

PUBLIC NOTICE OF PROPOSED CWA § 401 CERTIFICATION

by the

SENECA NATION ENVIRONMENTAL PROTECTION DEPARTMENT

Background: On February 15, 2022, the Seneca Nation (Nation) received a completed “Permit Application for Construction Projects Within Waterways” (CPWW) from the National Fuel Gas Supply Corporation of Erie, Pennsylvania, regarding the proposed exposure/replacement of approximately 240 feet of existing 8-inch steel natural gas distribution pipeline (PY2 Project). The PY2 Project also requires a permit under Section 404 of the federal Clean Water Act (CWA), which in turn requires certification under CWA § 401 by the Seneca Nation as to whether the PY2 Project will comply with the Nation’s water quality requirements. Pursuant to CWA § 401, the Seneca Nation Environmental Protection Department (EPD) seeks public and agency comment regarding its proposed certification of the CWA § 404 permit at issue here.

CWA § 401 Water Quality Certification: Under CWA § 401, a federal agency may not issue a permit or license to conduct any activity which may result in any discharge into waters of the United States unless a Section 401 water quality certification is issued or waived by the state or authorized tribe where the discharge will originate. The Nation was approved to administer a CWA § 401 program on March 12, 2021. Examples of federal permits and licenses requiring certification include the CWA §§ 402 and 404 permits issued by the EPA and the U.S. Corps of Engineers, respectively.

The PY2 Project: The PY2 Project in part proposes streambank stabilization measures of a portion of Clear Creek and an adjacent, unnamed tributary, both of which are located southwest of Lenox Road within the Cattaraugus Territory of the Seneca Nation in Erie County, New York. The approximate latitude/longitude of this location is 42.518538, -78.946152. The Project—identification no. LRB-1999-02373—is anticipated to proceed under the CWA § 404 Nationwide Permits (NWP) 3 and/or 13 (yet to be determined). Although the PY2 Project commenced last year (2021), the expiration and reissuance of the NWPs, effective February 25, 2022, necessitates a new project-specific CWA § 401 certification.

Public Comment Period: Pursuant to CWA § 401(a)(1), the public comment period for the proposed CWA § 401 certification of the PY2 Project by the EPD is thirty (30) days from the date of publication of this notice in the SNI Newsletter (Community News Section) and other publicly available locations. Agency representatives and members of the public are encouraged to submit written comments to the EPD, by 4:30pm on May 12, 2022, as follows:

- by email at epd@sni.org or
- by USPS mail to the Seneca Nation Environmental Protection Department, 84 Iroquois Drive, Irving NY 14081, Attention: Water Program Manager

Copies: A copy of the PY2 CPWW Application (which provides information regarding the PY2 Project) is available under the “documents” tab at the EPD website, here: <https://sni.org/community-services/environmental-protection/> or may be requested by contacting the email shown above, with the title, “Request for Copy of PY2 CPWW Application” in the subject line.