



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Western Regional Office • 436 Dwight Street, Springfield MA 01103 • 413-784-1100

Charles D. Baker  
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James Flynn, Project Manager  
Tennessee Gas Pipeline Company, LLC  
1001 Louisiana Street  
Houston, Texas 77002  
[James.Flynn@kindermorgan.com](mailto:James.Flynn@kindermorgan.com)

Re: WATER QUALITY CERTIFICATION  
Application for: BRP WW 10  
MAJOR FILL AND EXCAVATION PROJECT  
Connecticut Expansion Project  
Connecticut Loop, 300 Line (Worthington Brook watershed), and  
Massachusetts Loop, 200 Line (Clam River watershed) rights-of-way  
Town of Agawam, Hampden County, and Town of Sandisfield, Berkshire County,  
Massachusetts

USACOE Application Number: NAE-2013-02329  
MassDEP Wetlands File Number: 087-0610 and 278-0130  
MassNHESP Tracking Number: 13-32620  
MEPA EOEEA Number: 15205  
**Transmittal Number: X265051**

Dear Mr. Flynn:

The Massachusetts Department of Environmental Protection (hereinafter the Department) has completed its Supplemental Technical Review of the permit application for the project listed above. In accordance with the provisions of Massachusetts General Laws, Chapter 21, Sections 26 through and including 53 and the Regulations promulgated thereunder at 314 CMR 9.00; and Section 401 of the federal Clean Water Act as amended (33 USC §1251 *et seq.*), it has been determined that there is reasonable assurance this “natural gas pipeline expansion project” will be undertaken in a manner which will not violate applicable Massachusetts Surface Water Quality Standards (Regulations at 314 CMR 4.00) and other applicable requirements of state law.

**Findings:**

- The activity, as defined at 314 CMR 9.02 Activity, described within the Water Quality Certification application and supplemental information (hereinafter the “application”) will result in the “discharge of dredged or fill material” into and within “Waters of the United States within the Commonwealth” [each as defined at 314 CMR 9.02] on the Site;
- The application involves parcels of land referred to as the Connecticut Loop, 300 Line, located within the Town of Agawam, Hampden County, Massachusetts; and the Massachusetts Loop, 200 Line located within the Town of Sandisfield, Berkshire County, Massachusetts (hereinafter collectively the “Site”);
- The Site contains and includes “Waters of the United States within the Commonwealth” which have been determined to meet the jurisdictional definition of “Bordering Vegetated Wetland” (BVW), “Isolated Vegetated Wetland” (IVW), [each as defined at 314 CMR 9.02]; and Land Under Water (“jurisdictional resource areas”);
- The Department hereby approves the following site plan(s) and documents as the “plan(s) of record”:
  - “Tennessee Gas Pipeline Company, CT Expansion Project, Proposed Activities by Type and In-Situ Restoration”, Pages 1 through 19 of 19, dated February 2, 2016;
  - “Tennessee Gas Pipeline Company, CT Expansion Project, Proposed Activities by Type and In-Situ Restoration, Massachusetts Portion of the Connecticut Loop”, Pages 1 through 3 of 3, dated February 2, 2016;
  - “Connecticut Expansion Project, Massachusetts Loop 200-3, Proposed Wetland Mitigation Fales Site, Tennessee Gas Pipeline Company, LLC, Berkshire County, Massachusetts, MADEP Transmittal No. X265051, February 03, 2016,” Sheets 1 and 2 of 2, dated February 3, 2016;
  - “Attachment B, SMA-8/10, SMA-14, and SMA-20 Master Construction Sequence” and “Attachment B, SMA-8/10, SMA-14, and SMA-20 Restoration Plans,” as included in “Connecticut Expansion Project, Section 401 Water Quality Certification, Transmittal Number X265051, Response to Additional Information Request Dated January 6, 2016,” dated February 2016; and
  - “Attachment D, Invasive Species Control Plan,” as included in “Connecticut Expansion Project, Section 401 Water Quality Certification, Transmittal Number X265051, Response to Additional Information Request Dated January 6, 2016,” dated February 2016.
- The boundaries of the Bordering Vegetated Wetland(s) on the parcel in question have been approved by the U.S. Army Corps of Engineers-New England District-Regulatory Division, per the letter dated January 15, 2016, and are shown on the plan(s) of record;
- The boundaries of the Isolated Vegetated Wetland(s) on the parcel in question have been approved by the U.S. Army Corps of Engineers-New England District-Regulatory Division, per the letter dated January 15, 2016, and are shown on the plan(s) of record;
- The boundaries of Land Under Water on the parcel in question are demarcated at the “High Water Mark” [as defined at 314 CMR 9.02], and have been approved by the U.S. Army Corps of Engineers-New England District-Regulatory Division, per the letter dated January 15, 2016, and are shown on the plan(s) of record;

## Water Quality Certification for Transmittal Number X265051

- The Department has determined that the project, as shown on the plan(s) of record and further described in supplemental information, is the “least environmentally damaging practicable alternative,” and therefore meets the criteria at 314 CMR 9.06(1);
- The project, as approved in this Water Quality Certification, will result in the temporary discharge of dredged or fill material into: 439,520 square feet of Bordering Vegetated Wetland; 16,988 square feet of Isolated Vegetated Wetland; and 615 square feet of Land Under Water associated with the Clam River in Sandisfield and Worthington Brook in Agawam, and the associated tributary intermittent/perennial streams to the Clam River in Sandisfield and Worthington Brook in Agawam; and the permanent discharge of dredged or fill material into 4,792 square feet of Bordering Vegetated Wetland;
- The sum of these proposed activities will result in the discharge of dredged or fill material into 461,915 square feet of “Waters of the United States within the Commonwealth”;
- Per the authority of the Department at 314 CMR 9.09(1)(d), the Department has determined that the proposed *in situ* and the off-site/not-in-kind Bordering/Isolated Vegetated Wetland compensation (*in situ* restoration and off-site/out-of-footprint enhancement/restoration and preservation) described within the plan(s) of record and supporting documentation meet the criteria at 314 CMR 9.06(2) as conditioned by this Water Quality Certification;
- Per the authority of the Department at 314 CMR 9.09(1)(d), the Department has determined that the proposed project maintains water quality within Land Under Water on the Site, and adequately minimizes damage to the “Aquatic Ecosystem” [as defined at 314 CMR 9.02] therein associated, through application of the mitigation proposed, and as conditioned by this Water Quality Certification.

### **Water Quality Certification Conditions for Transmittal Number X265051**

Therefore, based on information currently in the record, the Department **grants a Water Quality Certification** (hereinafter “Certification”) for this project subject to the following conditions (“Conditions”) necessary to maintain water quality, to minimize impact to “Waters of the United States within the Commonwealth,” and to insure compliance with appropriate state law:

#### **Administrative and Procedural Conditions**

- 1) This Certification does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations, including those administered by the U.S. Army Corps of Engineers. **Activities, as defined at 314 CMR 9.02 Activity, conducted in accord with this Certification may only begin following the twenty-one (21) calendar day appeal period, as specified at 314 CMR 9.09(1)(e) and 314 CMR 9.10(2), and once all other required permits and licenses have been received.** The permittee shall comply with all the Conditions of the “Department of the Army General Permits, Commonwealth of Massachusetts” (U.S. Army Corps of Engineers, effective on February 4, 2015) (available from the U.S. Army Corps of Engineers, New England District, Regulatory Division at [www.nae.usace.army.mil](http://www.nae.usace.army.mil)), unless supplanted by an Individual Permit. The General

Permits conditions therein hereby form a part of, and are inseparable from, this Certification.

- 2) This Certification does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of property rights. **The permittee must obtain all necessary licenses, permits, easements and other authorizations allowing it to conduct the proposed activities prior to commencement of activities subject to this Certification.**
- 3) All successors and assigns in interest or control of the property subject to this Certification and any contractor or other person performing work conditioned by this Certification shall adhere to **all** applicable procedural and technical Conditions of this Certification. All work upon or within “Waters of the United States within the Commonwealth” allowed per this Certification shall be accomplished by reference to the plan(s) of record, and to the several Conditions of this Certification. In the event of any conflict between the several Conditions of this Certification and the plans of record, the Conditions of this Certification shall prevail.
- 4) The permittee shall arrange to procure and submit via hand to the Department’s Western Region Wetlands Program (Springfield State Office Building, 5<sup>th</sup> Floor, 436 Dwight Street, Springfield, Massachusetts) at least three (3) copies of the plan(s) of record (as referenced above) at least ten (10) business days prior to the initiation of activities at the Site, and subject to the Department’s jurisdiction. Upon review and acceptance of these plan(s) of record, the Department will affix an “Approved” stamp upon each sheet or bound set, which will then be signed by appropriate Department staff. A copy shall be retained by the Department as a permanent record, and a copy will be returned via hand delivery to the permittee and the general contractor (or equivalent). Thereafter, all work conducted per this Certification shall fully and completely comply with these plan(s) of record.
- 5) While submitting the three (3) copies of the plan(s) of record required at Condition #4 of this Certification, and prior to the initiation of any activities otherwise permitted by this Certification, the permittee shall arrange for a “Pre-construction Meeting” to be held with the Department’s Western Region Wetlands Program at the Springfield State Office Building, 5<sup>th</sup> Floor, 436 Dwight Street, Springfield, Massachusetts. It shall be the responsibility of the permittee to insure that its representative(s) (if any), as well as the general contractor, all appointed compliance monitors and environmental consultants required within this Certification (if any), and all other pertinent firms or persons, are in attendance. The permittee shall also insure that all plan(s) of record, contracts, and other pertinent documents are made available. No activities otherwise permitted by this Certification may proceed until this “Pre-construction Meeting” has been held.
- 6) Should the plan(s) of record approved in this Certification (or any sheet, detail, schematic, or collar note therein) prove not to accurately reflect site conditions, standard construction methodologies, or practical construction considerations sufficient enough to cause contractors not to be able to build according to said plan(s), the Department maintains the right to require an immediate cessation of work within its jurisdiction, in whole or in part. Should the Department, at its sole discretion, require such cessation, it shall do so in writing to the permittee, and such notice shall require adequate interim erosion and sedimentation controls and the submittal of proposed plan revisions that address the inadequacies, and result in the same or reduced alterations to “Waters of the United States within the Commonwealth” (as

- defined at 314 CMR 9.02) as approved in the plan(s) of record. Activities shall not recommence until written approval to proceed has been issued by the Department.
- 7) The Clam River and Worthington Brook, and their associated tributaries and Bordering and Isolated Vegetated Wetlands are classified in the Massachusetts Surface Water Quality Standards [314 CMR 4.00] as Class B, High Quality Waters, and are protected by the antidegradation provisions of these Standards. Therefore, reasonable care and diligence shall be taken by the permittee to assure that the proposed activity will be conducted in a manner that will avoid violations of these Standards.
  - 8) The contractor(s) employed to execute earth-moving, vegetation removal, demolition, and/or motorized vehicle operation activities on the property subject to this Certification must be provided a copy of this Certification prior to the commencement of any such activities. Said contractor(s) may be held responsible with the permittee and property owner for violations by the contractor, and may be subject to penalties authorized by law and/or regulation for those violations.
  - 9) This Certification specifically prohibits any activity, as defined at 314 CMR 9.02 Activity, within or upon any “Waters of the United States within the Commonwealth” not specifically authorized by this Certification. Any failure to abide by the Conditions of this Certification that results in or contributes to a discharge of dredged or fill material or discharge from dredging, as defined at 314 CMR 9.02, into “Waters of the United States within the Commonwealth,” shall result in a potential enforcement action on the part of the Department, and possibly other regulatory agencies.
  - 10) As this project has been determined to meet the definition of “Single and Complete Project” at 314 CMR 9.02, the amount of proposed “discharge of dredged or fill material” within “Waters of the United States within the Commonwealth” permitted by this Certification shall not be exceeded, regardless of future project modifications or any proposed modifications under Condition #11 of this Certification. This prohibition does not expire.
  - 11) The Department shall be notified in writing of any proposed changes in construction methodology or design necessary to complete this project, save for any proposed modifications involving additional “discharge of dredged or fill material,” which are strictly prohibited. Proposed reduction of “discharge of dredged or fill material” may be submitted under this Condition. Based upon submittals under this Condition, the Department will determine whether any proposed changes will require an “Amendment” to this Certification per the Department’s authority at 314 CMR 9.09(2).
  - 12) Failure to comply with this Certification is grounds for enforcement, including civil and criminal penalties, under MGL c. 21, § 42; 314 CMR 9.00; MGL c. 21A, § 16; 310 CMR 5.00; or other possible actions/penalties as authorized by the General Laws of the Commonwealth of Massachusetts.
  - 13) Department staff shall have the right to enter and inspect the property subject to this Certification at reasonable hours to evaluate compliance with the Conditions of this Certification.
  - 14) This Water Quality Certification expires on February 4, 2020, unless the U.S. Army Corps of Engineers, New England District, Regulatory Division specifically authorizes a different expiration date in writing in a Pre-Construction Notification Authorization or Individual Permit issued under § 404 of the federal Clean Water Act and the “Department

of the Army General Permits, Commonwealth of Massachusetts” (U.S. Army Corps of Engineers, effective February 4, 2015) issued thereunder.

- 15) No work subject to this certification, including the cutting of trees, may be conducted prior to the expiration of the Appeal Period set forth below or until a final decision is issued by the Department if an appeal is filed.

#### Site Stabilization Conditions

- 16) Prior to commencement of any work on the Site, adequate erosion and sedimentation control measures shall be implemented, including any necessary controls not specifically referenced in the plan(s) of record, and they shall be maintained in effect throughout the entire project, and until the Site has become stabilized with an adequate vegetative or landscaping cover. Structural failure of the erosion and sedimentation controls required by this Certification, and subsequent discharge of untreated stormwater to “Waters of the United States within the Commonwealth,” would constitute a violation of this Certification, and could result in enforcement actions taken by the Department, and possibly other regulatory agencies.
- 17) Prior to the commencement of any earth-moving activity, and where necessary, a double-staked hay bale barrier (end to end) shall be placed along the limit of activity between all disturbed areas and jurisdictional Resource Areas, regardless of what is shown on the plan(s) of record. Each bale shall be properly bound with at least two (2) lengths of twine or wire, and shall be entrenched to an excavated depth of at least four (4) inches, but no greater than six (6) inches. Excavated spoils from entrenching shall be deposited on the up-gradient side of the barrier. Bales shall be tightly butted against each other. A geotextile siltation fence shall be placed on the down-gradient side of the aforementioned hay bale barrier, and shall be entrenched in a like manner such that the base of the fabric lies below grade extending at least six (6) inches away from the fence. This fence shall be located no further than twelve (12) inches from the down-gradient side of the hay bale barrier. These erosion and sedimentation controls shall be constructed per this Condition, and shall be maintained in proper functioning condition until all disturbed areas have been stabilized, or until the Department has determined that the control measures are no longer necessary. Where employed, the geotextile siltation fence shall constitute a limit-of-work-line. No work shall be permitted on the down-gradient side (the Resource Area side) of this line under this Certification.
- 18) Prior to the initiation of any activities otherwise permitted in this Certification the permittee shall insure that a “Construction Sequencing Plan” appropriate to project and site conditions is submitted to the Department and approved in writing by the Department. Such a plan shall minimally follow the US Environmental Protection Agency’s National Pollutant Discharge Elimination System (NPDES) “Construction Sequencing” Best Management Practice at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=51>.
- 19) The permittee shall make every reasonable effort to insure that tree roots and stumps remain intact and viable within the portions of BVW/IVW labeled on the plans of record as “Temporary Fill/In-Situ Restoration/Temporal Loss,” wherever practicable. Such

efforts are intended to maximize the rapid reestablishment of woody vegetation through coppice growth. Similarly, surface microtopography (e.g., pits and mounds) and abiotic components (ledge, rock fragments) shall be preserved in place wherever practicable. All temporary deposition of trench spoils shall be stored between an existing pipeline and the proposed pipeline, as depicted on the cross-sections provided with the plans of record.

### Compliance Monitoring Conditions

20) Within ten (10) business days of the issuance date of this Certification, the permittee shall nominate one or more compliance monitors in writing, who shall be accepted in writing by the Department. Nominated compliance monitors shall have adequate and relevant education, training, and/or experience necessary to understand and perform the duties described herein, and the Department reserves the right to accept nominees based upon its review of such education, training, and/or experience, as documented in resumes submitted to the Department. The approved compliance monitor(s) shall observe all “construction activity” within all “Waters of the United States within the Commonwealth” (as defined at 314 CMR 9.02) permitted by this Certification and subject to it (said compliance monitor can be the same person identified at Condition #21 of this Certification). For purposes of this Certification, “construction activities” are all activities (as defined at 314 CMR 9.02 Activity) within “Waters of the United States within the Commonwealth” (WUSWC) which entail the initial placement and/or extraction of fill or materials:

- a. including the placement and the extraction of any proposed construction mats;
- b. the initial placement of any material into standing water within WUSWC;
- c. the initial placement of fill into Bordering and Isolated Vegetated Wetlands;
- d. the extraction of temporary fill from any WUSWC; and
- e. The removal and placement of any material or substance from or into WUSWC for purposes of mitigation which is required in this Certification.

The compliance monitor(s) are not required to be present for any work:

- f. taking place in WUSWC after initial placement of fill or materials (e.g., atop construction mats);
- g. taking place within the area dewatered by the proposed temporary cofferdams; and
- h. taking place in areas that are not “Waters of the United States within the Commonwealth”.

In addition to the above, the compliance monitor(s) shall conduct a thorough inspection of the site within 24 hours of any rainfall which equals or exceeds 0.5 inches within 24 hours (as measured from the nearest applicable National Weather Service Automated Surface Station, see [http://weather.noaa.gov/weather/MA\\_cc\\_us.html](http://weather.noaa.gov/weather/MA_cc_us.html)); or every calendar week during active construction, whichever comes first.

While performing these duties the compliance monitor(s) shall confirm that all relevant Conditions of this Certification are being complied with at all times whilst they are present.

While on site, the compliance monitor(s) shall sufficiently document any and all observed noncompliance with any of the Conditions of this Certification. The compliance monitor(s) shall submit such electronic documentation to: [David.Foulis@state.ma.us](mailto:David.Foulis@state.ma.us). This electronic documentation shall be in the form of a concise written report which adequately describes the noncompliant activities and/or conditions and cites the Condition(s) which have been violated, and shall always be accompanied by the submittal of digital photographs, which shall clearly and adequately show the nature and extent of noncompliant activities and/or conditions and support the written report. This electronic documentation shall be submitted as such noncompliance is occurring and/or is first noted by the compliance monitor(s). If, in unusual circumstances, this is not physically possible, then the compliance monitor(s) shall submit electronic documentation within no more than four (4) hours of the initial observance of the noncompliant activity and/or condition. Within this same time period, the compliance monitor(s) shall also report the noncompliant activities and/or conditions via telephone to each of the following Department staff: David Foulis at 413-755-2154 and David Cameron at 413-755-2138. Failure to comply with this Condition would constitute a violation of this Certification and could result in enforcement actions taken by the Department. The permittee, its employees, agents, successors, and assigns shall not impede the compliance monitor(s) in the performance of their duties under this Certification. Any change in staffing of the compliance monitor(s) must be approved by the Department per Condition #11 of this Certification.

Conditions Which Apply to all Physical Vegetated Wetland Compensation (*in situ* restoration, enhancement, and creation) at Conditions 23 through 31

- 21) At least ten (10) business days prior to the initiation of construction, the permittee shall nominate a wetland scientist(s) in writing, who shall be accepted in writing by the Department. Nominated wetland scientist(s) shall have at least five (5) years of experience in developing “replacement area” plans for Bordering Vegetated Wetland (“BVW”) alteration per 314 CMR 9.06(2) and 310 CMR 10.55(4)(b)1. through 7., inclusive. The Department maintains the right to approve or deny the nominee based upon the individual’s level of experience as it relates to the successful construction and completion of BVW “replacement areas.” Any change in staffing of the wetland scientist(s) must be approved by the Department per Condition #11 of this Certification. The designated wetland scientist(s) shall directly supervise all required compensation described at Condition #24 through #32, below.
- 22) Failure to maintain an appropriate standard of care in the installation or post-installation components of required compensation, at any time, including but not limited to planting at inappropriate times of year, failure to reach appropriate subsurface hydrology, failure to restore or replicate suitable substrate conditions, failure to implement standard horticultural practices (such as irrigation, fertilization, disease and pest control), failure to maintain erosion and sedimentation controls, failure to adequately control nonindigenous invasive species, and the loss of plantings of a sufficient number to impair the success of compensation may be deemed noncompliance with this Certification at the sole discretion

of the Department, unless identified in writing to the Department by the wetland scientist(s), or the permittee within five (5) business days of discovery. Any such written notification must include a “corrective plan of action,” which shall be implemented by the permittee according to a schedule and conditions established in writing by the Department. The Department maintains the right to take enforcement action per 314 CMR 9.11 for any such noncompliance, in addition to its right to require adherence to the several Conditions of this Certification.

- 23) The Department reserves the right to require additional field inspections, documentation, field-derived data, photographs, reports, and any other plan(s) necessary in order to meet the requirements of 314 CMR 9.00, including 314 CMR 9.06(2). The Department reserves the right to require any additional restoration of “Waters of the United States within the Commonwealth” when, at its discretion and per its sole judgment, temporary discharges of dredged or fill material into “Waters of the United States within the Commonwealth” has resulted in a long-term adverse impairment to the specific resource area, and/or to the proximate resource areas.

Provision of *In Situ* Bordering and Isolated Vegetated Wetland Restoration in Areas of No Temporal Loss

- 24) By no later than November 30, 2016 the permittee shall restore all BVW/IVW shown on the plans of record and labeled “Temporary Fill/In-Situ Restoration/No Temporal Loss” per the requirements of 314 CMR 9.06(2), and per the below-listed sections of “Final Compensatory Wetland Mitigation Plan, New England Portion of the Connecticut Expansion Project,” dated February 2016, and other sections of the plans of record, as modified by this Condition, as follows:
- a) Section C.1.1 on pages 45 through and including 48
  - b) Section C.2.1 on pages 58 and 59
  - c) The Department rejects the “Seed Mixes” described in Tables C-3 and C-8, and elsewhere, as they are intended for both upland and wetland settings. Prior to initiation of any activities otherwise permitted within this Certification, the permittee shall provide a seed mix list composed of hydrophytes indigenous to Berkshire County, Massachusetts and developed specifically for application in vegetated wetlands. The vendor shall be specifically identified, and that vendor shall certify in writing that:
    - i) All listed species are identified by scientific name (use *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan Connolly, Bruce Sorrie and Paul Somers (Massachusetts Natural Heritage & Endangered Species Program, Massachusetts Division of Fish and Wildlife, 2011);
    - ii) shall not include seed from non-Massachusetts ecotype sources; and
    - iii) shall not include non-indigenous subspecies, cultivars, or varieties.
- 25) By no later than May 31, 2017, or such later date as may be approved by the Department in writing, the wetland scientist(s) shall complete monitoring of the status of each BVW in which temporary earthen fills, trenching, and construction mats have been removed and the topography reestablished per this Certification via a field inspection. Based upon this field inspection, the wetland scientist(s) shall report the condition of *in-situ* restoration within the footprint of each BVW from whence earthen fills or construction mats have been removed via the submittal of a “Letter of Certification” to the Department, which

shall be sent to the Department on or before June 9, 2017. Based upon the results of the field inspection the wetland scientist(s) or their designees shall adequately certify, through signature and inclusion of professional stamps, if any, that there is no noticeable adverse impact to the hydrophytic plant community, soil characteristics and microtopography, and/or surface and near surface hydrology from the placement and removal of earthen fills and construction mats within “Waters of the United States within the Commonwealth”.

- 26) If the approved wetland scientist(s) or their designee determines that they cannot certify that there is no noticeable adverse impact to specific “Waters of the United States within the Commonwealth” per Condition #25, said wetland scientist(s) or their designee shall contact the Department within two (2) business days of said discovery. In such circumstances, Condition #27 of this Certification shall be in full force and affect.
- 27) The Department reserves the right to require additional field inspections, documentation, field-derived data, photographs, reports, and any other plan(s) necessary in order to meet the requirements of 314 CMR 9.00, including 314 CMR 9.06(2). The Department reserves the right to require any additional restoration of “Waters of the United States within the Commonwealth” when, at its discretion and per its sole judgment, the placement and removal/re-covering of temporary earthen fills, trenching, and construction mats has resulted in a long-term adverse impairment to the specific resource area, and/or to the proximate resource areas.

Provision of *In Situ* Restoration for Bordering and Isolated Vegetated Wetland in Areas of Temporal Loss

- 28) By no later than November 30, 2016, or such later date as may be approved by the Department in writing, the permittee shall restore all BVW/IVW shown on the plans of record and labeled “Temporary Fill/In-Situ Restoration/Temporal Loss” per the requirements of 314 CMR 9.06(2), and per the below-listed sections of “Final Compensatory Wetland Mitigation Plan, New England Portion of the Connecticut Expansion Project”, dated February 2016, and other sections of the plans of record, as modified by this Condition, as follows:
  - a) Section C.1.1 on pages 45 through and including 48;
  - b) Section C.2.1 on pages 58 and 59;
  - c) Table C-3, “Wetland Restoration Area Plant List-Massachusetts Loop”, on page 46;
  - d) Table C-8, “Wetland Restoration Area Plant List-Connecticut Loop”, on page 59;
  - e) Page 19 of 19, “Tree and Shrub Planting Notes, Tennessee Gas Pipeline Company, CT Expansion Project, Proposed Activities by Type and In-Situ Restoration”;
  - f) Page 3 of 3, “Tree and Shrub Planting Notes, Tennessee Gas Pipeline Company, CT Expansion Project, Proposed Activities by Type and In-Situ Restoration, Massachusetts Portion of the Connecticut Loop”;
  - g) Upon planting, each planted shrub or sapling shall be identified with a tag which clearly indicates the planting as a restoration planting. The design and materials of such tags shall be approved by the Department prior to use; and
  - h) The Department rejects the “Seed Mixes” described in Tables C-3 and C-8, and elsewhere, for the reason(s) stated above. Prior to initiation of any activities otherwise permitted within this Certification, the permittee shall provide a seed mix list composed of hydrophytes indigenous to Berkshire County, Massachusetts and developed

specifically for application in vegetated wetlands. The vendor shall be specifically identified, and that vendor shall certify in writing that:

- i) All listed species are identified by scientific name (use *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan Connolly, Bruce Sorrie and Paul Somers (Massachusetts Natural Heritage & Endangered Species Program, Massachusetts Division of Fish and Wildlife, 2011);
- ii) shall not include seed from non-Massachusetts ecotype sources;
- iii) shall not include non-indigenous subspecies, cultivars, or varieties.

Provision of Off-Site/Not-in-Kind Bordering and Isolated Vegetated Wetland Compensation

- 29) By no later than November 30, 2016, or such later date as may be approved by the Department in writing, the permittee shall complete construction of the proposed 21,898 square foot vegetated wetland shown on the plan of record titled "Connecticut Expansion Project, Massachusetts Loop 200-3, Proposed Wetland Mitigation Fales Site, Tennessee Gas Pipeline Company, LLC, Berkshire County, Massachusetts, MADEP Transmittal No. X265051, February 03, 2016", Sheets 1 and 2 of 2, dated February 3, 2016. Any deviation from the methodology approved by this Condition of the Certification must be requested in writing and approved by the Department per Condition #11 of this Certification. This proposed vegetated wetland shall be initially excavated according to the plan(s) of record prior to any earth moving activity otherwise permitted by this Certification. Donor soil placement, organic amendments, and plantings shall not be placed within this vegetated wetland until such time as the designated wetland scientist has verified that the final excavated grade for this vegetated wetland has intercepted groundwater at an elevation necessary and appropriate to support the proposed wetland hydrologic regime, and has been sufficiently joined to existing wetlands WMA-F and WMA-G (as shown on the plan of record) such that continuous wetland hydrology is established. Said plan(s) of record indicate that the finished substrate of the proposed vegetated wetland will be located at approximate elevation 1,450 feet above mean sea level (AMSL) to 1,464 feet AMSL(NGVD). The wetland scientist(s) shall verify in the field that these elevations will meet the requirements of this Condition.
- 30) The Department hereby approves the proposed planting list of woody species and herbaceous plugs, shown in tabular format on the plan of record. Any modification of species, size, quantity or planting techniques must be requested by the permittee in writing and approved by the Department per Condition #11 of this Certification.
- 31) The Department hereby approves the proposed fencing plan for the wetland creation/enhancement area at the Fales Site, with the exception that the fence shall extend along the northern limits of the wetland creation/enhancement area, terminating at the existing hedgerow along the western edge of South Beech Plain Road.
- 32) Prior to initiation of any activities otherwise permitted within this Certification, the permittee shall provide a seed mix list composed of hydrophytes indigenous to Berkshire County, Massachusetts and developed specifically for application in vegetated wetlands. The vendor shall be specifically identified, and said vendor shall certify in writing that:
  - i) All listed species are identified by scientific name (use *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan

- Connolly, Bruce Sorrie and Paul Somers (Massachusetts Natural Heritage & Endangered Species Program, Massachusetts Division of Fish and Wildlife, 2011);
- ii) shall not include seed from non-Massachusetts ecotype sources;
  - iii) shall not include non-indigenous subspecies, cultivars, or varieties;
  - iv) Additional applications of the approved seed mix shall be used when appropriate to maintain optimum surficial coverage of vegetation, until such time as the constructed vegetated wetland has been fully stabilized and is functioning as BVW, as determined by the wetland scientist(s) per Condition #34 of this Certification.
- 33) By no later than November 30, 2016, or such later date as may be approved by the Department in writing, and as additional qualitative compensation for permanent and temporal losses to BVW/IVW, the permittee shall daylight and restore the jurisdictional streams mapped as SMA-8/10, SMA-14, and SMA-20 in accordance with the plans of record and supporting information within Attachment B of “Final Compensatory Wetland Mitigation Plan, New England Portion of the Connecticut Expansion Project,” dated February 2016. Stream SMA-14 is a perennial river named Spectacle Pond Brook, a designated “cold-water fishery” per 314 CMR 9.02.

Preservation Component of Compensation Package

- 34) Per Section H of “Final Compensatory Wetland Mitigation Plan, New England Portion of the Connecticut Expansion Project”, dated February 2016, and per the authority of the Department at 314 CMR 9.09(1)(d), the permittee shall effectuate the legal transfer in fee simple of the portion of land referred to in the plans of record as the “Fales Site” to the Massachusetts Department of Conservation and Recreation-Division of MassParks. This legal transfer shall occur prior to the initiation of any activities otherwise permitted in this Certification, and the Department shall be provided a copy of the records within the Southern Berkshire County Registry of Deeds demonstrating this transfer. The Fales Site is an approximately 35.7 acre portion of property with frontage on South Beech Plain Road, located in the Town of Sandisfield, Berkshire County, Massachusetts; and also referred to as 137 South Beech Plain Road, Assessor’s Map 409, Parcel 10 (in part). The forested portion of the Fales Site is located within a Massachusetts Natural Heritage and Endangered Species Program BioMap2 Landscape (ID 2834).

Monitoring of Restored and Created Vegetated Wetlands (both *in-situ* and at the Fales Site)

- 35) The wetland scientist(s) approved by the Department or their approved designee shall monitor the status of all restored vegetated wetlands shown on the plans of record and labeled “Temporary Fill/In-Situ Restoration/Temporal Loss;” and created/enhanced vegetated wetlands at the Fales Site, in calendar years 2017 through and including 2022, and then until such time as each of these Bordering/Isolated Vegetated Wetlands (“BVW/IVW”) function in accordance with 314 CMR 9.06(2), as established by data collected during monitoring. Monitoring shall include, at a minimum, the collection of all data required in page 1 (for all areas of “Temporal Loss”) and page 2 (just for the “Fales Site”) of “Wetland Determination Data Form – Northcentral and Northeast Region” [as found within US Army Corps of Engineers. 2012. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region*, ed. J. S.

Wakeley, R. W. Lichvar, and C. V. Noble. ERDC/EL TR-12-1. Vicksburg, MS: U.S. Army Engineer Research and Development Center (Version 2.0)]. All vascular plants within these BVW/IVWs, as shown on the plan(s) of record, shall be identified to the species level. Scientific nomenclature shall follow *The Vascular Plants of Massachusetts: A County Checklist-First Revision*, by Melissa Dow Cullina, Bryan Connolly, Bruce Sorrie and Paul Somers (Massachusetts Natural Heritage & Endangered Species Program, Massachusetts Division of Fish and Wildlife, 2011), or an equivalent acceptable to the Department (as established in writing). At least two (2) “Wetland Determination Data Forms” shall be completed for two (2) distinct “Observation Plots” within each of the BVW/IVW subjected to temporary discharges of fill [WMA-3, WMA-5, WMA-6, WMA-7 (each of 4 polygons), WMA-10, WMA-12, WMA-14, WMA-15, WMA-18, WMA-19, WMA-17, WMA-20, WMA-21 (each of 2 polygons), WMA-23 and WMA-01]; and within the created vegetated wetland at the Fales Site. Sampling shall take place at least once in each growing season in the years specified in this Condition. For the vegetated wetland at the Fales Site only, each sampling event shall include hydrologic data garnered from “observation holes.” These “observation holes” shall be at least twenty-four inches deep, as measured from the surface of the mineral soil horizon. Alternatively, and with the permission of the Department, the wetland scientist(s) or their designee can establish a shallow monitoring well, directly adjacent to the two (2) Observation Plots within the vegetated wetland at the Fales Site. The shallow monitoring wells shall be constructed, installed, and operated in accordance with “Installing Monitoring Wells/Piezometers in Wetlands” [US Army Corps of Engineers, Wetlands Regulatory Assistance Program, WRAP Technical Note ERDC TN-WRAP-00-02, July 2000]. During each sampling event, color photographs or color reproductions of photographs (digital photographs or color photocopies) shall be taken of each of the two (2) separate Observation Plots, and of the observation holes established by this Condition. All data collected during each of the years specified in this Condition shall be submitted in a written report entitled “BVW Restoration and Creation Monitoring Report-Massachusetts Loop and Connecticut Loop, Sandisfield and Agawam, Massachusetts.” A draft copy shall be submitted to the Department on or before November 30<sup>th</sup> of each year specified by this Condition. A final copy shall be sent to the Department within thirty (30) calendar days of the receipt of draft comments by the Department, if any.

- 36) At the Fales Site the wetland scientist(s) or their designee shall collect data on wetland hydrology within the BVW Replacement Area at least once per month during the growing season in the years specified at Condition #23. The wetland scientist(s) or their designee shall use the “observation holes” or shallow monitoring wells required by Condition #23 in order to achieve the objectives of this Condition. At a minimum the wetland scientist(s) or their designee shall record depth to apparent water table and/or depth of surface inundation, both as measured from the soil surface [see *Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act* (DEP 1995) for a definition] during each monthly observation. This data shall be included within the report required at Condition #23.
- 37) Based upon the data collected during sampling events, the wetland scientist(s), or the Department upon its own discretionary initiative, shall render a conclusion within each report required by Condition #23, as to the success of the compensation (*in situ* restoration/enhancement/creation) in terms of 314 CMR 9.06(2), including the

establishment of wetland hydrology at the “Fales Site”. If, at the end of the second growing season, the wetland scientist(s), or the Department upon its own discretionary initiative, render a conclusion that this compensation has failed the standards specified at 314 CMR 9.06(2), said wetland scientist(s) shall prepare and submit a written “**corrective plan of action**” no later than the end of that calendar year to the Department for approval. The approved “corrective plan of action” shall be implemented the next growing season under the supervision of a wetland scientist approved by the Department, and shall be monitored via the requirements specified in the several Conditions of this Certification.

- 38) Each year in which monitoring is required, the wetland scientist(s) or her/his designee(s) shall complete an inventory of planted woody stock via reference to the tags required at Condition #28(g). This inventory shall list each planted species, and the total number of surviving plantings within each species. Where mortality is encountered, the wetland scientist(s) shall offer their opinion as to the cause of such mortality. This inventory shall be included within the report required at Condition #34.

#### Prohibitions and Mitigation for Activities in Land Under Water

- 39) Except as may otherwise be approved in writing by the Department and at its sole discretion, activities below the High Water Mark [as defined at 314 CMR 9.02] and within Land Under Water associated with Spectacle Pond Brook, and the unnamed streams referred to as SMA-8/10 and SMA-20, shall take place between July 1<sup>st</sup> and August 30<sup>th</sup> of any given year. Work within Land Under Water may continue after August 30<sup>th</sup> only if the area of proposed work is hydrologically isolated through mechanical means from surface water after June 30<sup>th</sup> but before September 1<sup>st</sup> of that year, as confirmed and approved through Condition #11 of this Certification. Any proposed modification under Condition #11 of this Certification not conforming to this Condition of the Certification shall only occur after a written request has been submitted to the Department. The request shall specify the exact position and extent of any proposed in-stream work not in conformance with the above time-of-year (TOY) window; and shall detail why such work must take place outside the specified time period and any additional erosion and sedimentation controls necessary as a result of such proposed work. The Department reserves the right to deny any such request if a practicable alternative exists, as determined solely by the Department.
- 40) All work upon or within Land Under Water and below the High Water Mark allowed per this Certification shall be accomplished by reference to the plan(s) of record, as modified by the several Conditions of this Certification, if any.
- 41) This Certification specifically prohibits the use of stone riprap, or any other *off-site* product or substance, from permanent emplacement below the High Water Mark of any Land Under Water at the Site. All stabilization of Land Under Water (“lake”, “pond”, “reservoir”, “river”, “stream”, or “creek”) shall be accomplished through the methods described in the plans of record, unless some other methodology is proposed by the permittee in writing and approved by the Department per Condition #11 of this Certification.
- 42) The Department has determined that the proposed daylighting and restoration of the jurisdictional streams mapped as SMA-8/10, SMA-14, and SMA-20 constitutes additional mitigation for the “aquatic ecosystem” (as defined at 314 CMR 9.02 Aquatic Ecosystem)

of Spectacle Pond Brook and unnamed tributaries to the Clam River, in conformance with 314 CMR 9.06(2).

- 43) This Certification specifically prohibits any activity, as defined at 314 CMR 9.02 Activity, below the High Water Mark of Spectacle Pond Brook **from January 1<sup>st</sup> to May 1<sup>st</sup>** of any given year. Additionally, this Certification requires the permittee to notify the Department in writing at least seventy-two (72) hours in advance of any proposed activities within twenty-five (25) feet of the High Water Mark of Spectacle Pond Brook. The Department reserves the right to require additional protective measures for any work within twenty-five (25) feet of the High Water Mark of Spectacle Pond Brook, based upon actual field conditions. This reach is designated as a Coldwater Fish Resource by the Massachusetts Division of Fisheries and Wildlife, and therefore meets the definition of “cold-water fisheries” at 314 CMR 9.02. As such, this reach is either habitat for brook trout (*Salvelinus fontinalis*) and other coldwater fish species, or consists of habitat potentially viable for brook trout and other coldwater fish species. Any proposed deviation from this provision must be requested in writing per Condition #11 of this Certification. The Department maintains the right to deny any proposed modifications to this Condition that, in the opinion of the Department, would present short- or long-term adverse affect to the habitat requirements of brook trout, and other cold-water fisheries.
- 44) Prior to the initiation of any activity otherwise permitted by this Certification, the permittee shall prepare a detailed dewatering plan for all proposed discharges within Land Under Water at the Site. This dewatering plan shall minimally include identification of techniques for bypass of water around each area of discharge; and separately, identification of techniques for treatment of residual water (“seepage water”) within each area of discharge. All such plans shall completely segregate bypass water from residual water. This dewatering plan shall include:
- Identification of any regulatory “time-of-year” (“TOY”) restrictions governing the proposed work [from the US Army Corps of Engineers “General Permit-Commonwealth of Massachusetts” (“MGP”); any Massachusetts Natural Heritage and Endangered Species Program directive; and any presumptive directions offered by the Massachusetts Division of Fisheries and Wildlife]. The Department will require adherence to TOY restrictions unless the permittee demonstrates that compliance with them is not practicable;
  - Use of temporary flume pipes to bypass flowing water in small rivers and intermittent streams, when flowing, and upstream and downstream temporary dams to isolate the work area and protect it from backwatering. Flume pipes shall be equipped with anti-seep collars where they pass through temporary dams, and fish screens on their upstream inverts. Flume pipes shall be sized to adequately handle at least a two-year storm event;
  - Use of cofferdams to isolate the area of alteration from flowing water in larger rivers, and in reservoirs, lakes, and ponds;
  - Use of pumps and hose lines to dewater standing water held behind cofferdams, and to dewater residual water and leaked water in isolated work areas. The rating, type, and location of all pumps and the intake and discharge positions of all hoses shall be identified and located on the revised site plans;

## Water Quality Certification for Transmittal Number X265051

- Use of appropriate energy dissipaters and erosion and sedimentation control best management practices at the discharge orifices of all bypass flume pipes and pump hoses;
- Treatment of pumped residual water prior to discharge back to resource areas. Techniques such as filter bags, frac tanks, and stilling basins shall be analyzed and specifically proposed;
- Salvage and translocation of sessile aquatic organisms (vertebrates, crayfish, freshwater mussels, etc.) stranded during dewatering;
- Structural and nonstructural best management practices to separate stormwater from the area of alteration during work and while the site is unstable; and
- Assurance that the substrate within each area of discharge is stable prior to the reestablishment of flow within it.

The Department advises that dewatering plans be designed according to *Stream Simulation: An Ecological Approach to Providing Passage for Aquatic Organisms at Road Crossings* (USDA Forest Service-National Technology and development Program 0877 1801-SDTDC, May 2008) (available at [http://www.nae.usace.army.mil/reg/Stream/USFS\\_StreamSimulationManual.pdf](http://www.nae.usace.army.mil/reg/Stream/USFS_StreamSimulationManual.pdf)). This document is very useful, even for projects not located in flowing streams.

### Stormwater Management

- 45) The project conditioned by this Certification is subject to the United States Environmental Protection Agency's (EPA) Construction General Permit (CGP) issued under the National Pollutant Discharge Elimination System (NPDES) (re-issued July 1, 2003). An electronic copy of the Notice of Intent submitted to the EPA per the CGP shall be provided to the Department at the time of filing. The Department reserves the right to inspect the Stormwater Pollution Prevention Plan (SWPPP) (which, in accordance with the CGP must be maintained on Site), and Notice of Termination (NOT) during compliance inspections conducted in accordance with Condition #13 of this Certification. Failure to comply with the Construction General Permit may constitute a violation of Condition #1 of this Certification, and may result in an enforcement action on the part of the Department, and possibly other regulatory agencies.

### Use of Herbicides to Control Invasive, Nonindigenous Plant Species

- 46) Should the permittee elect, or is required to use herbicides within any "Waters of the United States within the Commonwealth" per "Attachment D, Invasive Species Control Plan" (as included in "Connecticut Expansion Project, Section 401 Water Quality Certification, Transmittal Number X265051, Response to Additional Information Request Dated January 6, 2016), all such application shall be conducted in accordance with MGL Chapter 111, Section 5E, including any proposed usage in any Bordering or Isolated Vegetated Wetland. For most techniques, a BRP WM 04 Permit will be required for use of herbicides within any "Waters of the United States within the Commonwealth." In most cases, chemical treatments must be performed by an applicator currently licensed (in the aquatic weed category) by the Massachusetts Department of Food and Agriculture-Pesticide Bureau. Please contact Robert

Kubit, Division of Watershed Management, at the Department's Central Regional Office (1-508-767-2854) for additional information.

Pipe Testing Discharges

47) The permittee shall comply with the approved plans for the management of all discharges of residual water from pipe testing to ensure that those activities do not result in a discharge to Waters of the United States within the Commonwealth.

Section 61 Findings

See Attached Section 61 Findings

Appeal Rights

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

- a. The applicant or property owner;
- b. Any person aggrieved by this certification who has submitted written comments during the public comment period;
- c. Any ten (10) citizens of the Commonwealth pursuant to MGL c. 30A where a group member has submitted written comments during the public comment period; or
- d. Any governmental body or private organization with a mandate to protect the environment that has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) citizens of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to MGL c. 30A, § 10, a Notice of Claim to an Adjudicatory Hearing must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a Departmental Action Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Massachusetts Department of Environmental Protection  
Case Administrator  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Massachusetts Department of Environmental Protection  
Springfield State Office Building  
436 Dwight Street  
Springfield, MA 01103

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 4.10(3):

- a. The §401 Certification Transmittal Number and DEP Wetlands Protection Act File Numbers;
- b. The complete name of the applicant and address of the project;
- c. The complete name, address, and facsimile and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, facsimile and telephone numbers, and address of the attorney;
- d. If claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. A clear and concise statement that an adjudicatory hearing is being requested;
- f. A clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- g. A statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Massachusetts Department of Conservation and Recreation (when the Certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a Departmental Action Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts  
Department of Environmental Protection  
Commonwealth Master Lockbox  
Post Office Box 4062  
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing

authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

If you have further questions in regards to this Certification, please contact David Foulis at 1-413-755-2154.

Sincerely,

Bethany Card  
Deputy Commissioner

MassDEP  
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Certified Mail #7015 1660 0000 9069 4824, return receipt requested.

Mark Gardella, AECOM  
[mark.gardella@aecom.com](mailto:mark.gardella@aecom.com)

Dennis Lowry, AECOM  
[dennis.lowry@aecom.com](mailto:dennis.lowry@aecom.com)

Cori Rose, U.S. Army Corps of Engineers  
[Cori.M.Rose@usace.army.mil](mailto:Cori.M.Rose@usace.army.mil)

Sandisfield Conservation Commission  
[clare92@verizon.net](mailto:clare92@verizon.net)

Agawam Conservation Commission  
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Water Quality Certification for Transmittal Number X265051

Hilde Weisert

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