



November 18, 2019

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*Sent via U.S. mail and electronic mail to Naomi.J.Handell@usace.army.mil*

**Re: Transcontinental Gas Pipe Line Company's Ocean Placement Request,  
Supplemental Public Notice No. NAN-2016-00908-A-EHA**

Dear Ms. Handell:

Thank you for the opportunity to comment on Transcontinental Gas Pipe Line Company's ("Transco") Ocean Placement Request (the "Request"), which seeks to place 735,000 cubic yards of contaminated dredged material generated from construction of the Northeast Supply Enhancement project (the "Project" or "Williams pipeline") at the Historic Area Remediation Site (the "HARS").

We write on behalf of the Natural Resources Defense Council (NRDC) to raise some concerns about the proposed activity. Primarily, we believe that dumping dredged material from the Project area would unreasonably degrade the environment and ecological systems, causing unacceptable adverse effects on the ecological, recreational, and economic values of the surrounding waters. For this reason and because there are alternative methods of disposal available, the U.S. Army Corps of Engineers (the "Corps") should deny Transco's ocean placement request.

Our comments are divided into three parts. Part I provides some relevant background information intended to place this Project into proper context. Part II sets forth why we believe the Corps should deny Transco's request—namely, that the dumping of contaminated sediment at the HARS would harm the marine environment, reducing the ecological, recreational, and economic values of the surrounding waters. Finally, Part III requests that the Corps enhance the public comment process to ensure meaningful participation by the public and affected community members by extending the public comment period and holding a public hearing.

**I. Background**

**A. *The Natural Resources Defense Council***

The Natural Resources Defense Council is an international, nonprofit environmental organization with more than three million members and online activists, including nearly 130,000 in New York State and over 76,500 members and activists in New Jersey. For five

decades, NRDC has been committed to the preservation, protection, and defense of the environment, public health, and natural resources.

NRDC has a long history of litigating and advocating for clean water at both the federal level and in New York State. In 1972, for example, it helped enact the Clean Water Act, America's bedrock water-protection law, and most recently, in 2015, NRDC was a principal advocate for the issuance of the Clean Water Rule, which returned guaranteed protections under the Clean Water Act to hundreds of thousands of miles of streams and tens of millions of acres of wetlands across the country. In New York, NRDC has for more than 25 years been a principal advocate for pollution prevention and watershed protection for the Catskill and Delaware watersheds and the New York-New Jersey Harbor Estuary. In the 1990s, NRDC brought federal Clean Water Act litigation that led to the establishment of total maximum daily load (TMDL) pollution standards in New York's upstate reservoirs and other state waterbodies. NRDC has also been a key advocate since the 1970s for a full cleanup of toxic PCBs from the Hudson River.

### ***B. Transco's Proposal***

In accordance with Section 103 of the Marine Protection, Research, & Sanctuaries Act of 1972,<sup>1</sup> Transco requests a permit from the Corps to dump 735,000 cubic yards of dredged material at the HARS. This material would be dredged from the Project area for Transco's proposed new 26-inch-diameter fracked gas pipeline, the Williams pipeline.

The Williams pipeline is an expansion of the Transco Pipeline, a fracked gas pipeline that runs from Texas to New York City. The almost \$1 billion project is owned by Williams Partners, L.P. ("Williams"), one of the largest natural gas pipeline companies in the United States. The proposed pipeline facilities are divided into three sections—one of which, the Raritan Bay Loop, would cross offshore through New Jersey (for 6 miles), and New York State (for 17.3 miles). In New Jersey, the offshore portion of the Raritan Loop would be sited off the shores of Middlesex and Monmouth Counties, through Raritan Bay. In New York, the pipeline would be sited offshore in Queens and Richmond Counties, just south of Staten Island, Coney Island, and the Rockaways, through three connected waterbodies—Raritan Bay, Lower New York Bay, and the New York Bight section of the Atlantic Ocean.<sup>2</sup> The Williams pipeline would then connect to an existing offshore pipeline, the Rockaway Delivery Lateral, at a location known as the Rockaway Transfer Point in Queens, New York.

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<sup>1</sup> 33 U.S.C. § 1413.

<sup>2</sup> Federal Energy Regulatory Commission, Northeast Supply Enhancement Project - Final Environmental Impact Statement, Docket No. CP17-101-000, at 4-50 (2019) [hereinafter "EIS"].

### *C. Statutory Framework*

The Marine Protection, Research, and Sanctuaries Act prohibits the dumping of materials into the ocean except as authorized by the U.S. Environmental Protection Agency (“EPA”) or, in the case of dredged materials, by the Corps. Neither EPA nor the Army Corps may issue an ocean dumping permit unless they first determine that “such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.”<sup>3</sup>

The main two criteria used to determine whether or not to grant a request for ocean dumping include: (1) the environmental impact criteria and implementing regulations (as outlined by the EPA); and (2) if the dumping will occur at a designated site, the specific requirements for the designated disposal site.<sup>4</sup>

The EPA has adopted criteria for reviewing and evaluating permit applications. 40 CFR Section 227.6(a) lists “constituents” that are prohibited from being placed in the ocean except in “trace” amounts in material otherwise suitable for dumping. In accordance with section 227.6(b) of the regulations, these listed constituents are considered to be present at “trace” levels only when they are present in such forms and amounts that the “dumping of the materials will not cause significant undesirable effects, including the possibility of danger associated with their bioaccumulation in marine organisms.” These listed contaminants include, among other things, mercury, cadmium, and known and suspected carcinogens.<sup>5</sup>

In deciding whether or not to grant a request for ocean placement, the Army Corps can deny an application if it can be shown that (1) there is no demonstrated need for the dumping and alternative means of disposal are available, or (2) there are unacceptable adverse effects on aesthetic, recreational or economic values, or (3) there are unacceptable adverse effects on other uses of the ocean.<sup>6</sup> In making its determination, the Corps should consider the probable impacts on the public interest, effects on wetlands, fish and wildlife, water quality, coastal zone management programs and federal, state or local requirements, environmental benefits, and economics.<sup>7</sup>

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<sup>3</sup> 33 U.S.C. § 1412(a), § 1413(b).

<sup>4</sup> 40 C.F.R. § 227.1(a).

<sup>5</sup> 40 C.F.R. § 227.6.

<sup>6</sup> *See* 40 C.F.R. §§ 227.15 – 22.

<sup>7</sup> 33 C.F.R. § 320.4.

***D. Raritan Bay, Lower New York Bay, and the New York Bight***

The Williams pipeline would cross three important waterbodies in New York—Raritan Bay, Lower New York Bay, and the New York Bight—and most of the sediment dredged up from construction will be dumped at the HARS, located in the New York Bight. Both Raritan Bay and the Lower New York Bay are part of the New York-New Jersey Harbor Estuary (the “Harbor”), which opens onto the New York Bight in the Atlantic Ocean to the southeast. The Bight and the Harbor constitute two inextricably linked ecosystems<sup>8</sup>—collectively, these bodies of water provide important ecological services, host endangered and threatened species, and support a wide variety of recreational activities.<sup>9</sup> And while the New York-New Jersey Harbor and the New York Bight have historically been contaminated with toxic chemicals including heavy metals, PCBs, and dioxins, these interconnected bodies are on a path to ecological recovery. As New Jersey has previously noted, “[t]he NY Bight and NY-NJ Harbor are resources of overriding public importance, sustaining commercial and recreational pursuits of a resident population approaching 20 million, the densest in the nation.”<sup>10</sup>

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<sup>8</sup> *New York Bight Restoration Plan Report to Congress 4* (1993), available at <https://www.nj.gov/dep/passaicdocs/docs/NJDOTSupportingCosts/NY%20BightRestorPlan-ReporttoCongress.pdf> [hereinafter “New York Bight Restoration Plan”].

<sup>9</sup> Judith M. O’Neil et al., *New York Harbor: Resilience in the face of four centuries of development*, *Regional Studies in Marine Science*, *passim* (June 16, 2016), <https://par.nsf.gov/servlets/purl/10021363>.

<sup>10</sup> New York Bight Restoration Plan, *supra* note 8, at 1.



Figure 1. New York Bight Apex, New York/New Jersey Harbor Complex.  
 Source: Helen Grebe, New York Bight Water Quality Monitoring Program, USEPA Region 2 Division of Environmental Science, available at <https://www.state.nj.us/dep/wms/Grebe%20-%20EPA%20WO%20Monitoring.pdf>.

Since the beginning of the nineteenth century, pollution, sewage, solid waste, and, eventually, industrial chemical contamination increasingly debilitated the health of New York Harbor and the New York Bight.<sup>11</sup> As a result of severe pollution, both uses of ocean waters were impaired and native ecosystems were depleted—for example, phytoplankton blooms were prolific, depriving the ecosystem of oxygen to support fish and other wildlife; pollution washed up on ocean beaches; beaches and shellfish areas closed due to pathogenic contamination; and

<sup>11</sup> O’Neil et al., *supra* note 9, at 276; New York Bight Restoration Plan, *supra* note 8, at S-1.

marine fish and other wildlife populations changed their navigation patterns.<sup>12</sup> Notably, three toxicants (mercury, PCBs, and dioxin) were found in fish at levels that exceeded today’s limits.<sup>13</sup> More recently, copper has been noted as an additional toxicant of particular concern.<sup>14</sup> From 1990 to 1997, dredged material from the New York-New Jersey Harbor represented “a significant source of toxicant inputs to the NY Bight.”<sup>15</sup>

In the past 50 years, the health of the Harbor has improved tremendously—this is in large part due to the implementation of the Clean Water Act of 1972, the cessation of sewage sludge dumping in the NY Bight Apex in 1987, and significant investment from New Jersey, New York State, City of New York, local non-profit organizations, and private citizens.<sup>16</sup>

Thanks to these efforts, New York Harbor is the healthiest it has been in over a century.<sup>17</sup> Improvements in water quality, increased diversity of marine life, and enhanced access to the shoreline have all contributed to a revitalization of recreational activities in the New York Harbor.<sup>18</sup> Between 2009 and 2014, over 500 acres of the waterfront were opened to the public in the form of parks or public spaces,<sup>19</sup> and by 2016, approximately 37 percent of the Harbor shoreline was estimated to serve as parks or public waterfront spaces, totaling 41,078 acres.<sup>20</sup> As demonstrated by Figure 2 below, along the southern shoreline of Staten Island, the southwestern shoreline of Brooklyn, and the western shoreline of the Rockaway neighborhood in Queens, a majority of shoreline is designated public space.<sup>21</sup> National Park sites in New York Harbor alone received 16,090,450 visitors who spent \$559,169,600 in communities near the parks.<sup>22</sup>

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<sup>12</sup> New York Bight Restoration Plan, *supra* note 8, at S-1.

<sup>13</sup> *Id.*, at S-3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at S-4.

<sup>16</sup> *Id.*, at S-2; O’Neil et al., *supra* note 9, at 278, 281, 283.

<sup>17</sup> New York City Office of the Mayor, *New York Harbor: Healthier Than It’s Been in More Than a Century* (Dec. 7, 2017), <https://www1.nyc.gov/office-of-the-mayor/news/753-17/new-york-harbor-healthier-it-s-been-more-century>.

<sup>18</sup> New York-New Jersey Harbor & Estuary Program, *Connecting with Our Waterways: Public Access and its Stewardship in the New York-New Jersey Harbor Estuary* ii (2016), available at <https://www.nrs.fs.fed.us/pubs/50713> [hereinafter “*Connecting with Our Waterways*”]

<sup>19</sup> *Id.*

<sup>20</sup> O’Neil, *supra* note 9, at 10.

<sup>21</sup> *Connecting with Our Waterways*, *supra* note 18, at ii.

<sup>22</sup> National Park Service, National Parks of New York Harbor, *Tourism to National Parks of New York Harbor creates \$714,149,200 in Economic Benefits*, April 29, 2016, [https://www.nps.gov/nph/learn/news/vis\\_spending\\_2015.htm](https://www.nps.gov/nph/learn/news/vis_spending_2015.htm).

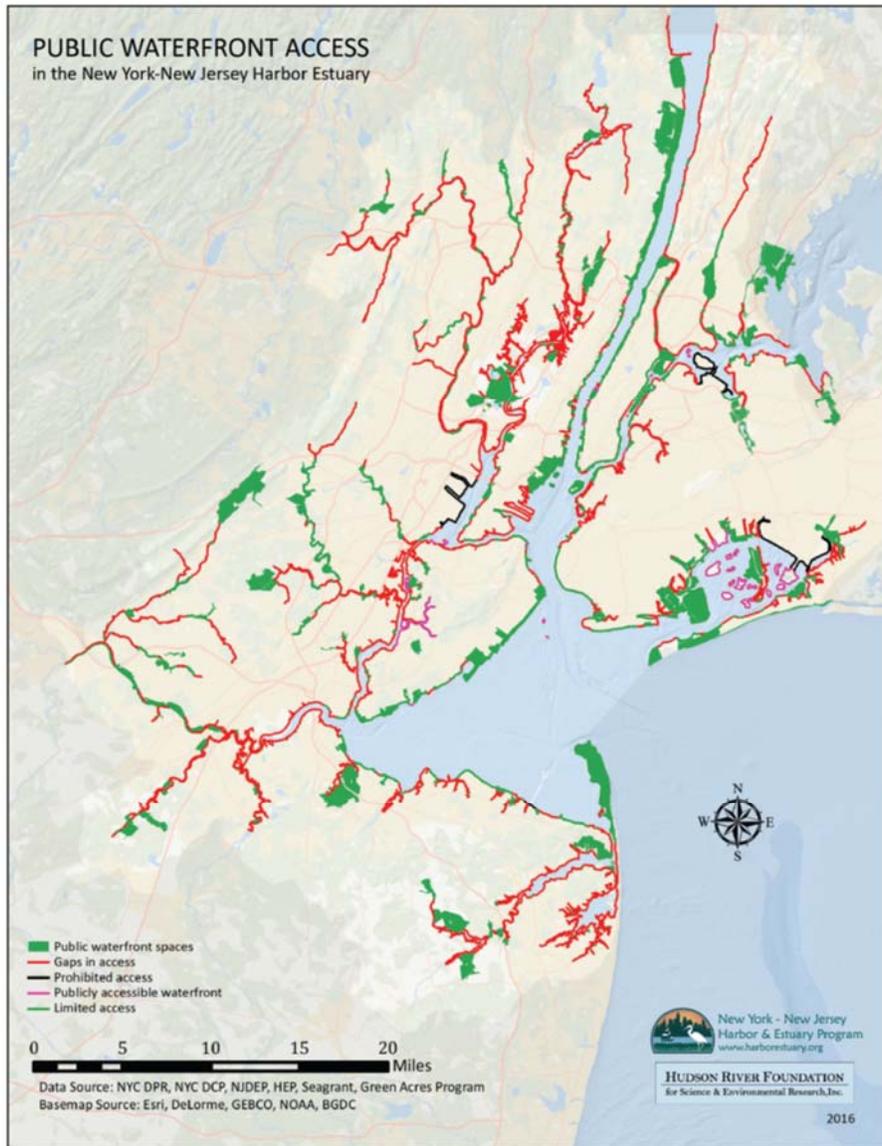


Figure 2: While large publicly-accessible waterfront spaces were found throughout the region, long stretches of gaps in access remain in many areas.

Source: Connecting with Our Waterways, *supra* note 18, at 4.

The Harbor itself also serves as a recreation area for public and private boating activities, such as rowing, kayaking, canoeing, and sailing.<sup>23</sup> Recreational and sport fishing are also popular recreational activities in the Project Area, as are whale watching and scuba diving.<sup>24</sup> The pipeline's workspace would cross through three New Jersey Department of Environmental

<sup>23</sup> O'Neil, *supra* note 9, at 10.

<sup>24</sup> EIS, *supra* note 2, at 4-265.

Protection-designated sport ocean fishing grounds in New York: the Gong Grounds, Tin Can Grounds, and Ambrose Channel Grounds.<sup>25</sup> In 2015, 3.2 million saltwater recreational angler trips took place off the shores of New York.<sup>26</sup>

New York Harbor and the Atlantic Bight are also home to a diverse collection of aquatic species.<sup>27</sup> According to a study by the NY-NJ Harbor & Estuary Program, the estuary now supports more than 200 fish species.<sup>28</sup> Seasonal nutritional upwellings in the estuary support a high volume of algae, phytoplankton, and zooplankton, which in turn support a high variety of aquatic species, including the blue crab,<sup>29</sup> ribbed mussel,<sup>30</sup> Shortnose Sturgeon,<sup>31</sup> bottlenose dolphin,<sup>32</sup> and the harbor seal.<sup>33</sup> The Raritan Bay has such a diverse array of habitats that support regionally rare and important marine, estuarine, and anadromous species, that the U.S. Fish and Wildlife Service designated parts of the Bay as the Raritan Bay-Sandy Hook Bay Significant Habitat Complex.<sup>34</sup>

Of these over 200 fish species, essential fish habitat (“EFH”) is designated for 33 species in the area. Four fish species (Atlantic sturgeon, shortnose sturgeon, cusk, oceanic whitetip shark), are federally or state-listed as threatened or endangered,<sup>35</sup> and eight species (alewife, blueback herring, rainbow smelt, warsaw grouper, cusk, Atlantic bluefin tuna, dusky shark, and sand tiger shark) are listed as “species of concern” by the National Marine Fisheries Service. Three of these species of concern (Atlantic bluefin tuna, dusky shark, and sand tiger shark) have designated essential fish habitat in the Harbor.<sup>36</sup>

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<sup>25</sup> *Id.* at 4-100, 4-265 – 4-266.

<sup>26</sup> *Id.* at 4-265.

<sup>27</sup> O’Neil, *supra* note 9, at 282; U.S. Army Corps of Engineers, New York District, *Site Management and Monitoring Plan for the Historic Area Remediation Site 21* (2010), [https://www.epa.gov/sites/production/files/2015-10/documents/r2\\_hars\\_smp\\_3-10\\_final.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/r2_hars_smp_3-10_final.pdf).

<sup>28</sup> New York-New Jersey Harbor & Estuary Program, *The State of the Estuary 3* (2018), available at <https://www.hudsonriver.org/NYNJHEPStateoftheEstuary.pdf> [hereinafter “*State of the Estuary*”].

<sup>29</sup> National Oceanic and Atmospheric Administration, Significant Habitats and Habitat Complexes of the New York Bight Watershed – Lower Hudson River Estuary 4 (2011) available at [https://www.nodc.noaa.gov/archive/arc0034/0071981/1.1/data/1-data/disc\\_contents/document/wp/low\\_hud.pdf](https://www.nodc.noaa.gov/archive/arc0034/0071981/1.1/data/1-data/disc_contents/document/wp/low_hud.pdf).

<sup>30</sup> New York-New Jersey Harbor & Estuary Program, Hudson-Raritan Estuary Comprehensive Restoration Plan 37, 82 (2016), available at <http://www.harborestuary.org/watersweshare/pdfs/CRP/FinalReport-0616.pdf>.

<sup>31</sup> *Id.*

<sup>32</sup> D. F. Squires & J. S. Barclay, New York-New Jersey Harbor & Estuary Program, *Nearshore Wildlife Habitats and Populations in the New York/New Jersey Estuary* 92 (1990), available at <http://www.harborestuary.org/pdf/NearshoreWildlife1990.pdf>.

<sup>33</sup> *Id.*

<sup>34</sup> EIS, *supra* note 2, at 4-98.

<sup>35</sup> *Id.* at 4-162.

<sup>36</sup> *Id.* at 4-103.

Sixteen species of marine mammals, consisting of 13 species of cetaceans (i.e., whales, dolphins, and porpoises) and 3 species of pinnipeds (i.e., seals) also use the NY-NJ Harbor and New York Bight during the year. Of these species, six (blue whale, sei whale, sperm whale, North Atlantic right whale, fin whale)<sup>37</sup> are federally or state-listed as threatened or endangered.<sup>38</sup>

In addition, five species of sea turtles have the potential to occur within the NY-NJ Harbor and New York Bight, all protected under the Endangered Species Act. These include the green, Kemp's ridley, leatherback, loggerhead, and hawksbill sea turtles.<sup>39</sup>

The New York Harbor Estuary also supports benthic species such as clams, oysters, and mollusks that provide important ecosystem services such as water filtration, three-dimensional habitats for other species like fish and anemones, stabilize shorelines from erosion, and absorb large waves.<sup>40</sup>

The New York Bight Apex serves a transitional region for many species of fish and shellfish. The area is occupied by many fish species. Fish such as the silver, red, and spotted hake; yellowtail, summer, winter, windowpane, four spot, and gulf stream flounder; cod; black sea bass; little skate; spiny dogfish; northern and striped sea robin; sea raven; Butterfish; Atlantic Herring; Bluefish; Weakfish; American Shad; Alewife; and Striped Bass; and shellfish such as the Surf Clam, Sea Scallop, American Lobster, Long-finned Squid, Rock Crab, Horseshoe Crab, Short-finned Squid, and Jonah Crab all inhabit the New York Bight.<sup>41</sup> The New York Bight also serves as spawning grounds for many economically important species and as nursery grounds for their early development stages.<sup>42</sup>

Despite the tremendous progress that has been made in the New York-New Jersey Harbor, as the oldest industrial watershed in the country, the sediments in the Harbor are “moderately to severely contaminated with a variety of industrial pollutants and the majority are no longer considered suitable for ocean disposal.”<sup>43</sup>

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<sup>37</sup> *Id.* at 4-162.

<sup>38</sup> *Id.* at 4-104.

<sup>39</sup> *Id.* at 4-106.

<sup>40</sup> *State of the Estuary, supra* note 28, at 31.

<sup>41</sup> U.S. Army Corps of Engineers, New York District, *Site Management and Monitoring Plan for the Historic Area Remediation Site 21* (2010), [https://www.epa.gov/sites/production/files/2015-10/documents/r2\\_hars\\_smp\\_3-10\\_final.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/r2_hars_smp_3-10_final.pdf).

<sup>42</sup> *Id.*

<sup>43</sup> W. Scott Douglas, et al., *A Comprehensive Strategy For Managing Contaminated Dredged Materials In The Port Of New York And New Jersey* (2004), <https://www.state.nj.us/transportation/freight/maritime/pdf/compstrategy.pdf>.

***E. The HARS***

As the Corps is well-aware, the HARS is a 15.7 square nautical mile area located approximately 3.5 nautical miles east of Highlands, New Jersey and 7.7 nautical miles south of Rockaway, Long Island.<sup>44</sup>

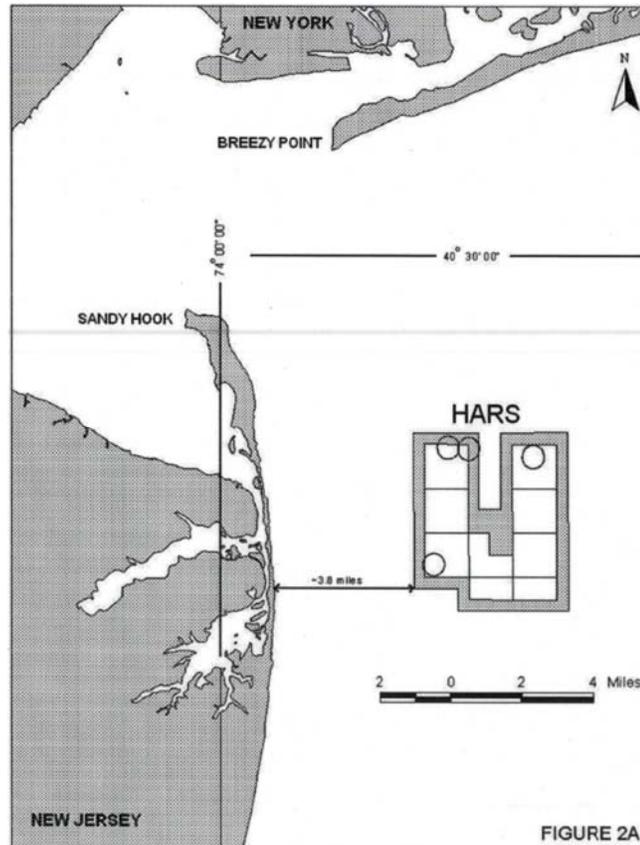


Figure 3. Map of the HARS

Source: U.S. Army Corps of Engineers, Public Notice: Sandy Hook Channel, New York Harbor Federal Navigation Project Maintenance Dredging, Public Notice No. NY HARBOR, SHC 13 (May 3, 2013), <https://www.nan.usace.army.mil/Portals/37/docs/harbor/Pubnot/Sandy%20Hook%20Channel%2713%20Public%20Notice.pdf>.

<sup>44</sup> 40 C.F.R. § 228.15.

From the mid-1800s to 1914, the area was used as a dumping ground for waste such as garbage, city refuse, cellar dirt (natural rock and soil excavated during building construction), floatable materials, and sediments derived from dredging during the maintenance, deepening, and construction of new navigation channels in New York Harbor.<sup>45</sup> From 1914 until 1977, the area was used as a “mud dumping ground,” with over 200 million cubic yards of dredged material deposited from navigational dredging projects deposited there—so much that significant mounding occurred in the area.<sup>46</sup> In 1984, EPA officially designated the site as a dredged material ocean disposal site, referring to it as the “Mud Dump Site” (MDS).<sup>47</sup>

By September 1997, it became clear the use of the area as a dumping ground was harming the ocean ecosystem; dangerously high levels of dioxin were found in aquatic worms, and nearby lobster stocks were discovered with abnormally high levels of TCDD/PCBs.<sup>48</sup> In response, the EPA de-designated and terminated the use of the MDS and simultaneously re-designated the site and surrounding areas that had been historically used for dredged material disposal as the Historic Area Remediation Site (HARS).<sup>49</sup> The purpose behind the creation of a remediation site was that the HARS would be capped using clean dredged material, which would help reduce harm caused by exposure of wildlife to the contaminated waste below.<sup>50</sup>

## II. The Corps Should Deny Transco’s Request

In support of NRDC’s request that the Corps deny Transco’s ocean placement request, NRDC makes two arguments. First, dumping would unreasonably degrade or endanger the marine environment, ecological systems, and economic potentialities such that it would lead to unacceptable adverse effects on ecological, recreational, and economic values to the New York Bight and surrounding waters. Second, as disclosed in the Project’s Environmental Impact Statement, an alternative means of disposal is available.

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<sup>45</sup> U.S. Army Corps of Engineers, New York District, *Historic Area Remediation Site (HARS)* (last visited Nov. 18, 2019), <https://www.nan.usace.army.mil/Missions/Navigation/Historic-Area-Remediation-Site-HARS/> [hereinafter U.S. Army Corps of Engineers, *HARS*].

<sup>46</sup> *Id.*; New York State Department of Environmental Conservation, Draft Comprehensive Wildlife Conservation Strategy 126 (2005), [https://www.dec.ny.gov/docs/wildlife\\_pdf/cwcs2005.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/cwcs2005.pdf).

<sup>47</sup> U.S. Army Corps of Engineers, *HARS*, *supra* note 45.

<sup>48</sup> *Id.*

<sup>49</sup> 40 C.F.R. § 228.15(d)(6); *see* 62 Fed. Reg. 46142 (29 August 1997); 62 Fed. Reg. 26267 (13 May 1997).

<sup>50</sup> U.S. Army Corps of Engineers, New York District, *Site Management and Monitoring Plan for the Historic Area Remediation Site 2* (2010), [https://www.epa.gov/sites/production/files/2015-10/documents/r2\\_hars\\_s MMP\\_3-10\\_final.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/r2_hars_s MMP_3-10_final.pdf).

***A. Dumping Would Lead to Unacceptable Adverse Effects on the Ecological, Recreational, and Economic Values of the New York Bight***

If granted, Transco's ocean placement request would result in the disposition of contaminated sediment in the New York Bight, potentially undermining remediation of the HARS, harming local fish and other aquatic wildlife, and rendering the area less suitable for its many economic and recreational uses, such as fishing.

***1. Transco's Own Tests Reveal That Bioaccumulation of Toxic Contaminants Is Likely to Occur From Disposal of Sediment From the Project Area***

Test results included in the Supplemental Notice indicate that dumping of the 735,000 cubic yards of sediment could in fact exacerbate contamination at the HARS, undermining the Corps' HARS cleanup efforts and harming nearby fish and other wildlife. Specifically, exposure to samples of sediment from the Project area was found to cause an increase in the bioaccumulation of a wide variety of contaminants—including heavy metals, pesticides, industrial chemicals like PCBs, PAHs, and dioxins/furans—in aquatic wildlife living near the HARS.

As explained in the Supplemental Notice, Transco conducted several bioaccumulation tests for sediment from the Project Area. These tests were designed to measure potential bioaccumulation of several contaminants of concern. As the Corps notes, sediment from every testing location caused increased bioaccumulation of at least two contaminants in the test organisms. Specifically, testing found statistically significant increased bioaccumulation of the following contaminants in at least one of the 10 samples:

- Heavy Metals
  - Arsenic (3 samples)
  - Cadmium (3 samples)
  - Chromium
  - Copper (2 samples)
  - Lead (8 samples)
  - Mercury (5 samples)
  - Nickel (3 samples)
  - Silver
  - Zinc (4 samples)
- Pesticides
  - Total DDT (2 samples)
- Industrial Chemicals/PCBs
  - PCB 18
  - PCB 28
  - PCB 49 (3 samples)
  - PCB 52 (2 samples)
  - PCB 53
  - PCB 66 (2 samples)

- PCB 87
- PCB 101 (4 samples)
- PCB 105 (2 samples)
- PCB 118 (2 samples)
- PCB 138 (2 samples)
- PCB 153 (2 samples)
- PCB 180 (2 samples)
- PCB 206 (2 samples)
- Total PCBs (4 samples)
- PAHs
  - Phenanthrene (2 samples)
  - Benzo(a)anthracene
  - Chrysene
  - Fluoranthene
  - Pyrene
  - Total PAHs
- Dioxins/furans
  - 2378 TCDD
  - 1234678 HpCDD (3 samples)
  - 1234789 OCDD (9 samples)
  - 2378 TCDF (2 samples)
  - 1234678 HpCDF

Given that disposal of this sediment at the HARS would lead to *increased* bioaccumulation of many constituents in what is already deemed a contaminated area, it is difficult to comprehend how ocean disposal of these sediments could assist in remediation of this site.

## 2. *New York and New Jersey's Denials of Transco's Water Quality Certification Applications Are Instructive*

This past year, both New York and New Jersey denied Transco's applications for water quality certification under section 401 of the Clean Water Act.<sup>51</sup> While Transco has reapplied for both applications and their new applications are still pending, New York and New Jersey's earlier findings regarding the toxicity of the sediment and the potential harm to marine ecosystems if the Project were to go forward should be considered when evaluating this instant request.

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<sup>51</sup> Letter from Daniel Whitehead, Director, Division of Environmental Permits, New York State Department of Conservation, to Joseph Dean, Manager, Environmental Health and Safety, Transcontinental Gas Pipe Line Company, LLC (May 15, 2019) [hereinafter *New York Denial Letter*]; Letter from Diane Dow, Director, Division of Land Use Regulation, New Jersey Department of Environmental Protection, to Sara Mochrie, Principal-Project Manager, Ecological and Environment, Inc. (June 5, 2019) [hereinafter *New Jersey Denial Letter*].

In Transco's water quality certification applications, Transco acknowledged that there are dangerous levels of contaminants in the Project Area. According to the Project's environmental impact statement, in every sample taken in the Project Area, levels of at least one contaminant were so high that New York State would classify the sample as "Class C" sediment, meaning that "there is a high potential for the sediments to be toxic to aquatic life,"<sup>52</sup> and most of the sites that Transco sampled had at least one contaminant that exceeded upper-level effects thresholds, i.e., New York Class C and/or New Jersey Effects Range – Medium sediment screening thresholds, meaning that at that threshold, there is a greater than 50 percent incidence of adverse effects in benthic communities.<sup>53</sup>

In Transco's sediment sampling analysis of sediment in New Jersey, Transco found levels of certain contaminants that were so high that there was a greater than 50 percent incidence of adverse effects in benthic communities. These contaminants were: two semi-volatile organic compounds (bis(2-ethylhexyl)phthalate and phenanthrene), arsenic, manganese, mercury, PCBs, and 4,4'-DDE (a pesticide).<sup>54</sup> Moreover, in New York, Transco's modeling predicted that dredging of the sediment would cause exceedances of the numerical standards for mercury and copper.<sup>55</sup>

In part because of these findings, New York and New Jersey came to similar conclusions about the quality of sediment surrounding the project. Indeed, in their review of sediment testing, New York and New Jersey found the sediment to be so contaminated that they determined it should not be dredged at all.<sup>56</sup> Consequently, both states denied the Project the required water quality certifications, finding that construction would resuspend sediment (the same sediment that would be disposed at the HARS) that consisted of contaminants at levels that would violate both New York and New Jersey water quality standards.

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<sup>52</sup> New York State Department of Environmental Conservation, *Screening and Assessment of Contaminated Sediment* 11 (2014), [https://www.dec.ny.gov/docs/fish\\_marine\\_pdf/screenasssedfin.pdf](https://www.dec.ny.gov/docs/fish_marine_pdf/screenasssedfin.pdf).

<sup>53</sup> EIS, *supra* note 2, at 4-121. ER-M values are measures of toxicity in marine sediment. Parameters that exceed ER-M values indicate that there is a greater than 50 percent incidence of adverse effects in benthic communities. NOAA, Sediment Quality Guidelines developed for the National Status and Trends Program (1999), <http://www.coastalscience.noaa.gov/publications/handler.aspx?key=1527>.

<sup>54</sup> *New Jersey Denial Letter*, *supra* note 51, at 13.

<sup>55</sup> *New York Denial Letter*, *supra* note 51, at 6 – 9.

<sup>56</sup> *Id.*; *New Jersey Denial Letter*.

3. *Exposure to the very contaminants found in the sediment would harm marine ecosystems and could lead to the injury and death of aquatic organisms*

Exposure to these contaminants—like lead, mercury, and PCBs—could significantly harm aquatic ecosystems, potentially rendering the waters unsuitable for their designated uses.<sup>57</sup> According to EPA, toxic metals and toxic organics can absorb or adsorb to fine-grained particulates, and through this process, become biologically available to organisms living in the water.<sup>58</sup> Furthermore, certain suspended material may react with the dissolved oxygen in the water, which can result in oxygen depletion,<sup>59</sup> which, in turn, can cause losses in biodiversity, ecosystem function, and services such as fisheries and aquaculture. And once contaminants enter an organism, they can move up the food chain, potentially harming and killing organisms that were not directly exposed to the contaminant in the environment.<sup>60</sup> For example, PCBs have a “high potential for bio-uptake and bio-transfer within marine food chains.”<sup>61</sup>

The following section provides just a small sample of the known contaminants present in the sediment and their associated effects on marine ecosystems:

**Mercury.** When mercury is found at concentrations at or well below even 1 parts per billion in water, it can cause effects including: loss of appetite, brain lesions, cataracts, abnormal motor coordination, and behavioral changes.<sup>62</sup> Even at relatively low concentrations, mercury is known to harm reproduction, growth, behavior, metabolism, blood chemistry, osmoregulation, and oxygen exchange.<sup>63</sup> It can also cause increased susceptibility to pathogens and death.<sup>64</sup> On an ecosystem scale, mercury exposure can decrease species diversity, decrease ecosystem productivity, increase algal blooms, and alter nutrient cycling.<sup>65</sup>

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<sup>57</sup> See, e.g., N.J. Admin. Code § 7:9B-1.14(d)(12).

<sup>58</sup> *Id.*

<sup>59</sup> 40 C.F.R. § 230.21(b).

<sup>60</sup> *Id.*

<sup>61</sup> EIS, *supra* note 2, at 4-124.

<sup>62</sup> U.S. Environmental Protection Agency, *Ecological Toxicity Information* (2016), <https://archive.epa.gov/reg5sfun/ecology/web/html/toxprofiles.html>.

<sup>63</sup> *Id.*

<sup>64</sup> U.S. Environmental Protection Agency, *Mercury Study Report to Congress, Volume VI: An Ecological Assessment for Anthropogenic Mercury Emissions in the United States 2-12* (1997), <https://www.epa.gov/sites/production/files/2015-09/documents/volume6.pdf>.

<sup>65</sup> *Id.*

**Lead.** Lead exposure can lead to cancer and harms reproduction, liver and thyroid function, and disease resistance.<sup>66</sup> According to EPA, “[f]ish exposed to high levels of lead exhibit a wide-range of effects including muscular and neurological degeneration and destruction, growth inhibition, mortality, reproductive problems, and paralysis. Lead adversely affects invertebrate reproduction; algal growth is affected. . . . At elevated levels in plants, lead can cause reduced growth, photosynthesis, mitosis, and water absorption.”<sup>67</sup>

**Copper.** Copper is highly toxic in aquatic environments at all levels of the food web.<sup>68</sup> Single-cell and filamentous algae and cyanobacteria are particularly susceptible to injury, as copper reduces their ability to grow and conduct photosynthesis, disrupts potassium regulation, and can lead to mortality.<sup>69</sup> In aquatic organisms, copper can fray gills and cause organisms to lose their ability to regulate transport of salts.<sup>70</sup> Copper also adversely harms fish’s sense of smell, which makes it harder for fish to find food, avoid predators, and migrate.<sup>71</sup> Reduced sense of smell also leads to reduced appetite and food intake, which in turn contribute to reduced growth of salmon and other fish.<sup>72</sup> Reduced sense of smell can also harm the ability of fish of any size to detect predators, causing them to be more vulnerable to predation.<sup>73</sup>

**PCBs.** There are a number of effects observed in aquatic organisms due to exposure to PCBs.<sup>74</sup> PCBs have been found to cause growth reduction in algae and brook trout; reduced egg survival and reduced fertilization success in flounder, minnows, sea urchins; and complete reproductive failure in brook trout.<sup>75</sup> Elevated levels of PCBs can also cause anemia, hyperglycemia, and altered cholesterol metabolism in brown trout.<sup>76</sup>

**Dioxins.** Dioxins can lead to reduced growth, fin necrosis, death, declining interest in feeding, skin discoloration, reduced resistance to fungal infestations, reduced swimming,

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<sup>66</sup> U.S. Environmental Protection Agency, *Ecological Toxicity Information* (2016), <https://archive.epa.gov/reg5sfun/ecology/web/html/toxprofiles.html>.

<sup>67</sup> *Id.*

<sup>68</sup> Frances Solomon, *Impacts of Copper on Aquatic Ecosystems and Human Health*, MINING.com, January 2009, at 26,

[http://www.ushydrotech.com/files/6714/1409/9604/Impacts\\_of\\_Copper\\_on\\_Aquatic\\_Ecosystems\\_and\\_human\\_Health.pdf](http://www.ushydrotech.com/files/6714/1409/9604/Impacts_of_Copper_on_Aquatic_Ecosystems_and_human_Health.pdf).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> U.S. Environmental Protection Agency, *Ecological Toxicity Information* (2016), <https://archive.epa.gov/reg5sfun/ecology/web/html/toxprofiles.html>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

teratogenesis, tissue damage, degeneration and necrosis of the liver, and opercular defects in fish.<sup>77</sup>

**PAHs.** PAHs are “highly potent carcinogens that can produce tumors in some organisms at even single doses.”<sup>78</sup> PAH contamination can cause fin erosion, liver abnormalities, cataracts, and immune system impairments leading to increased susceptibility to disease in fish.<sup>79</sup> In benthic invertebrates, PAHs can lead to inhibited reproduction, delayed emergence, sediment avoidance, and mortality.<sup>80</sup>

*4. Any Findings of the Project’s Environmental Impact Statement Regarding the Environmental Impacts of Disposal of Sediment at the HARS are Underestimated*

In reviewing the Project’s environmental impact statement, the Corps should note that any evaluation of the sediment dumping at the HARS underestimates the activity’s environmental impact. Importantly, Transco has increased the estimated volume of sediment that would be disposed of in the HARS and reduced the volume of contaminated sediment that would require disposal at an upland facility from what was originally stated in the Project’s environmental impact statement. While the environmental impact statement estimated that 661,478 cubic yards of sediment would be disposed in at the HARS, with approximately 160,417 cubic yards disposed of at an upland facility, Williams now proposes to dispose of an estimated 735,000 cubic yards at the HARS, with only 87,000 cubic yards taken to an upland facility. This increase in the volume of sediment that would be dumped at the HARS constitutes significant new information, demonstrating that the proposal could “have a significant impact on the environment in a manner not previously evaluated and considered.”<sup>81</sup> Because of this meaningful change in information, the Corps should not rely on any findings of the environmental impact statement as they relate to environmental impacts of the dumping at the HARS.

The increase in the volume of sediment disposed of at the HARS would exacerbate the environmental impacts of the Project. For example, for the reasons stated in the previous section, the addition of contaminated sediment to the HARS could increase the bioaccumulation of several contaminants in the bodies of wildlife. Additionally, the increased volume of

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Westlands Water Dist. v. U.S. Dep’t of the Interior*, 376 F.3d 853, 873 (9th Cir. 2004) (internal quotation marks omitted).

sediment disposed of at the HARS would require additional trips by Project-related vessels to and from the HARS to dispose of the material.<sup>82</sup> This increase in vessel trips could in turn lead to heightened stress and potential mortality in fish and other aquatic wildlife, such as the endangered North Atlantic right whale and the endangered Atlantic sturgeon, for whom vessel collisions are one of the greatest threats to the survival of their species.<sup>83</sup> Only about 400 North Atlantic right whales remain on earth, and there have been an unprecedented 30 mortalities since 2017.<sup>84</sup>

Given the strong evidence that the dumping of sediments will increase bioaccumulation of many contaminants in wildlife, New York and New Jersey's own findings that the sediment contains several contaminants at levels that exceed its own water quality standards, and the well-known harm to the aquatic ecosystem that would result from such exposure, the Army Corps should deny Transco's request.

***B. An Alternative Means of Disposal is Available***

In its environmental impact statement, Transco includes an alternative to sediment disposal at the HARS; specifically, the environmental impact statement states, “[i]f disposal of excess dredge material in the HARS is not approved, Transco has secured preliminary agreements to dispose of all excess dredge material at licensed onshore facilities in Kearney and Jersey City, New Jersey.”<sup>85</sup>

The Corps seems to be taking Transco at its word that upland sediment disposal is no longer a practicable alternative.<sup>86</sup> But when the environmental impact statement “describes the facts and circumstances of [an alternative] that has become a fiction,<sup>87</sup> a supplemental

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<sup>82</sup> See EIS *supra* note 2, at 4-166, 4-192, recounting how HARS disposal will lead to increased traffic.

<sup>83</sup> *Id.* at 4-165, 4-185

<sup>84</sup> NOAA Fisheries, *Species Directory: North Atlantic Right Whale*, <https://www.fisheries.noaa.gov/species/north-atlantic-right-whale> (last visited Nov. 18, 2019).

<sup>85</sup> EIS *supra* note 2, at 3-1.

<sup>86</sup> In the Supplemental Notice, Transco found that “[i]n consideration of the extreme cost of upland placement, it was not considered a practicable alternative.” U.S. Army Corps of Engineers, N.Y. District, Supplemental Public Notice No. NAN-2016-00908-A-EHA 11 (Oct. 17, 2019).

<sup>87</sup> *Conservation Law Foundation v. Watt*, 560 F.Supp. 561 (D.Mass.1983), *aff'd sub nom; Massachusetts v. Watt*, 716 F.2d 946 (1st Cir.1983).

environmental impact statement is warranted,<sup>88</sup> and construction of the Project should not take place until completion of the supplemental environmental impact statement.<sup>89</sup>

But because an alternative means of disposal is available, the Corps should deny Transco's request, as disposal at the HARS is not necessary.

### **III. The Corps Should Ensure Meaningful Public Participation in the Permitting Process by Extending the Public Comment Deadline and Holding a Public Hearing**

Finally, consistent with our requests in the November 5, 2019 letter sent to the Army Corps (attached), to make this a truly public process, we ask that the Corps improve opportunities for the public to learn and comment on the Request by extending the public comment deadline by a minimum of 90 days and holding a public hearing on the issue.

As expressed in more detail in the attached letter, the public comment period should be extended for several reasons, which also support the request for a public hearing. First, the public would benefit from having more than one month to review the magnitude of application materials submitted by Transco. Because NRDC only had one month to review the voluminous record, the contents of this comment letter are necessarily incomplete. We therefore reserve the right to raise additional issues and legal concerns at a later date. Second, this project is of high interest to the public at large, evidenced by the volume of public engagement in other permitting processes related to the Williams pipeline. Finally, as the Supplemental Notice points out, Transco will need to obtain several permits from both the NYSDEC and the NJDEP before the proposed activity can even begin—as such, there is no urgency for such a short public comment period.

For these reasons, we request that the Corps undertake the necessary steps to ensure public participation going forward.

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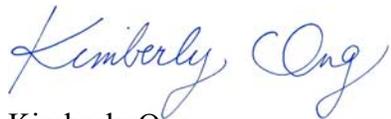
<sup>88</sup> NEPA regulations dictate that an agency must prepare a supplemental EIS if it makes substantial changes in the proposed action, or if there are significant new circumstances or information that are relevant to environmental concerns. 40 C.F.R. § 1502.9(c)(1). *See also Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 372 (1989) (recognizing the duty to supplement); *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006) (stating that the bar for triggering a supplemental EIS is low).

<sup>89</sup> *Montana Wilderness Association v. Fry*, 310 F. Supp.2d 1127, 1156 (D. Mont. 2004) (ordering an installed gas pipeline to be “shut down” due to the inadequacy of the agency’s NEPA analysis).

## CONCLUSION

Transco has failed to make a compelling case for why, despite the acknowledged increase in bioaccumulation of contaminants in aquatic life, the previous findings by New York and New Jersey that the Project's sediment is too contaminated to be dredged from the seafloor, and the disclosed alternative of upland disposal, the Corps should still grant its ocean placement request. For these reasons, we hope that the Corps takes a hard look at Transco's application and denies its request for ocean placement of dredged materials generated from construction of the Williams pipeline.

Sincerely,



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November 5, 2019

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**RE: USACE Permit App# NAN-2016-00908-A-EHA**

Dear Ms. Handell:

On behalf of the undersigned organizations, we write to request an extension of the November 18, 2019 deadline to submit comments on the Supplemental Public Notice prepared by the U.S. Army Corps of Engineers (Army Corps) for the proposed ocean disposal request by Transcontinental Gas Pipe Line Company (Transco) pursuant to Section 103 of the Marine Protection, Research & Sanctuaries Act of 1972, as amended (33 U.S.C. § 1413).<sup>1</sup> Specifically, we request that the comment period be extended a minimum of 90 days to provide additional time necessary for meaningful public input on this proposed activity.

The current window for public comment is insufficient given the magnitude of material to propose to be disposed of in the Historic Area Remediation Site (HARS), the volume of scientific data to evaluate, and the widespread public concern over Transco's proposed Northeast

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<sup>1</sup> U.S. Army Corps of Engineers, *Supplemental Public Notice NAN-2016-00908-A-EHA*, Oct. 17, 2019.

Supply Enhancement Project (NESE). By law, the comment period “should be for a reasonable period of time within which interested parties may express their views concerning the permit.”<sup>2</sup>

It is clear this project is of high interest to the public at large, evidenced by the volume of public engagement in other permitting processes related to the NESE. First, during the Draft Environmental Impact Statement Comment period 232 individuals offered oral public comments and 2,245 written public comments were submitted.<sup>3</sup> Second, during review of the May 16, 2018 Water Quality Certificate application by the New York State Department of Environmental Conservation (NYSDEC), over 167 oral comments and over 14,000 written public comments were received on behalf of over 45,000 individuals or organizations regarding the proposed project.<sup>4</sup> Of these public comments, well over 90 percent opposed the project.<sup>5</sup> Finally, the New Jersey Department of Environmental Protection (NJDEP) received roughly 4,000 written public comments during its review of the project. In addition to the clear public interest in this proposed project, the current comment period makes it challenging for most of the public to engage thoughtfully on the issue given its proximity to the holiday season.

Furthermore, there is no urgency for such a short public comment period. As the public notice points out, Transco will need to obtain several permits from both the NYSDEC and the NJDEP before the proposed activity can even begin. Four of the six permits necessary from the NJDEP were withdrawn by Transco on October 25, 2019 and resubmitted October 29, 2019.<sup>6</sup> Currently, these permits have not been deemed either administratively or technically complete by the NJDEP and therefore are not currently being reviewed.<sup>7</sup> In fact, several of these permits must be obtained before the Army Corps can issue a permit for ocean disposal.<sup>8</sup>

Finally, there is no question that you have the legal authority to grant this request.<sup>9</sup> In fact, the requested extension would further the purpose of the public notice requirement by providing a full and fair opportunity for public involvement, which is essential to the Army Corps administration of its regulatory programs. Indeed, the Army Corps relies on public comment to solicit “information necessary to evaluat[ing] the probable impact on the public interest.”<sup>10</sup>

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<sup>2</sup> 33 C.F.R. § 325.3(d)(2).

<sup>3</sup> Federal Energy Regulatory Commission, Northeast Supply Enhancement Project - Final Environmental Impact Statement, Docket No. CP17-101-000, at 1-12 (2019).

<sup>4</sup> See, New York State Department of Environmental Conservation, *Notice of Denial of Water Quality Certificate*. DEC ID: 2-9902-00109/00004. (May 15, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Joslin Tamagno Environmental Supervisor, New Jersey Department of Environmental Protection, to Mr. Tim Powell, Transcontinental Gas Pipe Line Co., dated Oct. 25, 2019.

<sup>7</sup> See, N.J.A.C. 7:7-26.2.

<sup>8</sup> See, 33 C.F.R. §§ 325.3(b)(1) - 325.3(b)(2), outlining the need for state decisions over Water Quality Certification under Section 401 of the Clean Water Act (33 U.S.C. § 1441), as well as a Consistency Determination pursuant to Section 307(c) of the Coastal Zone Management Act (16 U.S.C. 1456(c)).

<sup>9</sup> 33 C.F.R. § 325.2(d)(2)(iv).

<sup>10</sup> 33 C.F.R. § 325.3(a).

For the reasons outlined above, we respectfully request that you extend the comment period by a minimum of 90 days from the current November 18, 2019 deadline. Thank you for consideration of this request.

Sincerely,

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Policy Attorney  
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Waterspirit

Jeff Tittel  
Chapter Director  
New Jersey Sierra Club

Mike Castellano  
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Jersey Shore Chapter: Surfrider Foundation

Linda Powell  
Outreach Coordinator  
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Kimberly Ong  
Senior Attorney  
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Rev. Rob Gregson  
Executive Director  
UU Faith Action NJ

Noelle Picone  
Campaign Manager  
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Kim Fraczek  
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