

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
270 Michigan Avenue, Buffalo, NY 14203-2915
P: (716) 851-7165 | F: (716) 851-7168
www.dec.ny.gov

March 2, 2018

Mr. Paul Neureuter
Elk Street Redevelopment, LLC
4 Centre Drive
Orchard Park, New York 14127

**PERMIT TRANSMITTAL LETTER
PERMIT NO. 9-1402-00977/00004**

Dear Mr. Neureuter:

Enclosed is your permit which was issued in accordance with applicable provisions of the Environmental Conservation Law. The permit is valid for only that project, activity or operation expressly authorized. If modifications are desired after permit issuance, you must submit the proposed revisions and receive written approval from the Permit Administrator prior to initiating any change. If the Department determines that the modification represents a material change in the scope of the authorized project, activity, operation or permit conditions, you will be required to submit a new application for permit.

PLEASE REVIEW ALL PERMIT CONDITIONS CAREFULLY. IN PARTICULAR, IDENTIFY YOUR INITIAL RESPONSIBILITIES UNDER THIS PERMIT IN ORDER TO ASSURE TIMELY ACTION IF REQUIRED. SINCE FAILURE TO COMPLY PRECISELY WITH PERMIT CONDITIONS MAY BE TREATED AS A VIOLATION OF THE ENVIRONMENTAL CONSERVATION LAW, YOU ARE REQUESTED TO PROVIDE A COPY OF THE PERMIT TO THE PROJECT CONTRACTOR, FACILITY OPERATOR, AND OTHER PERSONS DIRECTLY RESPONSIBLE FOR PERMIT IMPLEMENTATION (IF ANY).

If you have any questions, please contact this office at the above address.

Respectfully,
David S. Denk
Regional Permit Administrator

Attachment

ecc: NYSDEC, Division of Law Enforcement
Mr. Michael Todd, NYSDEC, Division of Fish, Wildlife and Marine Resources
Mr. Eugene Melnyk, NYSDEC, Division of Environmental Remediation
Mr. Joseph Rowley, US Army Corps of Engineers, Buffalo District
Ms. Elizabeth Zinkevicz, Exxon Mobil





PERMIT

Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:

Elk Street Commerce Park LLC

4 Centre Dr

ORCHARD PARK, NY 14127

EXXONMOBIL OIL CORP

3225 GALLOWS RD

FAIRFAX, VA 22037

(703) 846-3000

Facility:

FORMER EXXON MOBIL BUFFALO

TERMINAL

625 ELK ST

BUFFALO, NY 14210

Facility Location: in BUFFALO in ERIE COUNTY

Facility Principal Reference Point: NYTM-E: 187.061 NYTM-N: 4753.026

Latitude: 42°51'56.6" Longitude: 78°49'50.9"

Authorized Activity: The installation of approximately 1,400 feet of metal sheet pile down to bedrock in front of the existing bulkhead along the bank of the Buffalo River at the Former Buffalo Terminal in the City of Buffalo. The purpose of this project is to aid in containment and recovery of migrating contaminants from impacted groundwater to the Buffalo River and to remove direct contact hazards from impacted soils, thus reducing the impact from the site on the Buffalo River.

Permit Authorizations

Excavation & Fill in Navigable Waters - Under Article 15, Title 5

Permit ID 9-1402-00977/00004

New Permit

Effective Date: 3/2/2018

Expiration Date: 3/1/2021

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 9-1402-00977/00005

New Permit

Effective Date: 3/2/2018

Expiration Date: 3/1/2021



NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: DAVID S DENK, Regional Permit Administrator
Address: NYSDEC Region 9 Headquarters
270 Michigan Ave
Buffalo, NY 14203 -2915

Authorized Signature: _____

Date 3, 2, 2018

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

WATER QUALITY CERTIFICATION SPECIFIC CONDITION

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: EXCAVATION & FILL IN NAVIGABLE WATERS; WATER QUALITY CERTIFICATION

- 1. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by Amec Foster Wheeler titled "Bulkhead Isolation Project, Exxon Mobil Former Buffalo Terminal" and dated October 2017.
- 2. Work Prohibition Period** Construction activities in the Buffalo River are prohibited during the period April 1st through June 30th.
- 3. Notice of Intent to Commence Work** The permittee shall submit a Notice of Intent to Commence Work to DEP.R9@dec.ny.gov at least 48 hours in advance of the time of commencement and shall also notify her promptly in writing of the completion of work.
- 4. Siltation Prevention Measures** Siltation prevention measures, such as silt fencing, sediment traps or settling basins, shall be installed and maintained during the project, to prevent movement of silt and turbid waters from the project site into any watercourse, stream, water body or wetland.



5. No Work During High Water and Waves No work shall occur in the Buffalo River during periods of high water and wave conditions. No work shall occur during or immediately after a storm, which may cause high water conditions or flooding.

6. Isolate Work Area The in-water and surrounding work area shall be isolated with a combination of soil erosion and sedimentation controls.

7. Seed, Mulch Disturbed Areas All areas of soil disturbance that are a result of this project shall be seeded with an erosion control seed mix and mulched with straw or hydro-mulch immediately upon completion of the project, within two days of final grading, or by the expiration date of the permit, whichever is first. Mulch shall be maintained until suitable vegetative cover is established to the department's satisfaction.

8. No Interference With Navigation There shall be no unreasonable interference with navigation by the work herein authorized.

9. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

10. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

11. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

12. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.



WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.

GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 9 Headquarters
270 Michigan Ave
Buffalo, NY14203 -2915



4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Excavation & Fill in Navigable Waters, Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.



Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.