



State of Vermont

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Agency of Natural Resources

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Judith C. Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05620-2701

Re: Vermont Gas Systems, Inc., Addison Natural Gas Project
Docket No. 17-3550-INV

Dear Ms. Whitney:

The Agency submits the following supplemental comments in response to the Commission's order dated August 28, 2017.

As indicated in the Agency's comments of September 8, 2017, the Agency's review in this matter was conducted in stages. The first stage focused on stream crossings subject to the Stream Alteration Permit #SA-5-9029 (SAP) issued by the Agency for the Project. As indicated in the Agency's prior comments, the SAP burial depth requirements were met. These supplemental comments now address Project stream crossings that were not subject to the jurisdiction of the SAP (i.e., the "non-jurisdictional streams").

The Agency concludes that while the actual pipeline burial depths for the non-jurisdictional streams meet the stream crossing performance standards of the Section 401 Water Quality Certification (401 WQC) issued by the Agency for the Project, certain non-jurisdictional stream crossings where Construction Type 7¹ was utilized were non-compliant with the Project's Individual Construction Stormwater Discharge Permit #6949-INDC.A1 ("INDC").² Because the 401 WQC included a requirement to comply with the INDC, those same non-jurisdictional stream crossings also resulted in non-compliance with the 401 WQC.

The Agency has decided not to pursue enforcement under its independent enforcement authority because of the immaterial nature of this non-compliance which arises from a technical detail that is not relevant to the INDC's programmatic purpose of managing surficial discharges of stormwater from construction activities. The Agency believes,

¹ See, Erosion Prevention and Sediment Control ("EPSC") plan set, Drawing ANGP-T-G-006, provided as Attachment D to the Affidavit of Jeffrey A. Nelson, dated August 4, 2017.

² Based on this review, it appears that as many as eight non-jurisdictional stream crossings (Crossing ID: 11, 12, 118, 45, 46, 47, 48, and 121) where Construction Type 7 was utilized may have resulted in non-compliance.

however, that non-compliance with the collateral permits results in a violation of condition 2 of the December 23, 2013 CPG issued by the Commission, which provides, in part, that “[c]onstruction, operation and maintenance of the proposed Project shall be in accordance with such permits and approvals.”

As noted in Mr. Nelson’s August 4 affidavit, the EPSC plan set for the Project indicates that Construction Type 7 (an open trench stream crossing detail) depicts a minimum pipeline burial depth of 84” at stream crossings where that construction type is utilized. The EPSC plan set was submitted by VGS as part of the INDC permit application, was incorporated by reference into the INDC, and compliance with the EPSC plan was ultimately made a condition of the INDC. An EPSC plan compliance requirement is a standard approach utilized by the Agency’s stormwater program. However, burial depth details are not construction elements that are relevant to the purpose of EPSC plans. Rather, EPSC plans, and the INDC, are intended to protect water quality in receiving waters by addressing surficial discharges of stormwater from construction activities.

In sum, failure to achieve 84” of burial at the certain non-jurisdictional stream crossings where Construction Type 7 was applicable has resulted in non-compliance with a technical detail which is not relevant to the purpose of the INDC. Likewise, because the 401 WQC was conditioned on compliance with the INDC, the resulting non-compliance applies equally to the 401 WQC. In this instance, non-compliance with the two Agency permits resulted in no harm to the natural environment and is not viewed as material in the context of those permits.

Please contact me if you should have any questions.

Respectfully submitted,
State of Vermont Agency of Natural Resources

A handwritten signature in blue ink, consisting of a large, stylized initial 'D' followed by a horizontal line extending to the right.

By: Donald J. Einhorn, Esq.

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