true and correct copy of which is hereto attached as Exhibit F.

15. Due to significant public interest in the subject application, Respondent TRC twice rescheduled its meeting on the

subject application and eventually held a meeting exclusively for the subject application on May 6, 2026.

16. At its meeting on May 6, 2026, Respondent TRC heard from 45 speakers, 43 (96%) of whom voiced their opposition to the license. As reflected in the meeting transcript previously filed by COA, the opposition to license application came from various sources, including fishermen, boaters, environmentalist and residents, who voiced a common theme: this license would damage (not serve) the public interest of the residents of New Jersey, particularly those interests supported by Raritan Bay.

I do hereby certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 31, 2026

Cindy Zipf

* * * * *

[exhibits omitted]

Scheduling Order
Filed on 09/15/26

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004004-25T2

IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE, CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY

An appeal having been filed in the above matter,

IT IS HEREBY ORDERED that the time for filing and serving briefs and appendices shall not be later than as follows:

a) BRIEF-APPELLANTS BRIEF AND APPENDIX (due date:10/30/2026)
LITWIN & PROVENCE LLC - ANDREW J PROVENCE
b) BRIEF-RESPONDENTS BRIEF AND APPENDIX (due date:11/30/2026)
RUTTER & ROY, LLP - RICHARD G SCOTT
c) BRIEF-RESPONDENTS BRIEF AND APPENDIX (due date:11/30/2026)
ATTORNEY GENERAL LAW - KRISTEN D HEINZERLING
d) BRIEF-REPLY BRIEF (due date:12/14/2026)
LITWIN & PROVENCE LLC - ANDREW J PROVENCE

IT IS FURTHER ORDERED that three paper copies of each brief and appendix shall be filed with the Clerk once the brief and appendix have been approved for filing, along with three copies of all filed transcripts and any exhibits; and

IT IS FURTHER ORDERED that, per the Supreme Court's October 15, 2024 Notice to the Bar, all filings submitted to the Appellate Division must include a system-generated certification confirming the submission contains no

confidential information or confidential personal identifiers; and

IT IS FURTHER ORDERED that in the event of default by appellant regarding any provision of this order, THE APPEAL WILL BE SUBJECT TO DISMISSAL WITHOUT FURTHER NOTICE; and

IT IS FURTHER ORDERED that if any respondent fails to file a brief within the time directed by this order, such respondent will be subject to preclusion from further participation in the appeal.

WITNESS, the Honorable Heidi Willis Currier, Chief Judge of the Appellate Division, at Trenton, this 15th day of September, 2026.

s/MARIE C. HANLEY
MARIE C. HANLEY
CLERK OF THE APPELLATE DIVISION

Order Denying Acceleration
Filed on 09/16/26

ORDER ON MOTION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO.: A-004004-25T2
MOTION NO.: M-007975-25
BEFORE: PART E
JUDGE: ROBERT J. GILSON

IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE, CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY

MOTION FILED: 08/31/2026 BY: CLEAN OCEAN ACTION, INC.

ANSWER FILED: 09/10/2026 BY: TRANSCONTINENTAL GAS PIPE LINE COMPANY

SUBMITTED TO COURT: September 14, 2026

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 16th day of September, 2026, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION TO ACCELERATE APPEAL DENIED WITHOUT PREJUDICE

SUPPLEMENTAL:

The Clerk's Office is requested to issue a briefing schedule as soon as possible. The same schedule will be applicable to A-4100-25. The dates in the schedules will be firm and preemptory. After all briefs are filed, any party can move for accelerated consideration.

FOR THE COURT:



ROBERT J. GILSON, P.J.A.D.

Current SICRA
Filed on 10/8/26

JENNIFER DAVENPORT
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625
Attorney for Respondent,
New Jersey Tidelands Resource Council

By: W. Conor Kennedy
Deputy Attorney General
Attorney ID No. 294762019
(609) 376-2950
Conor.Kennedy@law.njoag.gov

IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE, CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-004004-25

Civil Action

SECOND AMENDED STATEMENT OF ITEMS COMPRISING THE RECORD ON APPEAL

PLEASE TAKE NOTICE that Respondent, State of New Jersey Tidelands Resource Council (TRC) hereby certifies and files pursuant to Rule 2:5-4(b) the following Amended Statement of Items Comprising the Record on Appeal adding items 20 through 25 and the enclosures identified therein in the above-captioned case.

The record consists of:

License Documents

1. Letter to Transcontinental Gas Pipe Line Company from Randy Bearce RE:

Transcontinental Gas Pipe Line Company, Utility License Application, Cheesequake Creek Tributary, Raritan Bay, Lot N/A, Block N/A, Sayreville Boro, Middlesex County w/enclosure;

A. Revocable License prepared by Randy D. Bearce dated 6/15/2026 approved by Assistant Attorney General A. Paul Stofa, dated July 10, 2026, and Maps (2) of Raritan Bay dated 6/15/2026

Public Meeting and Feedback

2. March 2, 2026, through March 25, 2026: All written comments received by the TRC on Application # 1219-25-0004.1 TDI250001

3. Transcript of May 6, 2026, public meeting of the Tidelands Resource Council

4. June 3, 2026 Letter to Henry Gajda, Chief of Staff, NJDEP from Randy D. Bearce, Manager, Bureau of Tidelands Management RE: Minutes of the Tidelands Resource Council Meeting on May 6, 2026

Application Materials

5. Alliance NESE Statement Tidelands Council May 6, 2026; Statement of the New Jersey Alliance for Action Meeting of the NJ Tidelands Council

6. Transco Case for May TRC Calendar; Riparian Application dated April 1, 2026

7. April 3, 2026 – Letter to Tidelands re Special Meeting; Letter to Randy Bearce, DEP From Richard G. Scott RE: Transcontinental Gas Pipe Line Company, LLC Northeast Supply Enhancement Project Request for Tidelands Utility License File # 1219-25-0004.1 TDI 250001

8. NESE Pipeline Asm. Scharfenberger Submission; Letter to Mary Pat Robbie, Chair from Gerry Scharfenberger, Assemblyman RE: Northeast Supply Enhancement (NESE Pipeline)

9. TRC Response to Asm. Scharfenberger Submission; Letter to Gerry Scharfenberger, Assemblyman from Randy Bearce, DEP dated March 30, 2026

10. Transco Case for April TRC Calendar; Riparian Application dated April 1, 2026

11. DEP Permit 0000-25-25-0012.1 LUP250001 prepared by Matthew Resnick, Environmental Specialist III approved by Colleen Keller, Director, Division of Land Resource Protection

12. DEP Permit 0000-25-25-0012.1 LUP250001 Env Report prepared by Matthew Resnick, Environmental Specialist III dated November 6, 2025, approved by Colleen Keller, Director, Division of Land Resource Protection dated November 7, 2025.

13. 2026-03-20 – Letter in Support Tidelands Record; Letter to Randy Bearce, DEP from Richard G. Scott, on behalf of Transcontinental Gas Pipe Line Company, dated March 20, 2026, RE: Transcontinental Gas Pipe Line Company, LLC Northeast Supply Enhancement Project Request for Tidelands Utility License File # 1219-25-0004.1 TDI 250001

14. Response to Comments NJDEP 2025 Application received through September 25, 2025, dated October 14, 2025

    A. Exhibit A: Order Issuing Certificate dated Auguste 28, 2025 by the Commission; Debbie-Anne A. Reese, Secretary

    B. Exhibit B: Order Regarding Long-Term Natural Gas Plan and Requiring Further Actions at a session of Public Service Commission held in the City of Albany on September 18, 2025

15. EECL Letter to DEP re NESE August 15, 2025; Letter to Shawn M. LaTourette, Commissioner from Daniel A. Greenhouse dated August 15, 2025, RE: Williams/Transco NESE Project w/enclosure

    A. Letter to Anthony C. Cox from Diana Dow, Director of Division of Land use Regulation RE: File and Activity No.: 0000-17-0007.5 LUP190001, FWW190001 Applicant: PennEast Pipeline Company, LLC Project: Construction of approximately 37.8 miles of natural gas pipeline

16. EELC Final Public Comment September 25, 2025; Letter to Shawn M. LaTourette, Commissioner from Christopher D. Miller RE: Williams/Transco NESE Project, Agency Reference No.: 0000-25-0012.1-LUP-250001 w/enclosures:

A. Princton Hydro Report (September 25, 2025)

B. Comments of the City of New York on National Grid's Long-Term Gas Plan Addendum and PA Consulting Report (September 5, 2025)

C. NRDC's Comments on National Grid's Final Long-Term Gas System Plan (September 5, 2025) and Addendum; Synapse Analysis of National Grid's Long-Term Plan (September 5, 2025) Addendum; Synapse Geospatial Analysis Report (May 30, 2025); and Comments of EDF, NRDC, AGREE, Earthjustice, Sierra Club on NPA Frameworks (October 4, 2024)

17. COA Comments TRC NESE March 25, 2026; Letter to Tidelands Resource Council from Cindy Zipf, Executive Director and Madison Wurst, Ocean Policy Advocate dated March 25, 2026 RE: Clean Ocean Action Comments on Transcontinental Gas Pipeline Co. -Northeast Supply Enhancement Project Tidelands Utility License (1219-25-0004.1 TDI250001)

18. Waterspirit Comments Tidelands Resource Council (TRC) March 25, 2026; Letter to Bureau of Tidelands, Tidelands Resource Council from The Waterspirit Team dated March 25, 2026, RE: Williams/Transco (NESE) Utility License Application (1219-25-0004.1 TDI250001 Transcontinental Gas Pipeline Company, Utility License, Cheesequake Creek Tributary & Raritan Bay, Sayreville Boro, Middlesex County)

19. August 15, 2025 Letter to Shawn M. LaTourette, Commissioner from Daniel A. Greenhouse RE: Williams/Transco NESE Project w/enclosure:

A. Letter to Anthony C. Cox, V.P. from Diane Dow, Director, Division of Land Use Regulation RE: File and Activity No.: 0000-17-0007.5 LUP190001, FWW190001 Applicant PennEast Pipeline Company, LLC Project: Construction of approximately 37.8 miles of natural gas pipeline Hunterdon & Mercer Counties

20. May 21, 2025 Tidelands License Application Form from Transcontinental Gas Pipe Line Company, LLC to the State of New Jersey, Department of Environmental Protection, Bureau of Tidelands Management for a Utility or Utility-Related License with enclosures:

A. "Organization Data Form" from Transcontinental Gas Pipe Line

Company, LLC to State of New Jersey, Department of Environmental Protection, Bureau of Tidelands Management

B. Service Information and Application Certification and Payment Form totaling three (3) pages

21. "INFORMATION REGARDING SITE LOCATION" document containing listed address and identifying the portions of the linear construction project that cross tidelands by block(s) and lot(s)

22. "Tidelands License Application, Section 4, Written Description of the Project" including two sections: "Project Purpose and Need" and an "Overview of Project Facilities" totaling eleven (11) pages

23. "Tidelands License Application, Section 3, PERMISSION FROM THE ADJACENT UPLAND OWNER" Document with enclosures:

A. September 27, 1996 Deed from Robert F. Hyer, Single, to Transcontinental Production Company totaling five (5) pages

B. September 11, 2018 Supplemental Right of Way agreement between Borough of Sayerville and Transcontinental Gas Pipeline Company, LLC totaling six (6) pages

C. January 22, 2018 Supplemental Right of Way agreement between Harbour Club Condominium Association, Inc. and Transcontinental Gas Pipeline Company, LLC totaling five (5) pages

D. May 16, 2018 Supplemental Right of Way agreement between Lockwood Marina, LLC and Transcontinental Gas Pipeline Company, LLC totaling five (5) pages

24. "NJDEP Land Use Permit Plans for the Northeast Supply Enhancement Project Proposed 26" Madison Loop" prepared on behalf of Transcontinental Gas Pipe Line Company, LLC by Thomas J. Murphy, PLS totaling thirteen (13) pages

25. "NJDEP Land Use Permit Plans for the Northeast Supply Enhancement Project Proposed 26" Raritan Bay Loop (OFFSHORE)" prepared on behalf of Transcontinental Gas Pipe Line Company, LLC by Thomas J. Murphy, PLS totaling eight (8) pages

Respectfully submitted,

JENNIFER DAVENPORT
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ W. Conor Kennedy
W. Conor Kennedy
Deputy Attorney General
Attorney ID No. 294762019
Conor.Kennedy@law.njoag.gov

Cc: all parties via eCourts

Appellant's Amended CIS
Filed on 10/13/26

New Jersey Judiciary
Superior Court - Appellate Division

Civil Case Information Statement

AMENDED FOR: Addition of proposed issue to be raised on appeal

Title in Full	Trial Court or Agency Docket Number
IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE, CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY	**1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE**

Appellant's Attorney Email Address: **APROVENCE@LITPROLAW.COM**

☐ Plaintiff ☐ Defendant ■ Other (Specify) **INTERVENOR**

Name	Client
ANDREW J PROVENCE, Esq.	**CLEAN OCEAN ACTION, INC.**

Street Address	City	State	Zip	Telephone Number
108 SOUTH FINLEY AVE	**BASKING RIDGE**	**NJ**	**07920**	**973-642-1801**

Respondent's Attorney * Email Address: **KRISTEN.HEINZERLING@LAW.NJOAG.GOV**

☐ Plaintiff ☐ Defendant ■ Other (Specify) **STATE AGENCY**

Name	Client
KRISTEN D HEINZERLING, Esq.	**ENVIRONMENTAL PROTECTION***

Street Address	City	State	Zip	Telephone Number
25 MARKET ST PO BOX 112	**TRENTON**	**NJ**	**08625-0112**	**609-984-3900**

Give Date and Summary of Judgment, Order, or Decision Being Appealed and Attach a Copy:
The decision on appeal is memorialized by the minutes of the Tidelands Resource Council's meeting on 05/06/26 (approved on 06/12/26). The decision grants a tidelands license for the construction of a natural gas pipeline that would run for over 6 miles through Raritan Bay before entering NY waters and terminating on Long Island. Raritan Bay is a crucial estuary that supports a mix of freshwater and marine species (including striped bass, flounder and endangered whales and sturgeon) as well as recreational boating and fishing and commercial shipping. Per the applicant, over 80 acres of Raritan Bay floor will be directly affected by the construction. The pipeline is to service customers in New York exclusively.

Have all the issues as to all the parties in this action, before the trial court or agency, been disposed? (These claims may include counterclaims, cross-claims, third-party claims, and applications for counsel fees.) ■ Yes ☐ No

If outstanding claims remain open, has the order been properly certified as final pursuant to R. 4:42-2? ☐ Yes ☐ No ■ N/A

A) If the order has been properly certified, attach copies of the order and the complaint and any other relevant pleadings to the order being appealed. Attach a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.

B) If the order has not been certified or has been improperly certified, leave to appeal must be sought. (See R. 2:2-4; 2:5-6.) Please note that an improperly certified order is not binding on the Appellate Division.

If claims remain open and/or the order has not been properly certified, you may want to consider filing a motion for leave to appeal or submitting an explanation as to why you believe the matter is final and appealable as of right.

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Were any claims dismissed without prejudice? ☐ Yes ■ No

If so, explain and indicate any agreement between the parties concerning future disposition of those claims.

Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (*R.* 2:5-1(b)(4)) ☐ Yes ■ No

Give a Brief Statement of the Facts and Procedural History:

The Tidelands Resource Council (TRC) approved a tidelands utility license to Transcontinental for a submerged natural gas pipeline through Raritan Bay and to Long Island, without making a finding of public interest or with respect to future use and without the authority to grant a license for offshore developments for fossil fuel, both in contravention of statutory law. The TRC voted to approve the application at its meeting on 05/03/26, notwithstanding presentations by 43 objectors (against only 2 proponents). Minutes of the meeting were approved by the NJDEP designee on 06/12/26 and serve as the decision being appeal. Upon information and belief, the NJAG's office has also approved the decision, per statutory process.

The TRC's decision was expressly based upon the project having "all the necessary regulatory approvals" and therefore meeting all "environmental regulatory standards." On 09/08/26, the United States Court of Appeals for the Third Circuit vacated one of these environmental approvals--the Water Quality Certificate issued by DEP.

To the extent possible, list the proposed issues to be raised on the appeal as they will be described in appropriate point headings pursuant to *R.* 2:6-2(a)(6). (Appellant or cross-appellant only.):

1. THE TIDELANDS RESOURCE COUNCIL FAILED TO MAKE A FINDING OF PUBLIC INTEREST, AS REQUIRED BY N.J.S.A. 12:3-12.1.

2. ALL HARM, NO BENEFIT: AS THE PROPOSED PROJECT WOULD SERVE ONLY NEW YORK CUSTOMERS, THE SUBJECT LICENSE WOULD DAMAGE NEW JERSEY TIDELANDS AND SERVE NO PUBLIC INTEREST OF THE RESIDENTS OF NEW JERSEY.

3. THE TIDELANDS RESOURCE COUNCIL FAILED TO MAKE A DETERMINATION AS TO WHETHER THE STATE MAY HAVE A FUTURE USE OF THE SUBJECT TIDELANDS, AS REQUIRED BY N.J.S.A. 12:3-12.1.

4. UNDER THE NJ STOP OFFSHORE OIL AND GAS ACT, N.J.S.A. 13:19-47 ET SEQ., THE TIDELANDS RESOURCE COUNCIL LACKS THE AUTHORITY TO ISSUE A TIDELANDS LICENSE FOR A FOSSIL FUEL PIPELINE IN STATE WATERS.

5. FOLLOWING THE THIRD CIRCUIT'S DECISION TO INVALIDATE THE APPLICANT'S WATER QUALITY CERTIFICATE, THE DECISION OF THE TIDELANDS RESOURCE COUNCIL MUST BE VACATED BECAUSE IT WAS PREDICATED UPON THE APPLICANT HAVING ALL NECESSARY REGULATORY APPROVALS AND MEETING ALL ENVIRONMENTAL REGULATORY STANDARDS.

If you are appealing from a judgment entered by a trial judge sitting without a jury or from an order of the trial court, complete the following:

1. Did the trial judge issue oral findings or an opinion? If so, on what date? _____ ☐ Yes ■ No
2. Did the trial judge issue written findings or an opinion? If so, on what date? **06/12/2026** ■ Yes ☐ No
3. Will the trial judge be filing a statement or an opinion pursuant to *R.* 2:5-1(d)? ☐ Yes ■ No ☐ Unknown

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to *R.* 2:5-1(d).

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Date of Your Inquiry:

1. Is there any appeal now pending or about to be brought before this court which:

(A) Arises from substantially the same case or controversy as this appeal? ■ Yes ☐ No

(B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? ■ Yes ☐ No

If the answer to the question above is Yes, state:

Case Title	Trial Court Docket#	Party Name
IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCON	**1219-25-0004.1 TDI250001**	**PRINCETON MANOR HOMEOWNERS ASSOCIATION**

2. Was there any prior appeal involving this case or controversy? ☐ Yes ■ No

If the answer to question above is Yes, state:

Case Name and Type (direct, 1st PCR, other, etc.)	Appellate Division Docket Number
IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPE LINE COMPANY, UTILITY LICENSE CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX COUNTY	**A-004100-25**

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. ☐ Yes ■ No

Explain your answer:

This appeal involves the abdication of the Tidelands Resource Council's duties owed to the New Jersey residents and the violation of its authority. There can be no compromise to excuse this behavior and allow State tidelands to be used and destroyed without any public benefit notwithstanding the statutes intended to avoid this result.

Whether or not an opinion is approved for publication in the official court report books, the Judiciary posts all Appellate Division opinions on the Internet.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

CLEAN OCEAN ACTION, INC. Name of Appellant or Respondent	**ANDREW J PROVENCE, Esq.** Name of Counsel of Record (or your name if not represented by counsel)
10/13/2026 Date	s/ **ANDREW J PROVENCE, Esq.** Signature of Counsel of Record (or your signature if not represented by counsel)
042401998 Bar #	**APROVENCE@LITPROLAW.COM** Email Address

* * * * *

[balance omitted]

(*) truncated due to space limit. Please find full information in the additional pages of the form.

Counsel Certification
Re: Other Authorities
Certified on 10/27/26
(filed 10/30/26)

Andrew J. Provence - #042401998
LITWIN & PROVENCE, LLC
108 South Finley Avenue
Basking Ridge, NJ 07920
(973) 642-1801
Attorneys for the Appellant
Clean Ocean Action, Inc.

IN THE MATTER OF 1219-25-0004.1 TDI250001 TRANSCONTINENTAL GAS PIPELINE COMPANY, UTILITY LICENSE CHEESEQUAKE CREEK TRIBUTARY & RARITAN BAY, SAYREVILLE BORO, MIDDLESEX CO.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

On Appeal From Final Agency Decision of the Tidelands Resource Council

Docket No. A-004004-25

CERTIFICATION OF COUNSEL IN SUPPORT OF APPELLANT'S BRIEF

I, Andrew J. Provence, being of full age, do hereby certify as follows:

1. I am an attorney of Litwin & Provence, LLC, attorneys for the Appellant, Clean Ocean Action, Inc. ("Appellant COA") in the above-captioned appeal. As such, I am familiar with the facts set forth herein.

2. I make this certification in support of COA's appellate brief the above-captioned appeal.

3. A true and correct copy of Tidelands Resource Council Resolution adopted 10/06/10 establishing Utility or Utility Related Projects policy, as downloaded on October 26, 2026, from:

https://dep.nj.gov/wp-content/uploads/wlm/downloads/tidelands/td_012.pdf, is hereto attached as Exhibit A.

4. A true and correct screenshot of the DEP's webpage on Tidelands, https://dep.nj.gov/wlm/tidelands/, as captured on October 26, 2026, is hereto attached as Exhibit B.

5. A true and correct screenshot of the Merriam-Webster.com webpage for the word "Stewardship", https://www.merriam-webster.com/dictionary/stewardship, as captured on October 26, 2026, is hereto attached as Exhibit C.

6. A true and correct copy of the Third Circuit opinion in Natural Resources Defense Council v. N.J. Dep't of Envtl. Protection, 2026 U.S. App. LEXIS 27515, 190 F.4th 207 (3d Cir. 2026) is hereto attached as Exhibit D. This opinion is approved for publication and is, or is about to be, reported at 190 F.4th 207. Appellant's brief cites to the attached version of this opinion because the page numbers of the official reporter are not yet available on Lexis.com.

I do hereby certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: October 27, 2026

Andrew J. Provence

EXHIBIT A

Tidelands Resource Council Resolution – Adopted 10/06/10
Privileged and Confidential

Utility or Utility Related Projects

Preamble:

The Tidelands Council is asked to approve this resolution providing a new valuation formula that more fairly values private use of State tidelands for Utility or Utility related projects, and replaces the former policy described in the Council meeting minutes of October 25, 1990. The formula adopted in 1990 represents the last time that compensation for this type of license (formerly known as "one-fee license") was updated.

The proposed changes eliminate one-time payments for perpetual leases, which amount to a giveaway of State land for private use. Also proposed is the elimination of discounts for projects longer than 3,000 feet, ensuring the State receives full value for tidelands leases and licenses for Utility or Utility related projects.

The proposal also eliminates ancillary add-on fees. This will streamline the license (lease) application and renewal process, thus offering predictability to the business community. The attached Table 1 details the proposed changes.

Resolution:

This resolution regarding a formula to determine compensation for the lease of tidelands of the State of New Jersey for Utility or Utility related projects (e.g., pipelines, electric transmission lines, telecommunication lines and cables, outfalls, and other linear conveyances,) and practices regarding same, upon approval by the Tidelands Resource Council, will replace the fee schedule for "one-fee licenses" last updated and approved by the Council on October 25, 1990.

Applicability:

The provisions of this resolution shall apply to all license applications related to Utility or Utility related projects received on or after October 6, 2010. Additionally, this resolution shall apply to any existing license/lease when the license/lease holder requests a DEP permit for regulated activities within the license/lease area, or performs any addition, modification, alteration, or upgrade to the existing infrastructure other than for routine maintenance of the existing infrastructure.

The following practices concerning Utility or Utility related project licenses shall be effective immediately upon approval by the Council (NOTE: This is not an all-inclusive list):

1) Staff's Discretion:

   The formulation, addition, deletion, modification and interpretation of written and unwritten practices concerning Utility or Utility related project licenses are made at the discretion of the Bureau of Tidelands' staff subject to review and ultimate approval of the Tidelands Resource Council or its successors.

2) Measurement:

   The linear foot (LF) measurement shall be made horizontally along the proposed route between high water lines (present or former; as may be applicable) or between exterior grant lines as may exist and as said grant defines the extent of State riparian ownership. The width shall be calculated as the maximum distance perpendicular to the proposed route required by the project. The total square footage (SF) of the project shall be the width multiplied by the total linear feet.

3) Compensation:

   The following schedule of compensation for Utility or Utility related project licenses applies to any Utility or Utility related project whether above ground, below ground, at ground level, or submerged. A minimum annual fee of $1,250 shall apply to all licenses. There is no maximum fee. All licenses will be for fixed terms of no more than 24 years. The applicant has the right to renew the license at the end of its term. An annual payment

equal to the total square footage of the project multiplied by an initial base rate of $0.10 per SF shall be applied to the first year of the license. Each year, for the full term of the license, the annual payment shall be subject to an adjustment of plus 2 and ½ percent (+2.5%).

The initial base rate and/or the minimum fee for new licenses, currently $0.10 & $1,250 respectively, shall be adjusted annually. See rate schedule on page 5.

4) Existing applications already received by the Bureau of Tidelands Management before October 6, 2010 that are not yet issued should be handled under the old policy with the following exceptions:

    a. The license will not be in perpetuity

    b. The license will not have a discount for over 3,000 linear feet.

Table 1: Proposed changes to compensation for tidelands licenses for linear projects. October 6, 2010		
	began 1990	2010
	Current	**Proposed**
minimum fee	$750	$1,250
base fee - aerial	$0.375	$0.10
base fee - underground first 3,000 feet	$0.375	$0.10
base fee - underground >3,000 feet	$0.125	$0.10
maximum # cables on one license	5	unspecified
charge for additional cables (per LF/cable)	$1.50	$0.00
new cables in existing license area (per LF/cable)	$1.50	$0.00
replacement cables	$0.00	$0.00
additional new cables during a replacement (per LF/cable)	$1.50	$0.00
payment schedule	one-time	annual
Term	perpetuity	up to 24 years
annual inflation adjustment	0	+2.5%

RATE SCHEDULE

Base Rate in 2010: $0.10/sqft

Minimum Fee in 2010: $1,250

Increase Per Year: 2.50%

Year	Base Fee	Minimum Fee
2010	$0.10	$1,250
2011	$0.10	$1,281
2012	$0.11	$1,313
2013	$0.11	$1,346
2014	$0.11	$1,380
2015	$0.11	$1,414
2016	$0.12	$1,450
2017	$0.12	$1,486
2018	$0.12	$1,523
2019	$0.12	$1,561
2020	$0.13	$1,600
2021	$0.13	$1,640
2022	$0.13	$1,681
2023	$0.14	$1,723
2024	$0.14	$1,766
2025	$0.14	$1,810
2026	$0.15	$1,856
2027	$0.15	$1,902
2028	$0.16	$1,950
2029	$0.16	$1,998
2030	$0.16	$2,048
2031	$0.17	$2,099
2032	$0.17	$2,152
2033	$0.18	$2,206
2034	$0.18	$2,261
2035	$0.19	$2,317
2036	$0.19	$2,375
2037	$0.19	$2,435
2038	$0.20	$2,496
2039	$0.20	$2,558
2040	$0.21	$2,622

EXHIBIT B

https://dep.nj.gov/wlm/tidelands/

OFFICIAL SITE OF THE STATE OF NEW JERSEY

Governor Mikie Sherrill

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Department of Environmental Protection

Watershed & Land Management

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Home / Tidelands

Licenses | Grants | Statement of No Interest | Leases | Tidelands Resource Council



About Tidelands

Tidelands, also known as riparian lands, are all lands that are now or were formerly flowed by the mean high tide of a natural waterbody (such as the ocean, bays, and tidal sections of rivers and creeks, and also includes marshlands inundated by the tide). The State of New Jersey owns in fee simple all lands that are flowed by the tide up to the high-water line and claims ownership of those formerly flowed tidelands as delineated on the Tidelands Claims Maps.

Barnegat Bay, a naturally tidal body of water, is an example of currently flowed tidelands. However, New Creek, a tiny tidal stream that formerly flowed through the city of Newark a century ago but has since been filled in and built over, is also an example of tidelands claimed by the state. New Jersey contains an extensive network of tidelands, both big and small, and currently flowed and formerly flowed.

These state-owned tidelands are held in trust for the people of the state. All tidelands are overseen by the Tidelands Resource Council, a board of twelve Governor-appointed volunteers, along with DEP staff at the Bureau of Tidelands Management.

Certain artificially created waterbodies such as an artificial lagoon excavated out of unclaimed uplands would not be tidelands provided the land is not impacted by any former claimed areas such as a former natural creek flowing through the area. See the "Tidelands Claims Maps" for further information.

The Bureau of Tidelands Management recently hosted a webinar on tidelands with information on tidelands, applications, and online databases available to the public.

Tidelands 101 Webinar

The Bureau of Tidelands Management has initiated online services for submitting applications and paying invoices, as well as an online submission tutorial. Click here for more information on e-Services.

The Bureau also has a public online mapping tool available called the NJDEP Tidelands Data Viewer.

For all policies, applications and guidance documents, please visit our Form & Documents Page.

For additional questions, please email us at tidelandscomments@dep.nj.gov.

Grants

EXHIBIT C

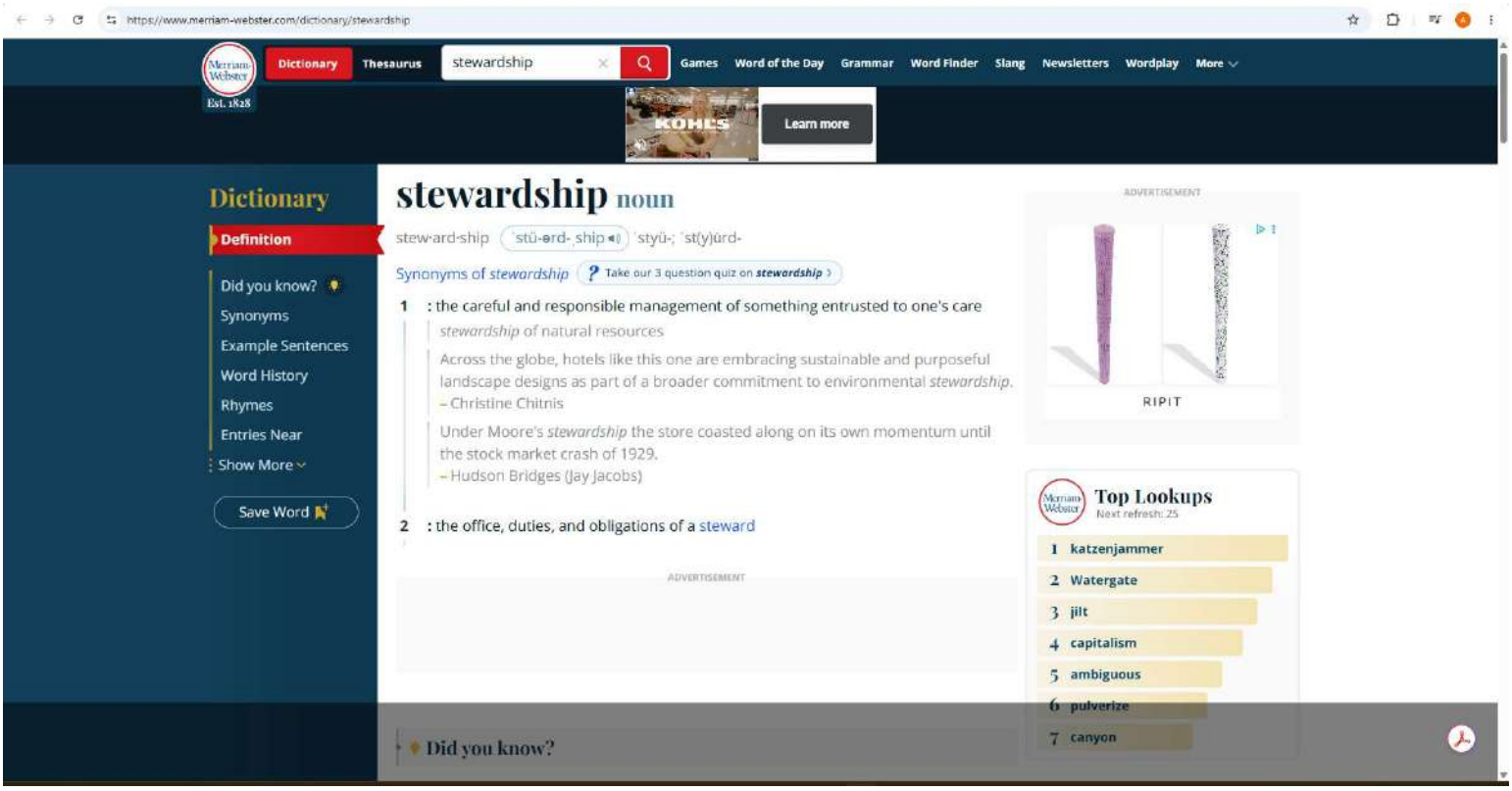

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Definition
Did you know?
Synonyms
Example Sentences
Word History
Rhymes
Entries Near
Show More
Save Word
stewardship noun
stew·ard·ship 'stü-ərd- ˌship 'styü-; 'st(y)ürd-
Synonyms of stewardship
Take our 3 question quiz on stewardship
1 : the careful and responsible management of something entrusted to one's care
stewardship of natural resources
Across the globe, hotels like this one are embracing sustainable and purposeful landscape designs as part of a broader commitment to environmental stewardship.
– Christine Chitnis
Under Moore's stewardship the store coasted along on its own momentum until the stock market crash of 1929.
– Hudson Bridges (Jay Jacobs)
2 : the office, duties, and obligations of a steward
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2 Watergate
3 jilt
4 capitalism
5 ambiguous
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EXHIBIT D

NRDC, Inc. v. N.J. Dep't of Env't Prot. Transcon. Gas Pipe Line Co., LLC

United States Court of Appeals for the Third Circuit

July 8, 2026, Argued; September 8, 2026, Opinion Filed

No. 26-1252, No. 26-1253

Reporter
2026 U.S. App. LEXIS 27515 *; 190 F.4th 207; 2026 LX 400361; 2026 WL 2639510

NATURAL RESOURCES DEFENSE COUNCIL, INC., Petitioner v. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION TRANSCONTINENTAL GAS PIPE LINE CO., LLC, Intervenor Respondent;NY/NJ BAYKEEPER; PRINCETON MANOR HOMEOWNERS ASS'N; CENTRAL JERSEY SAFE ENERGY COALITION; FOOD & WATER WATCH; NEW JERSEY LEAGUE OF CONSERVATION VOTERS EDUCATION FUND; SIERRA CLUB, Petitioners v. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION TRANSCONTINENTAL GAS PIPE LINE CO., LLC, Intervenor Respondent

Prior History: [*1] Environmental Protection Agency. (Eastern District of Pennsylvania 0000-25-012.1 LUP250001).

Counsel: Jackson P. Garrity, Natural Resources Defense Council, Chicago, IL; Mark A. Izeman, Natural Resources Defense Council, New York, NY; Jared E. Knicley, Natural Resources Defense Council, Washington, DC, Counsel for Petitioner Natural Resources Defense Council.

Kaitlin Morrison, Christopher D. Miller, Eastern Environmental Law Center, Newark, NJ, Counsel for Petitioners NY/NJ Baykeeper, Princeton Manor Homeowners Association, Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, and Sierra Club.

Nathaniel F. Rubin, Kristina L. Miles, Sara N. Torres, Jordan Viana, Office of Attorney General of New Jersey, Richard J. Hughes Justice Complex, Trenton, NJ, Counsel for Respondent.

Richard G. Scott, Christine A. Roy, Rutter & Roy, LLP, Wall, NJ, Counsel for Intervenor Respondent.

David R. Kott, McCarter & English, Four Gateway Center, Newark, NJ, Counsel for Amicus Respondent New Jersey Business & Industry Association.

Clifford M. Naeve, Skadden Arps Slate Meagher & Flom, Washington, DC, Counsel for Amicus Respondents Interstate Natural Gas Association [*2] of America and American Petroleum Institute.

Judges: Before: KRAUSE, FREEMAN and ROTH, Circuit Judges.

Opinion by: ROTH

Opinion

OPINION OF THE COURT

ROTH, *Circuit Judge*

In these consolidated petitions, several environmental organizations challenge a Water Quality Certification issued by the New Jersey Department of Environmental Protection (NJDEP) to Transcontinental Gas Pipe Line Company, LLC (Transco) for its proposed Northeast Supply Enhancement Project (NESE). The project would expand Transco's existing interstate natural gas pipeline system, in part by constructing a new pipeline segment beneath the Raritan Bay. Where the new segment crosses New Jersey waters, its installation would require dredging the bay floor, stirring up sediment containing toxic contaminants. The environmental groups contend that NJDEP arbitrarily reversed its earlier denial of certification, certified the project before resolving essential monitoring requirements and corrective measures, failed to explain why it concluded the project will comply with New Jersey's water quality standards, and denied the public an adequate opportunity to comment. For the reasons that follow, we will grant the petitions, vacate the Water Quality Certification, and remand [*3] to NJDEP for further proceedings.

A. Regulatory Background

Transco's proposed pipeline extension is subject to both federal and state permitting requirements. Pursuant to the Natural Gas Act of 1938, the Federal Energy Regulatory Commission (FERC) has exclusive authority to approve the construction and operation of interstate natural gas facilities.[1] No company may construct or extend facilities for the interstate transportation of natural gas without first obtaining a Certificate of Public Convenience and Necessity from FERC.[2] As a condition of FERC approval, an applicant must also secure any additional state or federal approvals required by law, including a Water Quality Certification under § 401 of the Clean Water Act.[3]

Section 401 of the Clean Water Act requires an applicant seeking a federal license or permit for an activity "which may result in any discharge into the navigable waters" of the United States to obtain a Water Quality Certification "from the State in which the discharge originates or will originate."[4] The certifying state agency must determine that the discharge "will comply" with the applicable provisions of the Clean Water Act and state water quality standards.[5] Any certification must also "set forth any effluent limitations and other limitations, and monitoring [*4] requirements necessary to assure" that compliance.[6]

NJDEP issues Water Quality Certifications in New Jersey[7] and administers the State's water quality regulations, including those governing new dredging for submerged pipelines (the New Dredging Rule)[8] and the Surface Water Quality Standards.[9] The New Dredging Rule requires dredging-related turbidity—that is, water cloudiness caused by suspended particles—and other water quality parameters to meet the Surface Water Quality Standards.[10] The New Dredging Rule also authorizes NJDEP to require a permittee to conduct water quality monitoring, and provides that NJDEP "will work cooperatively with the applicant to fashion acceptable control measures" when modeling predicts an exceedance of the Surface Water Quality Standards or sediment testing reveals significant contamination.[11]

The applicable Surface Water Quality Standards depend on the designated use of the waterbody at issue.[12] The Raritan Bay waters crossed by the proposed pipeline are classified as saline estuarine (SE1) and saline coastal (SC) waters,[13] with designated uses that include shellfish harvesting, preservation of the existing ecosystem, and primary contact recreation. [*5] [14] The water quality standards protect those uses through narrative and numeric criteria for turbidity, suspended solids, and toxic substances.[15] For example, in saline waters, the standards prohibit toxic substances at concentrations harmful to humans or aquatic life and set a human-health criterion of .00022 micrograms per liter for 4,4'-DDE (a breakdown product of the pesticide DDT).[16] All state surface waters are subject to New Jersey's "antidegradation" policy, which directs that a waterbody's "[e]xisting uses shall be maintained and

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[1] 15 U.S.C. § 717f; *Delaware Riverkeeper Network v. Sec'y Pa. Dep't of Env't Prot. (Riverkeeper I)*, 833 F.3d 360, 388 (3d Cir. 2016).

[2] 15 U.S.C. § 717f(c), (e). Before issuing a Certificate, FERC must find that the proposed facilities are "required by the present or future public convenience and necessity" and must assess the project's environmental effects under the National Environmental Policy Act. *Id.* §§ 717f(e), 717n(b)(1); *see* 42 U.S.C. § 4321.

[3] 33 U.S.C. § 1341; *Delaware Riverkeeper Network v. Sec'y of Pa. Dep't of Env't Prot. (Riverkeeper II)*, 870 F.3d 171, 174 (3d Cir. 2017).

[4] 33 U.S.C. § 1341(a)(1).

[5] *Id.*

[6] *Id.* § 1341(d); *see PUD No. 1 of Jefferson Cnty. v. Washington Dep't of Ecology*, 511 U.S. 700, 711-13, 114 S. Ct. 1900, 128 L. Ed. 2d 716 (1994).

[7] *See* N.J. Admin. Code § 7:7A-2.1(a), (d).

[8] *Id.* § 7:7-12.7.

[9] *Id.* §§ 7:9B-1.1 to — 1.16.

[10] *Id.* § 7:7-12.7(c)(10)(iii).

[11] *Id.* § 7:7-12.7(c)(10)(iii)-(iv).

[12] *See id.* § 7:9B-1.15.

[13] *Id.* § 7:9B-1.15(c), (h).

[14] *Id.* § 7:9B-1.12(d), (g).

[15] *Id.* § 7:9B-1.14(d), (f).

[16] *Id.* § 7:9B-1.14(d)(12), (f)(7).

protected."[17]

B. NJDEP's Review of NESE

1. The 2019 Denial

In March 2017, Transco applied to FERC for a Certificate of Public Convenience and Necessity for NESE, which would expand Transco's existing interstate natural gas pipeline system to carry additional gas from Pennsylvania to New York through New Jersey. The New Jersey portion of the project includes the construction of a new compressor station in Franklin Township,[18] an onshore pipeline segment known as the Madison Loop, and the Raritan Bay Loop, a pipeline segment that will require approximately six miles of offshore construction in New Jersey waters.[19] The underwater portions of the [*6] Raritan Bay Loop will require Transco to dredge a trench, install the pipeline, and then backfill the trench, disturbing seabed sediment along the way.

Transco applied for a New Jersey Water Quality Certification in June 2018.[20] Over the next year, NJDEP flagged deficiencies in the application and Transco responded with supplemental filings.

On June 5, 2019, NJDEP denied Transco's NESE application without prejudice. The denial rested on several grounds, including detrimental impacts on freshwater wetlands near the new compressor station, Transco's failure to demonstrate the "compelling public need" for the pipeline expansion as required by New Jersey's Freshwater Wetlands Protection Act,[21] and insufficient information to determine whether the Raritan Bay Loop would comply with state water quality standards.[22] As to water quality, NJDEP identified sediment samples from the Raritan Bay route that exceeded screening benchmarks for several substances, including arsenic, manganese, mercury, polychlorinated biphenyls (PCBs), and 4,4'-DDE. Those benchmarks indicated an increased likelihood of "adverse effects to benthic communities," or organisms that live on or near the bottom of the ocean. [*7] [23]

Because the samples and proposed dredging plans "indicate[d] there could be potential impact to water quality," and "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 [Surface Water Quality Standards]," NJDEP concluded that "Transco ha[d] not sufficiently demonstrated how it would avoid adverse impacts to surface water quality."[24] The denial letter informed Transco that "[a]ny resubmittal of [the] NESE Project application must include a modeling analysis for the above referenced parameters that demonstrates compliance with the [Surface Water Quality Standards], through the implementation of appropriate best management practices . . ., to avoid adverse water quality impacts."[25]

2. The 2020 Denial

A week later, on June 12, 2019, Transco filed a new application. On June 25, NJDEP issued a technical-deficiency letter requesting, among other things, a modeling analysis for the contaminants NJDEP had identified in its 2019 denial as exceeding screening benchmarks. A few days later, Transco submitted a contaminant modeling report titled *NESE [*8] Contaminant Transport Modeling Results for New Jersey Waters* (the *Contaminant Report*). The report predicted contaminant concentrations 500 feet from dredging under different operating conditions, including

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[17] *Id.* § 7:9B-1.5(d)(1).

[18] A compressor station is a facility that "increase[s] the pressure and rate of flow" in a pipeline so that gas can continue moving through the system. *See Riverkeeper I*, 833 F.3d at 369.

[19] A loop is a "section[] of pipe connected to the main pipeline system that reduce[s] the loss of gas pressure and increase[s] the flow efficiency of the system." *Id.*

[20] Transco had voluntarily withdrawn an earlier application filed in July 2017.

[21] N.J. Stat. Ann. §§ 13:9B-1 to — 30.

[22] JA 106-14.

[23] *Id.* at 112.

[24] *Id.* at 114.

[25] *Id.*

reduced dredging rates and pauses during slack tide, when tidal currents are weakest. The modeled operating conditions, Transco averred, would avoid exceedances of the Surface Water Quality Standards.

In November 2019, Transco voluntarily withdrew its application.[26] Following the withdrawal, NJDEP sent Transco a letter identifying additional information that any future submission would need to include. Although NJDEP acknowledged receipt of the *Contaminant Report*, it determined that Transco still "did not provide any information as to the means of monitoring the proposed dredging . . . to ensure that [best management practices] and operational procedures would be properly implemented to comply with [the] Surface Water Quality Standards."[27] NJDEP further explained that Transco had not identified adaptive management procedures—preplanned construction adjustments in response to monitoring results—that could be implemented if dredging exceeded those standards.

In January 2020, Transco resubmitted [*9] its application with a draft Water Quality Monitoring Plan that included proposed adaptive management measures. In May 2020, New York denied Transco's corresponding Water Quality Certification for the New York portion of NESE. NJDEP consequently denied Transco's New Jersey application the same day, explaining that without a functional endpoint in New York, Transco had not demonstrated the compelling public need required by New Jersey's wetlands rules. NJDEP expressly stated that it "need not resolve any further issues" raised by the application.[28]

3. The 2025 Certification

In May 2025, Transco again applied to New Jersey for a Water Quality Certification and other necessary state permits for NESE. Transco described the project's scope as unchanged and its application as "essentially identical to the application[] reviewed by [NJDEP] in 2020," except for revisions necessitated by intervening changes to New Jersey's stormwater regulations.[29] The application incorporated the *Contaminant Report* and the Water Quality Monitoring Plan developed after the 2019 denial.

NJDEP deemed the application administratively complete on June 23, 2025, and opened a public comment period from July 16 to [*10] September 25, 2025. NJDEP posted Transco's application materials on its website and held a public hearing in early September. Commenters raised several substantive concerns about NESE. They asserted that Transco's 2025 application was "nearly identical" to its 2020 application;[30] that its modeling still showed potential exceedances of limits governing toxic pollutants; that the Water Quality Monitoring Plan tracked only turbidity, not toxic substances; and that the proposed monitoring locations were too far from dredging to assess compliance with the Surface Water Quality Standards.

While the public comment period remained open, NJDEP requested revisions to Transco's stormwater materials for the new compressor station site. When Transco submitted a revised stormwater report in August, NJDEP did not post the revised report to its project website.

NJDEP's review of Transco's application continued after the public comment period closed. On October 30, NJDEP sought clarification on several aspects of the Water Quality Monitoring Plan, including the threshold for triggering corrective measures in response to increased turbidity, the number and placement of monitoring locations, the data [*11] Transco would provide to NJDEP, the deadline for reporting exceedances, and whether operations would cease if corrective measures failed.

Eight days later, on November 7, 2025, New York issued its certification for NESE.[31] Later that same day,

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[26] Transco had previously withdrawn and resubmitted permit materials to afford NJDEP more time for review. The record does not indicate whether the November 2019 withdrawal served the same purpose.

[27] *Id.* at 743.

[28] *Id.* at 124.

[29] *Id.* at 564.

[30] *Id.* at 242.

[31] That certification, which was recently upheld by the U.S. Court of Appeals for the Second Circuit, s*ee Raritan Baykeeper, Inc. v. N.Y. State Dep't of Env't Conservation*, No. 25-2938, 2026 U.S. App. LEXIS 25328, 2026 WL 2453538 (2d Cir. Aug. 21, 2026) (summary order), rests on a materially different state administrative record than

NJDEP issued the Water Quality Certification now before us.

Two conditions in the Water Quality Certification are especially pertinent for our purposes. *First*, Transco must submit a Water Quality Monitoring Plan "for review within 60 days of issuance of [the certification]."[32] NJDEP directed that the plan must include "one monitoring location within the operation," two "outside of the operation," and a "control point" to measure background conditions.[33] The monitoring locations "should be calculated based on the modeling analysis for the rate of operation," and Transco must conduct continuous visual observations, record turbidity twice daily, and make monitoring data available to NJDEP within twenty-four hours of collection.[34]

Second, Transco must submit an Adaptive Management Plan containing "a course of action, some or all of which may be employed in any given situation" to "reduce or mitigate the effects of observed increases in [*12] turbidity."[35]

The Water Quality Certification also imposes several dredging-related restrictions. For instance, Transco must use closed clamshell dredging buckets designed to limit sediment dispersion, reduce the dredging rate in the portion of the route with the highest predicted contaminant concentrations, conduct dredging during slack tide in that same area, and follow specific restrictions on refilling the trench and disposing of dredged sediment.

Accompanying the Water Quality Certification were engineering, environmental, dredging, and threatened and endangered species reports created by NJDEP, as well as the agency's response to public comments. In response to commenters' water quality concerns, NJDEP stated that, based on Transco's modeling, and through the use of best management practices and monitoring, "any temporary increases in turbidity or contaminant levels are expected to be minimal and will not result in long-term impacts to water quality or aquatic life."[36]

C. Procedural History

On November 18, 2025, Petitioner Natural Resources Defense Council (NRDC) filed a petition for review in the United States Court of Appeals for the Second Circuit challenging New Jersey's Water [*13] Quality Certification for NESE. That same day, New York/New Jersey Baykeeper, together with Princeton Manor Homeowners Association, Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, and the Sierra Club (collectively, the Baykeeper Petitioners), filed a separate petition in the same court challenging the same certification. Transco intervened as a respondent in both matters. The Second Circuit Court of Appeals transferred the petitions to this Court, and we consolidated them. The New Jersey Business & Industry Association filed an amicus brief in support of Transco.

II.

Pursuant to the Natural Gas Act, we have "original and exclusive" jurisdiction to review state administrative agency grants of water quality certifications under § 401 of the Clean Water Act.[37]

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the one before us. For example, the Water Quality Certification (WQC) issued by the New York State Department of Environmental Conservation (NYSDEC) "require[d] NYSDEC to review and approve" the majority of Transco's compliance plans before construction commenced, provided for an "independent third-party monitor with stop-work authority," and set out toxicity limits for roughly a dozen pollutants in the certification itself. *Id.* at 13-15. As explained below, *see infra* Part III.B, the New Jersey certification before us lacks these safeguards and leaves mitigation response largely to Transco's discretion.

[32] JA 16.

[33] *Id.*

[34] *Id.*

[35] *Id.* at 17.

[36] *Id.* at 425.

[37] 15 U.S.C. § 717r(d)(1); *Riverkeeper I*, 833 F.3d at 370-73. While neither NJDEP nor Transco contest Petitioners' Article III standing, we have an independent duty to ensure that we have jurisdiction to hear these petitions. *See Free Speech Coal., Inc. v. AG of the United States*, 974 F.3d 408, 421 (3d Cir. 2020) (explaining "associational standing requires an association to show that (1) its members would otherwise have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit") (cleaned up). Petitioners submitted declarations from members who regularly use

"[W]e review *de novo* state agency interpretation of federal law, and review under the arbitrary and capricious standard state action taken pursuant to federal law."[38] Under federal law, agency action is arbitrary and capricious when it "fails to examine the relevant data and articulate a satisfactory explanation for its action[,] including a rational connection between the facts found [*14] and the choice made."[39] Although a reviewing court will "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned," it "may not supply a reasoned basis for the agency's action that the agency itself has not given."[40] Even so, "we apply a 'harmless error' analysis," meaning that "mistakes that have no bearing on the substantive decision of an agency do not prejudice a party."[41]

When a state agency interprets state law, we afford its interpretation the same level of deference it would receive under state law.[42] Under New Jersey law, an agency charged with administering a statutory scheme is ordinarily entitled to substantial deference in construing statutes and regulations within its area of authority.[43]

III.

Petitioners challenge the Water Quality Certification on four principal grounds. They argue that NJDEP (1) arbitrarily reversed its 2019 certification denial, (2) unlawfully deferred material monitoring and adaptive management requirements, (3) inadequately explained how the project complies with New Jersey's water quality standards, and (4) deprived the public of a meaningful opportunity to comment. We reject the first argument, but we agree that [*15] NJDEP improperly left material monitoring and adaptive management terms for later resolution without making NJDEP approval of the final plans a prerequisite to dredging. We also conclude that NJDEP failed to adequately explain its finding that NESE will meet state water quality criteria. Because those defects require vacatur, we need not decide the public participation claims.

A. The Alleged Reversal

We begin with NRDC's contention that NJDEP arbitrarily reversed its 2019 certification denial. NRDC argues that NJDEP arbitrarily reversed course by approving Transco's 2025 application after denying certification in 2019 based on water quality concerns, without acknowledging or explaining its change in position.[44] NRDC's argument, however, overlooks the different evidentiary records underlying the two decisions.

NJDEP's 2019 denial did not state that NESE could *never* comply with New Jersey's water quality standards. Rather, NJDEP concluded that Transco had not yet demonstrated compliance—a conclusion borne of a lack of data. The agency observed that Transco had "not sufficiently demonstrated how it would avoid adverse impacts to surface water [*16] quality," and directed that any renewed application include "a modeling analysis . . . that demonstrates compliance with the [Surface Water Quality Standards]," as well as appropriate best management practices or other controls.[45]

Raritan Bay and nearby waters for recreation and aesthetic enjoyment and who describe concerns that dredging-related pollution will impair those uses. Their alleged injuries are fairly traceable to the challenged certification and would be redressed by vacatur. *See Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180-85, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000). Accordingly, we find the Petitioners have standing. *See id.*

[38] *Riverkeeper I*, 833 F.3d at 377.

[39] *Id.* (quoting *Motor Vehicle Manfs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983)) (cleaned up).

[40] *State Farm*, 463 U.S. at 43 (citations omitted).

[41] *Riverkeeper I*, 833 F.3d at 377 (citation omitted).

[42] *See Riverkeeper II*, 870 F.3d at 181; *Twp. of Bordentown v. FERC*, 903 F.3d 234, 270 (3d Cir. 2018).

[43] *See E. Bay Drywall, LLC v. Dept. of Lab. and Workforce Dev.*, 251 N.J. 477, 278 A.3d 783, 792 (N.J. 2022) (citing *Hargrove v. Sleepy's, LLC*, 220 N.J. 289, 106 A.3d 449, 456 (N.J. 2015)).

[44] The parties dispute whether *F.C.C. v. Fox Television Stations, Inc.* and related cases—which require agencies to acknowledge and explain certain changes in policy or agency practice—apply to successive permit decisions like those at issue here. *See, e.g.*, 556 U.S. 502, 129 S. Ct. 1800, 173 L. Ed. 2d 738 (2009); *Logic Tech. Dev. LLC v. FDA*, 84 F.4th 537 (3d Cir. 2023). We need not wade into that debate because NRDC's argument rests on the premise that the application NJDEP approved in 2025 did not materially differ from the one it denied in 2019. As explained below, we disagree.

[45] JA 114.

Transco responded by submitting the *Contaminant Report*, which modeled predicted contaminant concentrations under various dredging scenarios, including reduced dredging rates and slack-tide restrictions. Transco also later developed and submitted a Water Quality Monitoring Plan in response to NJDEP's ongoing concerns about monitoring and adaptive management. During its 2020 review, NJDEP did not reject those supplemental materials; instead, NJDEP denied Transco's application solely because New York had rejected Transco's corresponding NESE application.

NRDC seizes on Transco's statement in its 2025 cover letter that its application was "essentially identical" to the one NJDEP reviewed in 2020, offering the statement as further evidence that the application had not materially changed since NJDEP's 2019 water quality finding.[46] Transco's choice of words proves less than NRDC supposes. By 2020, NJDEP had before it the additional contaminant modeling and technical materials [*17] Transco had developed to address the agency's water quality concerns. And, as noted, NJDEP's denial that year did not reach those materials on the merits. We accordingly conclude that NJDEP's approval of a materially different application in 2025 does not amount to the arbitrary reversal NRDC alleges.

B. Deferred Monitoring and Adaptive Management Terms

Petitioners next argue that NJDEP acted arbitrarily and capriciously when it issued the Water Quality Certification before Transco finalized its Water Quality Monitoring Plan and Adaptive Management Plan. They contend that § 401 of the Clean Water Act required NJDEP to determine, before certification, that NESE would comply with New Jersey's water quality standards, yet the Water Quality Certification deferred critical monitoring and corrective measures for later resolution. NJDEP and Transco answer that § 401 allows conditional certifications, that the Water Quality Certification imposes enforceable monitoring and response obligations, and that NJDEP retained authority to review and approve the post-certification plans.

Section 401 requires the certifying state agency to certify that the discharge from the proposed activity "will comply" with the applicable provisions of the [*18] Clean Water Act, including applicable federal and state water quality standards.[47] The certification itself must "set forth" any limitations and monitoring requirements "necessary to assure" such compliance, and those requirements "shall become a condition on any Federal license or permit."[48]

NJDEP principally relies on our decision in *Delaware Riverkeeper Network v. Secretary Pennsylvania Department of Environmental Protection (Riverkeeper I)*.[49] In *Riverkeeper I*, the Pennsylvania Department of Environmental Protection (PADEP) issued a § 401 Water Quality Certification before completing an environmental assessment required for a separate state permit.[50] We upheld the certification, finding PADEP's order of operations permissible, because construction could not begin until the agency reviewed the assessment and issued the separate permit.[51] In other words, although PADEP had deferred review, it did not abandon it.

We rejected a similar sequencing argument in *Delaware Riverkeeper Network v. Secretary Pennsylvania Department of Environmental Protection (Riverkeeper III)*.[52] There, PADEP certified water quality compliance based on Transco's pledge to demonstrate substantive compliance in later permit applications, [*19] rather than in the Water Quality Certification application itself.[53] Like *Riverkeeper I*, construction remained contingent on subsequent agency approval before work could begin.[54] So, we upheld the Water Quality Certification.[55]

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[46] *Id.* at 564.

[47] 33 U.S.C. § 1341(a)(1).

[48] *Id.* § 1341(d); *PUD No. 1*, 511 U.S. at 712-13.

[49] 833 F.3d at 367.

[50] *Id.* at 385-88.

[51] *Id.* at 385-86.

[52] 903 F.3d 65 (3d Cir. 2018).

[53] *Id.* at 76-77.

[54] *See id.*

[55] *See id.* at 78.

Petitioners instead direct us to *Waterkeeper Alliance, Inc. v. EPA*.[56] In *Waterkeeper*, the Second Circuit Court of Appeals examined an EPA rule governing discharge permits for concentrated animal feeding operations, or large livestock farms.[57] The rule required each operation to develop a nutrient management plan but did not require the permitting authority—whether the EPA or an authorized state agency—to review that plan before issuing a permit.[58] Our sister circuit invalidated the rule, determining the Clean Water Act allows permit issuance only when the permitting authority determines that the proposed discharge will comply with applicable pollution limits and standards.[59] Thus, the permitting authority had to determine whether each nutrient management plan satisfied the rule's substantive requirements before issuing a permit.[60] Without that review, the rule did "nothing to ensure" that each operation had developed a compliant plan and instead created an "impermissible self-regulatory [*20] permitting regime."[61]

This case falls somewhere between our line of *Riverkeeper* cases and *Waterkeeper*. NJDEP has not, as in *Waterkeeper*, left Transco to write the terms of its own compliance. The Water Quality Certification at issue here imposes several concrete restrictions on dredging: it prescribes dredging practices designed to limit sediment dispersion, requires turbidity monitoring, and instructs Transco to finalize both a Water Quality Monitoring Plan and an Adaptive Management Plan. But *Riverkeeper I* and *Riverkeeper III* support NJDEP only if, like PADEP, NJDEP retained authority to approve the outstanding material plans before dredging could begin. The certification's text shows otherwise.

Take Condition 9, which requires Transco to submit the Water Quality Monitoring Plan "for review within 60 days of issuance of [the] permit."[62] The text obligates "review," not "approval," and says nothing about approval before dredging can begin.[63] Even assuming "review" implies that NJDEP has the authority to accept or reject the plan, Condition 11 is barer still when it comes to what must happen and when.

Condition 11 requires Transco to submit [*21] an Adaptive Management Plan "consist[ing] of a course of action, some or all of which may be employed in any given situation," but sets no deadline for submission and does not condition certification on NJDEP's approval of said plan.[64] And by providing that "some or all" measures "*may* be employed," Condition 11 does not even require Transco to abide by any specified action when turbidity increases.[65]

Nor does Condition 6 salvage the Water Quality Certification. It requires Transco, before dredging, to obtain "[a]ll required local, state and federal approvals for the work."[66] Read in context, that general catchall refers to permits and other governmental authorizations required for the work, not to the individual plans Transco must submit under *this* certification. In any event, Condition 6 does not identify approval of either plan as one of the "required" approvals, and nothing in the certification guarantees that either plan will be reviewed as part of a later permit before dredging, nor have Respondents argued so.

NJDEP points to Transco's representation that it would "adhere to an NJDEP-approved" monitoring plan as evidence that the agency retained approval authority.[67] That representation, [*22] however, is buried in the

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[56] 399 F.3d 486 (2d Cir. 2005).

[57] *Id.* at 498-99.

[58] *Id.*

[59] *Id.* at 502.

[60] *See id.* at 499-502.

[61] *Id.* at 498-99. *Waterkeeper* also held that the terms of the nutrient management plans were themselves "effluent limitations," meaning restrictions on pollutant discharges, and therefore had to appear in the discharge permits. *Id.* at 502. But NRDC does not contend that the monitoring and adaptive management requirements left for later resolution are effluent limits, so *Waterkeeper*'s alternative basis for invalidating the EPA rule is inapposite here.

[62] JA 16.

[63] *Id. Compare* Merriam-Webster's Collegiate Dictionary 1360 (12th ed. 2025) (defining "review" as "an act or process of carefully looking at or examining the quality, condition, etc., of something or someone") *with id.* at 86 (defining "approve" as "to accept as satisfactory" or "to give formal or official sanction to").

[64] JA 17.

[65] *Id.* (emphasis added).

[66] *Id.* at 16.

[67] *Id.* at 612; NJDEP Br. 37.

May 2025 Environmental Report that Transco submitted with its application. It appears nowhere in the Water Quality Certification's enforceable conditions. A regulated party's representation in its application does not amount to an enforceable condition precedent to construction.

Elsewhere, by contrast, the Water Quality Certification expressly requires NJDEP approval before specified work may proceed. For example, Condition 15 provides that "[p]rior to backfilling the trenches," Transco "shall receive an approval from [NJDEP] and [the] Army Corps of Engineers."[68] Condition 21 likewise directs Transco to submit the dredging inspector's resume "to [NJDEP] for review and receive written approval prior to the initiation of dredging."[69] The omission of comparable language in Conditions 9 and 11 is therefore stark.

The Water Quality Monitoring and Adaptive Management Plans were plainly critical to NJDEP's conclusion that NESE would comply with New Jersey's water quality standards. NJDEP denied certification in 2019 in part because Transco had not shown that dredging would avoid adverse water quality impacts. And in 2025, NJDEP expressly relied on "modeling, monitoring, [*23] and [best management practices]" to conclude that "any temporary increases in turbidity or contaminant levels" would be minimal.[70]

Yet only eight days before certification, NJDEP recognized that material aspects of the Water Quality Monitoring and Adaptive Management Plans remained unsettled. It pressed Transco to clarify the turbidity threshold that would trigger mitigation measures, the timeframe for reporting an exceedance, and whether dredging would stop if corrective measures failed. While the Water Quality Certification ultimately addresses some water quality requirements—including sampling locations, monitoring frequency, and data reporting—it failed to resolve several of the substantive questions NJDEP itself had flagged. The certification essentially deferred the core of the adaptive management scheme to later plans that are no longer subject to NJDEP's approval before dredging begins. Thus, compared to *Riverkeeper I* and *Riverkeeper III*, a key safeguard is missing: no prescribed NJDEP approval stands between the unfinished plans and dredging.[71]

Ultimately, our review turns on the certification that NJDEP issued, not the certification the agency now describes. [*24] [72] To be clear, we do not suggest that § 401 categorically forbids an agency from requiring monitoring or adaptive management plans after certification. Nor do we conclude that every monitoring threshold or corrective measure must appear on the face of the certification. We recognize that some implementation details will necessarily require refinement as work progresses and field conditions change. Nevertheless, there is a critical distinction between refining details under a mandatory approval process and leaving material compliance terms to plans that the agency need not approve before work begins.[73] Because material monitoring and response terms remained unresolved and no later NJDEP approval was required before dredging could begin, we conclude that NJDEP acted arbitrarily and capriciously in issuing the Water Quality Certification.[74]

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[68] JA 17.

[69] *Id.*

[70] *Id.* at 425.

[71] *See also Riverkeeper I*, 833 F.3d at 385-87 (upholding certification because construction remained contingent on PADEP's later substantive review and approval); *Riverkeeper III*, 903 F.3d at 76-77 (same).

[72] *See State Farm*, 463 U.S. at 50 ("[C]ourts may not accept appellate counsel's *post hoc* rationalizations for agency action."); *SEC v. Chenery Corp.*, 332 U.S. 194, 196, 67 S. Ct. 1575, 91 L. Ed. 1995 (1947) (establishing that "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency").

[73] *Compare Sierra Club v. EPA*, 972 F.3d 290, 307-08 (3d Cir. 2020) (vacating EPA approval of a state air pollution plan that deferred to regulated operators what data and calculations were sufficient to demonstrate compliance, leaving "no discernible enforcement mechanism"), *with Twp. of Bordentown*, 903 F.3d at 259, 261 n.15 (upholding FERC's decision despite incomplete information about affected private wells where the certificate required Transco to identify the wells before construction, conduct pre-and post-construction monitoring, and report any resulting problems, and FERC retained authority to require additional measures).

[74] Having resolved this issue under arbitrary-and-capricious review, we have no occasion to reach Petitioners' alternative theory that the certification independently violates § 401 of the Clean Water Act by

C. NJDEP's Explanation of Compliance

The Water Quality Certification is deficient in another respect. Even apart from the deferred plans, NJDEP's decisional documents do not adequately explain its conclusion that Transco's dredging will comply with New Jersey's water quality standards. Three points in the record reveal that NJDEP's conclusion [*25] outruns its explanation: its treatment of the 500-foot modeling boundary and predicted 4,4'-DDE concentrations, its reliance on turbidity monitoring, and its assessment of the shellfish evidence in the record. We address each in turn.

1. The 500-Foot Boundary and DDE

The Baykeeper Petitioners argue that NJDEP unlawfully treated the 500-foot modeling boundary used in Transco's *Contaminant Report* as a regulatory mixing zone, which is a defined area surrounding a discharge where water quality criteria may be exceeded, so long as the applicable standards are met at the zone's outer boundary.[75] In support, Petitioners point to Transco's repeated description of the 500-foot boundary as the "500' mixing zone edge." They further note that New Jersey prohibits regulatory mixing zones for new discharges of certain pollutants, including 4,4'-DDE, mercury, and PCBs.[76]

NJDEP and Transco reject the notion that a regulatory mixing zone was requested or approved. They maintain that New Jersey's mixing-zone provisions apply to wastewater effluent—meaning liquid waste discharged into the water—not sediment resuspended during dredging, and they explain that Transco used mixing-zone terminology because [*26] New York applies mixing zones to dredging projects. They also stress that neither the Water Quality Certification nor NJDEP's supporting reports establishes a mixing zone.

We agree with NJDEP and Transco that the Water Quality Certification, by its terms, does not formally establish a regulatory mixing zone, nor did NJDEP purport to do so in any of the certification's accompanying documents. Whatever its label, though, the 500-foot line anchored Transco's toxic contaminant analysis. Transco compared modeled contaminant concentrations with New Jersey's water quality criteria at that distance, but not in waters closer to dredging. NJDEP itself also repeatedly referred to a "500-foot mixing zone." For instance, at a June 2019 meeting, NJDEP advised Transco that a "500-foot mixing zone could be assumed for contaminants in New Jersey."[77] Petitioners therefore ask a fair question. Why did results at 500 feet establish compliance throughout the affected waters?

NJDEP responds that New Jersey's New Dredging Rule, which addresses compliance at the dredging site, governs this project instead of New Jersey's mixing-zone provisions. Subsection (iii) of the New Dredging Rule states that "[t]urbidity [*27] concentrations (that is, suspended sediments) and other water-quality parameters at, downstream, and upstream of the dredging site . . . shall meet [the] applicable Surface Water Quality Standards at N.J.A.C. 7:9B."[78] Subsection (iv) then provides that "[i]f predicted water quality parameters are likely to exceed Surface Water Quality Standards . . . or if pre-dredging chemical analysis of dredged material, including surface water and ground water quality predictive analyses, reveals significant contamination, then [NJDEP] will work cooperatively with the applicant to fashion acceptable control measures."[79]

The parties offer competing interpretations of subsection (iv). The Baykeeper Petitioners read subsection (iv) to require control measures that keep dredging within the standards prescribed by subsection (iii). NJDEP, conversely, reads subsection (iv) as allowing temporary predicted exceedances if best management practices and other controls sufficiently reduce their effects.

As explained above, we ordinarily defer to NJDEP's

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deferring material monitoring and response terms to later plans.

[75] *See* N.J. Admin. Code § 7:9B-1.5(h)(1)(ii) (requiring surface water quality criteria to be met at the edge of a regulatory mixing zone).

[76] *See id.* § 7:9B-1.5(h)(5)(vii).

[77] *See, e.g.*, JA 733.

[78] N.J. Admin. Code § 7:7-12.7(c)(10)(iii).

[79] *Id.* § 7:7-12.7(c)(10)(iv).

reasonable interpretation of its own regulations.[80] Here, however, the Water Quality Certification and NJDEP's response to public comments both fail to explain how subsection (iv) operates alongside subsection (iii). More specifically, neither explains whether Subsection (iv) permits temporary [*28] exceedances despite subsection (iii)'s command that water quality parameters "shall meet" the applicable standards.[81] We cannot uphold certification based on an interpretation the agency first supplied in litigation.[82]

The significance of the 500-foot boundary might have remained academic had no modeled contaminant concentration raised a compliance concern. But 4,4'-DDE does. At 500 feet, Transco's model predicted 4,4'-DDE concentrations numerically above New Jersey's human-health criterion.

Transco's *Contaminant Report* estimated the concentrations of several pollutants that dredging would release from the Raritan Bay's sediment. It then compared those predictions with New Jersey's acute and chronic aquatic-life criteria, which set limits to protect aquatic organisms from short- and long-term exposure.[83] Because New Jersey has no acute or chronic aquatic-life criterion for 4,4'-DDE, the report did not compare its predicted 4,4'-DDE concentrations against either standard. New Jersey does, however, set a separate human-health criterion for 4,4'-DDE of .00022 micrograms per liter.[84]

At two sampling locations, the *Contaminant Report* predicted that the highest 4,4'-DDE concentrations at 500 feet [*29] would be .001 and .003 micrograms per liter, assuming a dredging rate of 7,500 cubic feet per hour. Both predicted concentrations numerically exceed the human-health criterion, with the latter exceeding it *more than thirteenfold*. Yet the report never compared those predicted concentrations against the human-health criterion. Although the final Water Quality Certification reduced the rate of dredging to 4,800 cubic feet per hour and required slack-tide operations in the relevant area, the *Contaminant Report* did not recalculate the predicted 4,4'-DDE concentrations under those revised conditions. Accordingly, neither the Water Quality Certification nor NJDEP's response to public comments identifies the 4,4'-DDE concentration expected under the final operating conditions.

Transco attempts to plug this gap in the record by arguing that increases in 4,4'-DDE concentrations will be brief, that ambient conditions will return within one to six hours, and that shellfish harvesting for human consumption is prohibited in the affected area. However, NJDEP did not clearly adopt those specific rationales. The agency instead noted, in response to public concerns about toxic contaminants, that "criteria [*30] do not exist for acute and chronic surface water quality standards for 4,4'-DDE," and then reasoned that "overall levels of contaminants *in the mixing zone* decrease with best management practices" and that, with those practices and monitoring, "dredging impacts *will be minimized*."[85] A prediction that contaminant levels will "decrease" is not a finding that they will adhere to New Jersey's human-health criterion. And a finding that dredging impacts "will be minimized" does not explain whether New Jersey law permits a short-term exceedance in waters closer to dredging.

NJDEP could have reconciled the 4,4'-DDE result by, for example, explaining why the human-health criterion was inapplicable, requiring Transco to model 4,4'-DDE under the final dredging conditions, or identifying a state-law basis for allowing a short-term exceedance. Its current decisional documents take none of those paths.

In short, NJDEP failed to adequately explain why 500 feet was the relevant boundary for its contaminant review or how the predicted 4,4'-DDE concentrations supported certification.[86] Without more, we cannot

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[80] *See supra* Part II.

[81] N.J. Admin. Code § 7:7-12.7(c)(10)(iii).

[82] *See State Farm*, 463 U.S. at 50; *Christ the King Manor, Inc. v. Sec'y United States HHS*, 730 F.3d 291, 305 (3d Cir. 2013) (noting judicial review rests on the administrative record, not "some new record made initially in the reviewing court" or "post-hoc rationalizations made after the disputed action") (cleaned up).

[83] Acute criteria generally protect against effects from a one-hour exposure, whereas chronic criteria address a four-day exposure. *See* N.J. Admin. Code § 7:9B-1.14(f)(1)-(2).

[84] *Id.* § 7:9B-1.14(f)(7).

[85] JA 425 (emphases added).

[86] *See Chenery*, 332 U.S. at 196-97 (emphasizing that the agency's "basis must be set forth with such clarity as to be understandable" so

discern how NJDEP concluded that Transco's dredging will comply with New Jersey's water quality standards. [*31]

2. Turbidity Monitoring

The Baykeeper Petitioners next challenge the Water Quality Certification's reliance on turbidity monitoring rather than direct monitoring of the toxic contaminants disturbed by dredging. They argue that the Water Quality Certification cannot assure compliance with New Jersey's toxic-substance criteria because it requires monitoring only for turbidity, not for 4,4'-DDE, PCBs, mercury, or the other contaminants identified in the dredging area.

NJDEP and Transco counter that the New Dredging Rule gives NJDEP discretion to determine what water quality parameters should be monitored. NJDEP specifically argues that turbidity monitoring alone can be "sufficient to assure water quality standards," and that its "construction[] of [its] own regulations [is] powerful evidence of their meaning."[87] Transco adds that NJDEP advised it that chemical contaminant monitoring is not typically required and that turbidity monitoring ordinarily suffices to evaluate surface water quality exceedances.

NJDEP and Transco are correct that the New Dredging Rule vests NJDEP with discretion: it provides that the agency "*may* require the permittee to conduct biological, physical, and chemical [*32] water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded."[88] We are persuaded that the regulation's permissive language does not mandate direct monitoring of every contaminant.

That said, NJDEP was still required to "examine the relevant data and articulate a satisfactory explanation for its action[,] including a rational connection between the facts found and the choice made."[89] Technical expertise does not relieve an agency of its obligation to articulate the basis for its decision.[90]

Here, too, NJDEP's explanation falls short. The record makes clear that toxic contaminants lay at the heart of NJDEP's water quality concerns throughout its review of NESE. Water quality concerns figured prominently in the agency's 2019 denial. Moreover, in its response to public comments in 2025, NJDEP reasoned that, "[b]ased on the modeling, monitoring, and [best management practices] in place, any temporary increases in turbidity *or contaminant levels* are expected to be minimal."[91] Yet the Water Quality Certification requires monitoring *only* for turbidity. NJDEP has not explained how monitoring turbidity alone assures [*33] compliance with the separate standards governing 4,4'-DDE, PCBs, mercury, and the other contaminants at issue. Monitoring water cloudiness is not self-evidently the same as monitoring toxic contaminants; if NJDEP relied on the former as a proxy for the latter, it had to say so and explain why.[92]

NJDEP was not required to select Petitioners' preferred monitoring method, but it *was* required to connect its chosen method to the pollutants and criteria that drove its water quality concerns. Its failure to do so was arbitrary and capricious.

3. Shellfish Findings

NRDC additionally contests NJDEP's conclusion that NESE will not imperil shellfish. As discussed earlier, the affected waters here are designated for shellfish harvesting, and the applicable Surface Water Quality Standards protect that designated use.[93] In response to

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that a court is not "compelled to guess at the theory underlying the agency's action").

[87] NJDEP Br. 54 n.12 (citing *E. Bay Drywall*, 278 A.3d at 792).

[88] N.J. Admin. Code § 7:7-12.7(c)(10)(iii) (emphasis added).

[89] *State Farm*, 463 U.S. at 43 (cleaned up); *accord Riverkeeper I*, 833 F.3d at 377.

[90] *Sierra Club*, 972 F.3d at 298 ("[T]he agency cannot reach whatever conclusion it likes and then defend it with vague allusions to its own expertise; instead, the agency must support its conclusion with demonstrable reasoning based on the facts in the record.").

[91] JA 425 (emphasis added).

[92] *See Ohio v. EPA*, 603 U.S. 279, 293-95, 144 S. Ct. 2040, 219 L. Ed. 2d 772 (2024) (finding agency action likely arbitrary where EPA failed to explain whether an assumption underlying its methodology affected the result and observing that, "if there is an explanation, it does not appear in the final rule").

[93] N.J. Admin. Code § 7:9B-1.12(d), (g).

public concerns about dredging impacts on shellfish habitat, NJDEP stated that it had consulted with the New Jersey Marine Resources Administration (MRA), which oversees New Jersey's fish and shellfish, to assess NESE's impacts to shellfish and commercial shellfish harvesters. According to NJDEP, the MRA determined "that the Project's sedimentation rates are anticipated [*34] to be within surf clam tolerance, [and] the impacts to the habitat are temporary and will return to baseline conditions within one to three years."[94] As a result, NJDEP maintains the project would not "result in [the] destruction, condemnation or contamination of surf clam habitat."[95]

NRDC argues that the MRA memorandum made no such finding. We agree. The memorandum directly quoted Transco's prediction that surf clam populations would recover within one to three years, but nowhere in the memorandum does the MRA adopt or endorse that view. Instead, the MRA determined that the project "will directly and indirectly impact productive surf clam beds," could cause mortality and physiological stress, and poses particular risks to surf clams, which "are more sensitive and susceptible to the impacts of increased turbidity and smothering" from sediment plumes.[96]

While the MRA found that impacts would be temporary to *some* clams, that finding was with respect to hard clams—an entirely different species. Indeed, the MRA expressly distinguished the two: "Unlike hard clams, surf clams do not have the ability to close their shells completely in the presence of increased turbidity."[97]

NJDEP therefore [*35] attributed to the MRA conclusions about surf clams that the MRA never made. An agency's decision is "arbitrary and capricious" when it "offer[s] an explanation for its decision that runs counter to the evidence" before it.[98] NJDEP was free to adopt Transco's prediction that surf clam populations would recover within one to three years, but it did not purport to do so. Rather, it attributed Transco's prediction to the MRA, and so this error bears directly on the agency's stated rationale. Combined with the deferred compliance terms and unexplained technical issues already discussed, this mischaracterization further prevents us from discerning the basis for NJDEP's assurance of compliance.

D. Public Participation

Petitioners' remaining arguments concern public participation. NRDC argues that by postponing the final Water Quality Monitoring Plan and Adaptive Management Plan until after certification, NJDEP insulated the final water quality control measures from public comment. The Baykeeper Petitioners train their challenge on Transco's revised stormwater materials, contending that commenters spent the public comment period reviewing and criticizing the May 2025 report, only for Transco [*36] to replace it with a materially different August 2025 report that NJDEP neither posted on the project website nor flagged to the public. Accordingly, they argue that NJDEP certified the project based on revised technical materials the public never had an opportunity to address.

NJDEP and Transco counter that the application included draft monitoring and adaptive management plans that drew public comment, and that Transco submitted the revised stormwater report more than a month before the comment period closed. They note that the public notice identified locations where application materials could be reviewed even if NJDEP never posted the report to the project website, and they further argue that the Petitioners have shown no prejudice since they have not identified any substantive argument they lost the opportunity to raise.

Section 401 of the Clean Water Act requires states to establish procedures for public notice of Water Quality Certification applications and, where appropriate, procedures for public hearings.[99] More broadly, the Clean Water Act provides that "[p]ublic participation in the development, revision, and enforcement of any . . . plan, or program established by the [EPA] Administrator or any State under this chapter [*37] shall be provided for, encouraged, and assisted by the

[94] JA 436.

[95] *Id.*

[96] *Id.* at 313.

[97] *Id.*

[98] *See State Farm*, 463 U.S. at 43.

[99] 33 U.S.C. § 1341(a)(1).

Administrator and the States."[100] Consistent with that directive, we have observed that interested members of the public should have a full opportunity to weigh in before an agency relies on the technical materials underlying its decision, though a party challenging an alleged defect in the public comment process must show prejudice resulting from said error.[101]

Because we vacate the certification on other grounds, we need not decide whether NJDEP's procedures independently violated the Clean Water Act or New Jersey's notice requirements. Should NJDEP renew the certification on remand, it will have the opportunity to cure any potential lack of adequate opportunity for public participation.[102]

IV.

When an agency fails to adequately explain the basis for its decision, our ordinary course is to vacate and remand so the agency may exercise its delegated authority in the first instance.[103] Although the administrative record documents years of agency review, repeated requests for additional information, and numerous project-specific restrictions, our task is to evaluate the certification NJDEP ultimately issued and the reasons the [*38] agency gave for it. On remand, NJDEP remains free to supplement its explanation, require additional submissions or analyses, issue a new or revised certification, or reach a different result. We leave those specific choices to NJDEP.

For the foregoing reasons, we will grant the petitions, vacate the Water Quality Certification, and remand for further proceedings consistent with this opinion.

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[100] *Id.* § 1251(e); *see also Waterkeeper*, 399 F.3d at 503-04.

[101] *See Riverkeeper III*, 903 F.3d at 76 (denying a public participation challenge where "all interested parties . . . ha[d] a full opportunity to weigh in when [the agency] consider[ed] applications for those permits . . . .").

[102] *See Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 411-12 (3d Cir. 2004), as amended (June 3, 2016).

[103] *See Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 744, 105 S. Ct. 1598, 84 L. Ed. 2d 643 (1985); *see also Sierra Club*, 972 F.3d at 309 (vacating EPA's approval of new state air quality standards and remanding to the EPA).

JUDGMENT

These cases came to be considered on the record from the Environmental Protection Agency and were argued on July 8, 2026.

On consideration whereof,

It is **ORDERED** and **ADJUDGED** by this Court that the petitions for review pursuant to 15 U.S.C. § 717r(d)(1) of the Natural Gas Act are hereby **GRANTED**, and the decision and Order of the Environmental Protection entered November 7, 2025, is **VACATED** and **REMANDED**. Costs shall not be taxed.

All of the above in accordance with the Opinion of this Court.

Dated: September 8, 2026

ENTRY OF JUDGMENT

Today, **September 08, 2026**, the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing [*39] :

14 days after entry of judgment.

45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service, unless the petition is filed and served through the Court's electronic-filing system.

Certificate of compliance if petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. A party seeking both forms of rehearing must file the petitions as a single document. Fed. R. App. P. 40(a).

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed. R. App. P. 41.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements [*40] for filing a petition for writ of certiorari.

By: /s/ James King

Case Manager

267-299-4958

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