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March 6, 2024

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**Re: Comments on Proposed Wetland General Permit for Certain Minor Regulated Activities in Jurisdictional Wetlands
APA Project ID: GP2024G-1**

Dear Mr. Plante and Mr. Amos:

Protect the Adirondacks! Inc. ("PROTECT") is pleased to submit these comments on the proposal by the Adirondack Park Agency ("APA") to revoke APA General Permit GP2002G-3AAR and issue a new General Permit/Order 2024G-1 ("General Permit") concerning certain minor regulated activities in jurisdictional freshwater wetlands.

Background

According to the APA, the new General Permit will: (i) be available for use throughout the Adirondack Park; (ii) be effective from the date of issuance unless otherwise modified or revoked by the Agency; (iii) authorize jurisdictional activities involving wetlands pursuant to the Freshwater Wetlands Act (Environmental Conservation Law Article 24), the Adirondack Park Agency Act (Executive Law §§ 809(2)(a) and 810(1)) and the Agency's wetland regulations (9 NYCRR § 578.2(a)); (iv) allow for certain minor regulated activities in a freshwater wetland that involve no permanent wetland fills or involve minor fills with compensatory wetland mitigation; and (v) include relevant mitigating conditions and conclusions of law, as specified in the general permit.

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APA's proposal further states that each project certification issued pursuant to the General Permit will include standard conditions related to compliance with the approved project plans, documentation of site restoration, erosion and sediment control, invasive species spread prevention, and vegetative cutting. The certification will also include project-specific conditions regarding compensatory wetland mitigation and conditions related to wetland protections for the eligible regulated activities. APA will issue a signed certification approving the project within 10 business days of the site visit or when the application is deemed complete, whichever is later, for a project that meets the General Permit eligibility criteria.

PROTECT's comments are organized under the headings and in the order as they appear in the proposed General Permit.

Comments

Summary and Authorization

1. PROTECT supports the clarifications added to this section relating to applicability of terms and conditions of certificates issued pursuant to the General Permit and that the General Permit does not satisfy legal obligations of the applicant to comply with other federal, state and local laws and regulations.
2. In the current General Permit GP2002G-3AAR, this section includes a statement that the General Permit does not apply if the proposed project is subject to APA jurisdiction as a subdivision or new land use or development under APA Act sections 810 or 814; the project constitutes a "rivers project" under the New York Wild, Scenic and Recreational Rivers System Act; the project site is subject to the State Land Master Plan or a Unit Management Plan; the proposed activity is prohibited by a prior APA determination or permit; or the project requires a variance from the shoreline restrictions in section 806 of the APA Act. These exclusions from the General Permit applicability are not included in the proposed General Permit. PROTECT believes it is important to have these exclusions prominently stated in the first section of the General Permit and requests that APA retain this language from the existing General Permit. This section should also clearly state that a project that does not meet the Eligibility criteria below cannot apply for a certificate pursuant to the General Permit.
3. It is unclear what is meant by the statement in the last paragraph in this section that the General Permit "is in effect once recorded." We suggest changing this to state that the General Permit is in effect "upon approval by the Agency."

Jurisdiction

4. This section recites some of the criteria for regulated activities in wetlands requiring a permit under Section 809 of the APA Act and Part 578 of the APA regulations, including filling, excavating or draining a wetland and any activity that "substantially impairs" the functions or benefits of wetlands. However, this section is incomplete because it omits important categories of regulated activities as defined in Part 578 and fails to include

jurisdictional wetland activities under Section 810 of the APA Act, which requires a permit for any activity that “involves” wetlands. *See, e.g.*, Executive Law §§ 810(a)(1), 810(b)(1)(b), 810(c)(1)(b), 810(d)(1)(b), 810(e)(1)(b). This section must be modified to include all regulatory and statutory jurisdictional language or, in the alternative, specifically reference the applicable statutory provisions and the definition of “regulated activity” set forth in the regulations. 9 NYCRR § 578.3(n).

Eligibility

5. PROTECT supports the clarification in paragraph 3 in this section that the General Permit cannot be used for new installation of culverts in wetlands.
6. PROTECT suggest modifying paragraph 4 to by adding the following italicized language: “This general permit shall not be used for activities which *may potentially* result in adverse impacts to cultural, historic or archaeological resources, or to rare, threated or endangered species *or species of special concern or to the occupied habitat of such species.*” These modifications are necessary to exclude projects which may potentially result in adverse impacts to the named resources even though it has not been definitively shown that such impacts are certain to occur; to include species of special concern, which are also protected by law; and to include occupied habitat which is also protected by law. *See* 6 NYCRR §§ 182.2(b), 182.2(p), 182.2(v).

Regulated Activities Subject to this General Permit

7. In paragraph 1, PROTECT suggests that the first part of the third sentence be modified as follows: “Authorized utility lines include: pipes or pipelines for the transportation of gaseous, liquid or slurry substances *that are not fossil fuels or greenhouse gases;*” PROTECT believes that pipes and pipelines used to transport substances contributing to climate change should not be exempted from full regulatory review and cannot be exempted under section 7 of the Climate Leadership and Community Protection Act.
8. PROTECT supports the specification in paragraphs 2 (relating to installation of work pads, access or detour drives, or water control structures) and 7 (relating to access for survey and exploratory activities) that “temporary” means “lasting less than one year.”
9. PROTECT opposes the inclusion of paragraphs 5 and 6 to the extent that these allow for new projects (*e.g.*, “new culvert installations” and infrastructure widening and improvements to roads, bridges, driveways and trails) that create permanent wetland impacts. New activities that create permanent wetland impacts should not be allowed to proceed under a General Permit and instead should be subject to full APA permit review. Further, as described below, the language about “compensatory wetland mitigation” is inadequate.
10. The phrase “where compensatory wetland mitigation is addressed, as appropriate” is used in paragraphs 3 (relating to installation, replacement or repair of water control structures); 4 (relating to installation, replacement or repair of beaver control structures); and 5

(relating to culverts); 6 (relating to widening or minor improvements to lawfully existing roadways, bridges, driveways or trails). This phrase is vague and unclear. PROTECT suggests changing it to, “where compensatory wetland mitigation is completed as required by the applicable project-specific conditions in the certification.”

11. The term “wetland complex” is used in paragraphs 5 (relating to culvert removals, repairs, replacements and extensions) and 6 (relating to widening or minor improvements to lawfully existing roadways, bridges, driveways or trails). Specifically, paragraphs 5 and 6 allow these activities if they involve less than 300 square feet of permanent wetland excavation or fill “per wetland complex.” Because “wetland complex” is not defined in the General Permit or in statute or regulation, PROTECT suggests deleting the phrase “per wetland complex” and replacing it with “in a wetland.”
12. Paragraph 9 extends the General Permit to “installation of new fords involving less than 300 square feet of permanent wetland fill which do not involve a perennial stream on active farms for purposes of crossings by farm equipment or animals.” PROTECT opposes the addition of this new class of wetland fill activities to the General Permit without requiring compensatory wetland mitigation.

Application Review Process

13. The proposed General Permit eliminates the Eligibility Criteria set forth in paragraph 5 of the section entitled, “Procedures” in the existing General Permit. PROTECT opposes elimination of those criteria because they include specific determinations that must be made by APA staff prior to issuing a certification under the General Permit. Those criteria should be included in paragraph 3 of this section.

Findings of Fact

14. PROTECT has no comments on this section.

Conclusions of Law

15. Paragraph c of the Conclusions of Law should be modified to reflect the regulatory language and that APA has concluded in the General Permit that these regulated activities “will be consistent with the guidelines of 9 NYCRR 578.10 and are compatible with preservation of the entire wetland and not result in degradation or loss of any part of the wetland or its associated values.” APA should use the criteria applicable to the most protected class of wetlands (wetlands with a value rating of 1) since APA is not conducting an evaluation of each of the individual wetlands that will be impacted by these regulated activities. If an activity cannot satisfy the criteria applicable to value 1 wetlands, then it should not be eligible for permitting through the General Permit.

On behalf of the Board of Directors of Protect the Adirondacks, please let me express our gratitude for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with the first name "Chris" and last name "Amato" clearly distinguishable.

Christopher Amato
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