



MEMORANDUM
DEPARTMENT OF TRANSPORTATION

DATE: February 19, 1997

TO: Regional Landscape/Environmental Managers, Regions 4, 5, 8, 11
Regional Environmental Contacts, Regions 1, 2, 3, 6, 7, 9, 10

FROM: G. R. McVoy, Environmental Analysis Bureau, 5-303 0473 

SUBJECT: DEC/DOT MOU REGARDING ECL ARTICLES 15 & 24

On February 12, 1997 Commissioner Daly and DEC Commissioner Cahill signed the Memorandum of Understanding Between the New York State Department of Environmental Conservation and the New York State Department of Transportation Regarding ECL Articles 15 and 24 (copy attached).

The MOU is effective February 12, 1997 and supersedes the 1977 Article 15 DEC/DOT MOU. Also attached for your information and use is a companion document entitled "General Guidance On NYSDOT/NYSDEC Memorandum of Understanding Regarding Article 15 and 24 Issues."

Pursuant to the MOU, NYSDOT does not need to obtain individual permits for projects regulated by ECL Article 15 Protection of Waters and 6 NYCRR Part 608. The MOU further streamlines use of the existing five Freshwater Wetlands Programmatic Permits and allows for the option of in-the-field authorization and issuance for Programmatic Permits 95-01 and 95-02. Programmatic Permits 95-03, 95-04, and 95-05 no longer require prior authorization provided that NYSDOT files a Notice of Intent with NYSDEC no later than 48 hours before actual construction work begins.

We are currently working with DEC to revise the Application/Authorization Form for Programmatic Permits 95-01 and 95-02 and to develop a Notice of Intent Form for Programmatic Permits 95-03, 95-04 and 95-05. We will get these forms to you as soon as possible. In the meantime, use the existing Application/Authorization Form for PPs 95-01 and 95-02.

MEMORANDUM OF UNDERSTANDING BETWEEN
THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION AND
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
REGARDING ECL ARTICLES 15 AND 24

DECEMBER, 1996

This Memorandum of Understanding (MOU) sets forth mutually agreeable understandings reached between the New York State Department of Transportation (NYSDOT) and the New York State Department of Environmental Conservation (NYSDEC) regarding Articles 15 and 24 of the Environmental Conservation Law (ECL).

Whereas, NYSDOT and NYSDEC have a common interest and obligation in protecting, enhancing, and facilitating access to important floral, faunal, aquatic and wetland resources while recognizing the importance of providing the public with adequate, safe, efficient, and environmentally sensitive transportation services at a reasonable cost to the people of the state;

Whereas, NYSDEC is adopting administrative and operational processes in order to reduce the need for strict oversight where applicants have demonstrated environmental awareness and compliance; and

Whereas, NYSDOT has trained environmental staff in each NYSDOT Region involved in the planning, design, construction and maintenance of transportation facilities and NYSDOT central office provides quality assurance and oversight;

Therefore, be it resolved that the two agencies agree to the following:

1. Effective with the date of the last signature on this MOU, NYSDOT staff will refer all applicable projects to the NYSDEC Regional Supervisor of Natural Resources for review under the provisions of Article 15 and projects covered by NYSDOT/NYSDEC Programmatic Freshwater Wetlands Permits. This will enable NYSDOT regional environmental staff to continue to coordinate directly with NYSDEC Regional Division of Fish, Wildlife and Marine Resources staff. Pursuant to this MOU, NYSDOT does not need to obtain individual permits for projects regulated by ECL Article 15 Protection of Waters and 6 NYCRR Part 608.

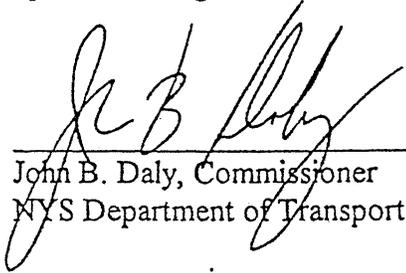
Individual Article 24, 401 Water Quality Certificate, and Wild, Scenic and Recreational Rivers permit applications will continue to be referred to the NYSDEC Regional Permit Administrator. NYSDOT will be obligated to conduct its own environmental screening of design and maintenance work proposals for NYSDEC jurisdiction and resource considerations. Results of this screening will be used as the basis for subsequent permit applications and coordination activities. NYSDEC technical assistance in these matters will be available as necessary.

NYSDOT staff will routinely consult with NYSDEC Fish, Wildlife and Marine Resources staff on wetland and stream classifications, fisheries concerns, time of year restrictions on in-stream work, in-stream and riparian habitat protection, erosion and sediment control, stormwater management and other water quality concerns.

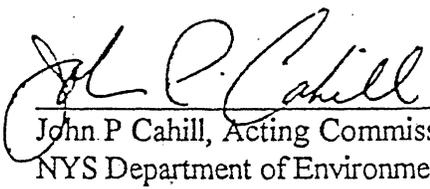
2. Each NYSDEC Regional Supervisor of Natural Resources or designee(s) shall function as the contact person(s) for program technical advice and coordination for Article 15 and Article 24 Programmatic Freshwater Wetlands Permit issues. The Regional Supervisor of Natural Resources shall coordinate, as appropriate, with other Division of Fish, Wildlife, and Marine Resources staff depending on the stream or wetland resources involved and, if needed, will provide NYSDOT environmental staff with written project specific conditions within 30 days to be incorporated into contract documents.
3. Programmatic Freshwater Wetlands Permits 95-03 Utility Line Installation and/or Repair, 95-04 Rehabilitation or Replacement of Existing Transportation Facilities W/O Wetland Fill, and 95-05 Clearing, Grubbing, Grading and Minor Fills Associated with Survey and/or Exploratory Activities shall no longer require prior authorization by NYSDEC before work is commenced pursuant to these permits provided NYSDOT submits a Notice of Intent to undertake such activities covered by the permit no later than forty-eight hours before actual construction work begins. NYSDOT must assure that work commenced pursuant to the permits does not exceed the prescribed thresholds, and NYSDOT must abide by the general conditions set forth in the permits.
4. Programmatic Freshwater Wetlands Permits 95-01 Bank and Channel Stabilization Activities Associated with Existing Transportation Facilities and 95-02 Minor Earth Fills Associated with the Rehabilitation or Replacement of Existing Transportation Facilities shall allow for the option of "in the field" authorization and issuance. That is, the designated NYSDEC Regional Fish, Wildlife and Marine Resources representative may authorize in writing the programmatic permit in the field during a site visit with NYSDOT staff providing that NYSDOT agrees to abide by the general conditions of the permit and any special written conditions decided upon in the field, including mitigation.
5. This MOU will be subject to annual joint review by NYSDEC Division of Compliance Services, NYSDEC Division of Fish, Wildlife and Marine Resources, and NYSDOT Environmental Analysis Bureau. As part of this review, NYSDOT shall provide statewide project information on NYSDOT's five-year capital program and will share information on the use of the five Programmatic Freshwater Wetlands Permits. NYSDOT will maintain a data base on the number of uses of each of the five Programmatic Freshwater Wetlands Permits.

6. Nothing in this MOU precludes the continuing exchange of information between the respective regional staffs. Joint meetings between NYSDEC Regional Permit Administrators, NYSDEC Regional Supervisors of Natural Resources, and NYSDOT Regional Environmental Contacts shall occur at least annually to discuss program, project, and process concerns.
7. This MOU does not relieve the NYSDOT of its obligations to obtain other permits required under ECL; to fully comply with any and all applicable requirements of the ECL and its implementing regulations; or to abide by other Letters of Agreement or MOUs which are in effect.
8. This MOU supersedes and replaces any prior NYSDOT/NYSDEC MOU or amendments thereto executed between the respective agencies on the scope of activities covered herein.

This MOU may be rescinded at any time upon 30 days notice from either party or may be modified upon mutual agreement.



John B. Daly, Commissioner
NYS Department of Transportation



John P. Cahill, Acting Commissioner
NYS Department of Environmental Conservation

2/12/97

Date

2/12/97

Date

**GENERAL GUIDANCE ON
NYS DOT/NYS DEC MEMORANDUM OF UNDERSTANDING
REGARDING ARTICLE 15 AND 24 ISSUES**

December, 1996

GENERAL GUIDANCE

NYS DOT environmental staff will continue to submit Individual Article 24 Wetlands Permit, Individual 401 Water Quality Certification, and Wild, Scenic and Recreational Rivers Permit applications to the NYS DEC Regional Permit Administrator.

Effective on the date of the last signature on the Memorandum of Understanding (MOU), Freshwater Wetlands Programmatic Permits 95-01 and 95-02 applications shall be submitted to the Supervisor of Natural Resources or designee(s) for authorization using the revised application/authorization form (copy attached). The NYS DEC Regional Supervisors of Natural Resources will provide their respective NYS DOT Regions with their names, addresses and phone numbers and those of their designees, if any, as soon as possible after the MOU is signed.

For uses of Freshwater Wetlands Programmatic Permits 95-03, 95-04, and 95-05, no application form shall be submitted and no prior authorization shall be required. However, so that NYS DEC knows that construction is about to begin, NYS DOT shall submit to the Regional Supervisor of Natural Resources a Notice of Intent no later than 48 hours before the start of actual construction. This will assist NYS DEC in responding to public inquiries about the project.

PROJECT SCREENINGS

Pursuant to the NYS DOT Environmental Procedures Manual, NYS DOT regional environmental staff will conduct office and field screenings to verify the presence or absence of state regulated freshwater wetlands, protected streams or navigable waters within or adjacent to the limits of projects involving regulated activities, e.g., ground disturbance, in-stream work or projects resulting in a temporary or permanent direct discharge to a surface water.

Office screenings will include the review of USGS topographic maps, NYS DEC freshwater wetlands maps, county soil surveys, and NWI maps, where available. Field screenings will involve site walkovers focusing on obvious and potential wetlands, protected streams and navigable waters. The results of the screenings will be used by NYS DOT staff to determine the need for wetland delineations (pursuant to the NYS DEC/NYS DOT MOU on Wetland Delineations), to select the appropriate Article 24 permit type (either individual or programmatic); and to determine the need for further Article 15 coordination.

DATA EXCHANGE

To the maximum extent practicable, NYSDEC and NYSDOT should share paper map, GIS, and technical data sets to facilitate efficient and timely jurisdictional determinations and resource protection. Shared data sets should include stream and wetland classifications, species-specific time of year in-stream restrictions, and fish community information.

PERIODIC MEETINGS

The Regional Supervisors of Natural Resources and the Regional Permit Administrators shall jointly set up a meeting, at least annually, and more frequently if necessary, with each of their respective NYSDOT Regions. The meeting(s) should address the following:

- * NYSDOT's upcoming five-year Capital program, including discussion of project specific stream and wetland concerns
- * Reviewing upcoming maintenance projects, including emergency maintenance contracts
- * Reviewing experiences of the past construction season, including interagency construction coordination
- * Updating lists of contact persons - names, mail and e-mail addresses, phone and fax numbers
- * Reviewing wetland delineations
- * Evaluating turn around times for permit reviews and approvals
- * Exchanging data on the number of uses of each Programmatic Freshwater Wetlands Permit
- * Exchanging data on and lessons learned from violations that may have occurred
- * Discussing and implementing opportunities to improve coordination, communication, resources protection and enhancements, and administrative processes.

A record of meeting results should be provided by the NYSDEC Supervisors of Natural Resources/Regional Permit Administrators to Division of Compliance Services with copies to the involved NYSDOT Regional Environmental Contacts and NYSDOT Environmental Analysis Bureau.



PART 1—APPLICATION by the New York State Department of Transportation for Authorization to use NYSDEC Freshwater Wetlands Programmatic Permits. Application pursuant to DEC/DOT MOU Regarding ECL Articles 15 and 24.

INSTRUCTIONS: Please fully complete Part 1 of this form. One form per project may be used, with the appropriate boxes checked to indicate the programmatic permit(s) being applied for. One set of project plans and a location map must be submitted for each project. Use of the programmatic permit(s) is not authorized until Part 2 is signed and returned by the DEC Regional Supervisor of Natural Resources.

PROGRAMMATIC PERMIT(S) BEING APPLIED FOR:

- PP 95-01 Bank and Channel Stabilization Activities Associated with Existing Transportation Facilities .
DEC #0-0000-01129/00001-9
- PP 95-02 Minor Earth Fills Associated with the Rehabilitation or Replacement of existing Transportation
Facilities DEC #0-0000-01132/00001-9

Official Project Title _____

PIN Number _____ BIN Number _____

Project Location Including County and Town _____

NYTM Coordinates NYTM-E _____ NYTM-N 4 _____

USGS Quadrangle Map Name _____

NYSDEC Wetland Number _____

Description of Project _____

Estimated Start Date _____ Completion Date _____

NYSDOT Contact Person/Title/Telephone Number/NYSDOT Region Number and Address



NOTICE OF INTENT by the New York State Department of Transportation to use NYSDEC Freshwater Wetlands Programmatic Permits. Notice of Intent pursuant to DEC/DOT MOU Regarding ECL Articles 15 and 24.

INSTRUCTIONS: Please fully complete this form. One form per project may be used, with the appropriate boxes checked to indicate the programmatic permit(s) to be used. One set of project plans and a location map must be submitted for each project. Use of the programmatic permit(s) is not authorized unless this Notice has been submitted to the DEC Regional Supervisor of Natural Resources at least 48 hours before the actual start of construction.

PROGRAMMATIC PERMIT(S) BEING APPLIED FOR:

- PP 95-03 Utility Line Installation and/or Repair DEC #0-0000-01133/00001-9
- PP 95-04 Rehabilitation or Replacement of Existing Transportation Facilities (requiring no configuration or alignment changes or earth fill in wetlands or adjacent areas)
DEC #0-0000-01130/00001-9
- PP 95-05 Clearing, Grubbing, Grading and Minor fills Associated with Survey and/or Exploratory Activities DEC #0-0000-01131/00001-9

Official Project Title _____

PIN Number _____ BIN Number _____

Project Location Including County and Town _____

NYTM Coordinates NYTM-E _____ NYTM-N 4 _____

USGS Quadrangle Map Name _____

NYSDEC Wetland Number _____

Description of Project _____

Estimated Start Date _____ Completion Date _____

NYSDOT Contact Person/Title/Telephone Number/NYSDOT Region Number and Address

