ATTACHMENT 4.A.Y. NYSDOT Guidance Regarding Maintenance Ditch Cleaning, Culvert Cleaning, Bank Stabilization and Scour Protection Activities Pursuant to Revisions of Section 404 Nationwide Permit Number 3 - Maintenance - September 14, 2000

1. Ditch Cleaning
   a. Highway drainage ditches originally constructed in upland areas are NOT considered Waters of the U.S., including wetlands, or subject to Section 404 jurisdiction, therefore maintenance cleaning of these ditches is not regulated and requires no coordination with the United States Army Corps of Engineers (USACE). Most NYSDOT maintenance ditch cleaning activities should fall into this category.
   
b. Highway drainage ditches originally constructed in wetlands or stream channels, connecting two or more wetlands or draining a wetland, are subject to Section 404 jurisdiction, however can be cleaned to original alignment and dimensions under Nationwide Permit Number 3 (attached), without notification to the USACE. Incidental fallback from the equipment bucket is not regulated, however no material may be side-cast or disposed-of in Waters of the U.S., including wetlands and all Section 404 general and regional conditions must be complied with in full (attached). A small to moderate number of NYSDOT maintenance ditch cleaning activities should fall into this category.
   
c. Modification of jurisdictional highway drainage ditches, as defined in 1.b., (ditches originally constructed in wetlands or connecting two wetlands, etc.) from original alignment or dimensions is jurisdictional under Section 404 and will require notification under NWP #3 to the USACE in accordance with general condition number 13 (see “Notification” below). Very few, if any, maintenance ditch cleaning activities should fall into this category.

2. Culvert Cleaning
   a. Removal of sediment from Waters of the U.S., including streams and wetlands, during culvert cleaning activities is not subject to Section 404 jurisdiction and therefore is not regulated if the work is accomplished by reaching from above with a gradall, back hoe, excavator, etc., and the activity does not result in the discharge of dredge or fill material or placement of equipment in Waters of the U.S., including wetlands. Incidental fallback of small amounts of sediment from the equipment bucket is not regulated, however sediment removed from the stream must not be side-cast or disposed-of in Waters of the U.S., including wetlands. Most NYSDOT maintenance culvert cleaning activities should fall into this category.
b. If equipment is placed or operated within Waters of the U.S., including streams or adjacent wetlands, the work is jurisdictional under Section 404, however the work can be done under NWP # 3 without notification to the USACE if:

- all work is limited to within 50 feet in any direction from the structure;
- excavation is limited to returning the stream dimensions to original width, depth and alignment;
- sediment removed from the stream is not pushed-up onto banks or side-cast into adjacent floodplains or wetlands;
- work is accomplished, to the extent practicable, during low flow conditions;
- there are no adverse impacts to federally-listed endangered or threatened species;
- there are no adverse effects to historic properties; and
- all other Section 404 general and regional conditions are complied-with in full.

A small to moderate number of NYSDOT maintenance culvert cleaning activities should fall into this category.

c. If equipment is placed or operated within Waters of the U.S., including streams or adjacent wetlands, and the work limits extend greater than 50 feet in any direction from the structure, the USACE must be notified in accordance with Section 404 general condition number 13. Few, if any NYSDOT maintenance culvert cleaning activities should fall into this category.

3. Bank Stabilization and Scour Protection

a. Placement (or replacement) of stone armoring, rip rap, etc. above ordinary high water is not jurisdictional under Section 404, is not regulated and therefore does not require notification to the USACE. Many NYSDOT bank stabilization and scour protection activities should fall into this category.

b. Replacement of “hard armoring” to original footprint below ordinary high water (minor deviations up to 10 linear feet beyond bridge abutments are allowed) is jurisdictional under Section 404, however is allowed under NWP #3 without notification to the USACE, provided that all Section 404 general and regional conditions are complied with in full. Most NYSDOT maintenance bank stabilization or scour protection activities should fall into this category.

c. Any increase in the footprint or placement of new “hard armoring” in excess of 10 linear feet beyond abutments should be evaluated for compliance with NWP #13 - Bank Stabilization or individual permit, as appropriate, and should not be permitted under NWP #3 - Maintenance. Only a small number of NYSDOT maintenance bank stabilization or scour protection activities should fall into this category.

4. Cofferdams
a. **Notification is required** for any work accomplished under NWP #3 which involves the discharge of dredged or fill material into waters of the U.S. for the purpose of creating temporary structures to facilitate work, such as cofferdams*, access/work pads, staging areas and similar fills. Only a small number of NYSDOT maintenance activities should fall under this category.

*Notification is NOT required* for utilization of temporary cofferdams in association with projects qualifying for NWP #3, provided the cofferdams consist of gravel bags, concrete jersey barrier, wood or metal sheet piling or water-filled bladders. Most NYSDOT maintenance projects requiring use of cofferdams should fall into this category.

5. **Notification**

At a minimum, notification must include:

- statement of why the work is necessary;
- a project location map;
- photos of the project area;
- the location of all waters of the US, including wetlands, within and adjacent to the proposed work limits (e.g. stream, vegetated islands and riparian wetlands);
- scaled drawings of the structure or ditch and proposed work limits (can be hand-drawn);
- description of the proposed project and scope of work;
- names of any federally affected endangered and threatened species;
- name and vicinity map of any affected historic properties;
- For activities involving removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previous existing depths and alignment, notification must include evidence of such depths and alignment. If this information is not available, the PCN must include evidence of the existing stream depths and alignment immediately outside the proposed work area; and,
- Name, address and phone number of NYSDOT contact person.

Any questions or comments regarding this guidance can be directed towards Kyle Williams (518/457-5566) or Kurt Weiskotten (518/485-5320) of the Water/Ecology Section of the Environmental Analysis Bureau.