



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOUTHEAST REGIONAL OFFICE
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Lieutenant Governor

STEPHEN R. PRITCHARD
Secretary

ROBERT W. GOLLEDGE, Jr.
Commissioner

20 OCT 2005

Scott Alfonse, Environmental Stewardship
City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

Re: WATER QUALITY CERTIFICATION
Application for: BRPWW10
MAJOR FILL AND EXCAVATION PROJECTS

At: McCoy Field, 225 Hathaway Boulevard
New Bedford, Massachusetts

Transmittal Number: W065206
DEP File Number: SE 49-543

Dear Mr. Alfonse:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of M.G.L. c. 21, §§26-53 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 *et seq.*), and 314 CMR 9.00, it has been determined that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards at 314 CMR 4.00.

The proposed project under this Water Quality Certification consists of the removal of contaminated soil and sediment from Bordering Vegetated Wetland (BVW) adjacent to McCoy Field and the new Keith Middle School construction site. The proposal includes temporary and permanent alteration to approximately 37,900 square feet of BVW. As proposed and conditioned by this Water Quality Certificate, wetland resource areas shall be restored and revegetated in their entirety after the removal of contaminated sediments and underlying soil(s) as a Special Project under a Massachusetts Contingency Plan (MCP) pursuant to 310 CMR 40.0060.

In addition, the Department has reviewed previous activities in association with the construction and on-going operation at the McCoy Field site [314 CMR 9.02, *Activity*]. Pursuant to Orders of Conditions issued by the New Bedford Conservation Commission for DEP File No. SE 49-461 and SE 49-475, the City of New Bedford altered 992 square feet and 167 square feet of BVW, respectively, and constructed 2,457 square feet of wetland replication.

Impacts to BVW subject to this Water Quality Certification total approximately 39,059 square feet. The Department accepts and hereby approves the proposed wetland remediation and restoration of BVW totaling 37,900 square feet and the 2457 square feet of wetland replication noted above as mitigation for unavoidable impacts [314 CMR 9.06(2)]. Therefore the Department is satisfied that adequate attempts to avoid, minimize and mitigate wetland impacts have been demonstrated.

Therefore, based on information currently in the record, the Department grants a Water Quality Certification [hereinafter referred to as "this Certificate"] for this project subject to the following conditions to maintain water quality, to minimize impact on the waters and wetlands, and to ensure compliance with appropriate state law:

1. Construction, wetland restoration and enhancement activities shall comply with the Water Quality Certificate Application, received June 21, 2005, as revised, and the following plans and reports as revised and entitled:
 - a. **Report 1:** "Wetlands Remediation and Restoration Project for New Keith Middle School Site, New Bedford, Massachusetts, BID #SCH-5-C04"; and, "Addendum Number One SC" H-5-C04, Wetlands Remediation and Restoration Project New Keith Middle School Site", dated August 2005 revised through August 31, 2005, BETA Group, Inc. and City of new Bedford, Procurement Office.
 - b. **Plan 1:** "Wetlands Sediment Remediation Area A (South), McCoy Field/New Keith Middle School", Sheet 1, and "Wetlands Sediment Remediation Areas B & C (North), McCoy Field/New Keith Middle School", Sheet 2, dated July 2005 revised through August 16, 2005, BETA Group, Inc.
 - c. **Plan 2:** "Wetlands Sediment Remediation Profiles, McCoy Field/New Keith Middle School", Sheet 3, dated August 15, 2005, BETA Group, Inc.
 - d. **Plan 3:** "Wetlands Sediment Restoration Area A (South), McCoy Field/New Keith Middle School", Sheet 4, and "Wetlands Sediment Restoration Areas B & C (North), McCoy Field/New Keith Middle School", Sheet 5, dated August 16, 2005, BETA Group, Inc.
 - e. **Plan 4:** As-Built, "Record Drawing, Utility Easement, McCoy Field/New Keith Middle School", 1 Sheet, dated 9/2/05 revised through 9/7/05, signed and stamped by Bernard E. Munroe, Sr., Professional Land Surveyor, of Land Planning for BETA Group, Inc.
2. In addition to this Certificate the remediation and restoration work is regulated by other local, state and federal permits including, but not limited to, the following: Massachusetts Contingency Plan (MCP) as a Special Project pursuant to 310 CMR 40.0060; Massachusetts Superseding Order of Conditions (SOC) [DEP File No. SE 49-543]; U.S. Department of Army, New England District, Corps of Engineers, Category II, Massachusetts General Programmatic Permit [CENAE-R-PEA Permit Number: 2005-2131]; and, U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Permit.
3. **Prior to commencement of any work at the site**, an erosion control barrier consisting of hay bales staked end to end and a siltation fence firmly anchored with six (6) inches of soil on the uphill side shall be placed as shown on the plans of record listed above in Condition #1. This erosion control barrier shall serve as the limit of work area.
4. The applicant shall notify the Department and the New Bedford Conservation Commission in writing, 48 hours before any activity commences on the project site.
5. It is the responsibility of the applicant, owner and/or successor(s) to ensure that all conditions of this Certificate are complied with. The project engineer and contractors are to be provided with a copy of this Certificate and referenced documents before commencement of construction.
6. A qualified *wetland scientist* shall be available for consultation during remediation activities as required by the New Bedford Order of Conditions (attached) and shall be present at the site during construction of the wetland restoration areas. The wetland scientist shall be responsible for supervising all wetland restoration activities including, but not limited to, wetland soil amendments, planting, monitoring; and the submittal of professional evaluations, progress reports, recommendations and certification that the wetland restoration has been completed in compliance with this Certificate.
7. The applicant shall submit in writing to the Department and the New Bedford Conservation Commission, the name, telephone number and address of the qualified wetland scientist (or botanist), hired to perform and/or oversee the work required by this Certificate.
8. The applicant, owner, and/or successor(s) and/or assignees shall not deviate from the wetland restoration actions required by this Certificate unless and until the applicant, via the wetland scientist, submits to the

~~Department adequate plans proposing a change to the wetland actions in writing and receives from the Department written approval of such proposed changes.~~

9. Any debris, fill or excavated material shall be stockpiled on the upland side of the erosion control barrier, and at a location to prevent sediment from entering the wetlands as surface runoff.
10. All areas disturbed during construction shall be immediately (within twenty-four hours) stabilized against erosion and revegetated with appropriate fast growing erosion control species or local indigenous plants within thirty (30) days of final on-site grading *except* the wetland remediation and restoration areas [which, as proposed, shall be stabilized with a wetland seed mix and vegetative plantings].
11. This Certificate authorizes a total of 37900 square feet of proposed alteration to wetlands for the removal of contaminated soil and sediment and is limited to the 37900 square foot areas shown on the above noted plans of record (refer to Condition #1). Total square footage of wetland alteration shall be re-calculated during construction (prior to planting of the restoration and enhancement areas). **Immediate written notification is required to be submitted to the Department and the New Bedford Conservation Commission if project exceeds 37900 square feet of cumulative impact for state and federal wetlands, cumulatively, as defined in 314 CMR 9.00 for the property.** The applicant, owner and his successor(s), and any other party having an interest in the property, or any portion thereof, shall provide a minimum area of wetland restoration equaling at least 37900 square feet.
12. Refer to the plans of record listed under Condition #1 and the areas identified as "8-foot wide temporary impact area". Any temporary impacts to wetlands, including any temporary alteration from using this 8-foot wide access area, shall be stabilized with New England wetland seed mix and, if necessary, revegetated with wetland plantings under the direction of the wetland scientist.
13. This Certificate also authorizes existing historic wetland alteration at the site previously authorized under local Orders of Conditions issued by the New Bedford Conservation Commission totaling approximately 992 square feet pursuant to DEP File No. SE 49-461 and the accidental 167 square feet of alteration (refer to Plan 4 of Record) that occurred under DEP File No. SE 49-475. Approximately 2,467 square feet of wetland replication areas has been constructed at the site. These wetland replication areas, as constructed, serve as mitigation for the 1,159 square feet total of historic wetland loss associated with the on-going operation and construction at the site.
14. Refer to Report 1 of Record, Addendum 1, Section 02100, Page 02100-3A, noted previously under Condition #1. The six-foot chain link security fence shall be disconnected from the posts in sections as described during the excavation portion of the remediation work. Erosion control measures such as a series of haybale lines and siltation fence, and if necessary organic jute netting, shall be installed and in place prior to removing each section of fence or as each section of fence is removed (based on site conditions). Once the remediation and restoration effort has been completed, the fence and posts shall be relocated to the upland side of the wetland replication areas created under DEP File No. SE 49-461, wetland restoration areas and wetlands as shown on the plans of record.
15. Geotextile mats, swamp mats, if necessary, shall be used to minimize impacts to vegetated wetlands that will be temporarily altered by equipment access routes that are located outside the proposed excavation area(s) as shown on the plans of record under Condition #1.
16. The temporary soil stockpile area shown on Plan 1 of Record noted under Condition #1 shall be lined, covered and secured with *impervious* 10 mil polyethylene sheeting.
17. Any dewatering discharge, including any that may result from the proposed truck washing activities, shall be effectively filtered or settled to remove sediment and silt prior to being discharged to waters or wetlands. Discharges from any dewatering shall not cause scouring of the wetlands or erosion of adjacent upland areas.

18. The construction staging area as shown on the plans of record listed under Condition #1 shall be inspected after major storm events or reports of malfunction. Repairs of any control system and the removal of sediment, debris and/or trash shall be done as needed.
19. Exposed substrate adjacent to and within the remediation and restoration areas shall be protected against erosion until the establishment of wetland vegetation occurs with herbaceous New England wetland seed mix. Wetland seed mix shall be spread throughout the wetland restoration areas and associated side slopes. The restoration areas shall be supplemented with nursery stock plantings as listed and described within the report and plans of record identified under Condition #1.
20. The wetland vegetation planting for the restoration area(s) shall be done in a manner that mimics the adjacent wetlands in terms of species, size, and density. The wetland restoration and enhancement areas shall be planted in accordance with the previously referenced documents and plans.
21. Proposed wetland restoration area plantings shall be nursery stock. At no time shall any wetland plant species be translocated from adjacent wetland areas. If a particular plant species or size cannot be obtained, then the wetland scientist shall so notify the Department in writing, copy to the New Bedford Conservation Commission, on behalf of the owner/applicant or his/her successor(s) and request a modification to the planting schedule described in the previously referenced plans and this Certificate prior to planting.
22. New England wetland seed mix shall be hand sown or dispersed with a hand-held spreader throughout the restoration area as described in Report 1 of Record, Addendum No. 1, Section 02265, Page 02265-6A, listed under Condition #1. Hydro-seeding (which may introduce herbicides, fertilizers, or upland species seed stock) is not permitted under this Certificate.
23. The use of grass, lawn, rye, conservation or highway seed mix is prohibited within any portion of the restoration areas or wetlands.
24. The application of bark mulch or wood chips (which may introduce invasive species or upland species seed stock) is not permitted in wetland resource areas, wetland replication or restoration areas.
25. As proposed and described in Report 1 of Record, Addendum No. 1, Section 02265, Page 02265-6A, listed under Condition #1, an organic weed free mulch is permitted to be applied around the roots and base of woody vegetation. However the depth of mulch shall not exceed an inch (so as to not adversely affect the hydrology and elevations in the wetland).
26. The maximum elevation of ground water shall be verified and certified by a Massachusetts Registered Professional Engineer or Land Surveyor within all wetland restoration areas once these proposed restoration areas have been excavated. A copy of such certification shall be sent to the Department and the New Bedford Conservation Commission.
27. As described within the textual materials and plans noted under Condition #1, after the required soil testing has been completed within the remediation and restoration areas, and after the required soil testing of the organic soil proposed as soil amendment to be placed in the restoration areas, meeting MCP, EPA and U.S. Army Corps Engineers specifications, organic weed free soil amendment that replicates wetland soils shall be backfilled onto the remediation and restoration areas to re-create the elevations of the altered wetlands in order to achieve a finished surface area, or grade, that is no more than 6-inches above the verified seasonal elevation of the ground water table (refer to Condition #26 above). Elevations of the ground within the wetland remediation and restoration areas shall match pre-excavation conditions.
28. Any soil material within the wetland restoration areas that has been compacted by equipment use shall be loosened at least to a depth of three inches in order to promote plant growth.
29. Permanent placement and disposal of any excavated material in wetland resource areas is prohibited. Temporary storage areas and activities in order to remove sediment and contaminated soils shall take place in accordance with, and as described, in Report 1 of Record noted above under Condition #1.

30. The applicant and his successor(s) shall be responsible for maintaining erosion control measures, and for weeding and irrigating planted wetland vegetation. Any non-native invasive plant species (e.g. Phragmites, purple loosestrife, buckthorns, etc...) shall be removed from the wetland restoration areas under the supervision of the previously noted wetland scientist.
31. Should at least 75% of the surface area of the wetland restoration areas fail to become established with greater than 50% wetland species within two years of the restoration attempt [in accordance with 310 CMR 10.55(4)(b)1-7], the Department reserves the right to require additional measures necessary to achieve compliance.
32. After the planting has been completed within the wetland restoration areas the following documentation shall be submitted to the Department and the New Bedford Conservation Commission:
- Final contour elevations, longitudinal cross-sectional profile(s) and square footage of the wetland remediation, restoration and replication areas shall be shown on an *As-built plan*. A Massachusetts Registered Professional Engineer and/or Land Surveyor shall certify the Wetland Restoration as-built plan and submit a statement (signed and stamped by said Engineer and/or Land Surveyor) certifying compliance with conditions of this Certificate.
 - The wetland scientist shall submit a status report certifying that all phases of wetland restoration area construction have been completed in compliance with the conditions of this Certificate and shall include in said report an inventory of the plants planted and relative vigor of the plants.
33. Upon completion of the project and at the end of two full growing seasons, a final report on the relative success or failure of the wetland restoration effort shall be submitted to the Department and the New Bedford Conservation Commission. The inspection report shall include percent of vegetative cover, a list of the type of plants growing in each wetland restoration area, coverage of the wetland species as a percentage of all plants, relative vigor of the plants, etc... The report shall also include the recommendations for improvement of poorly established wetland areas.
34. The Department and members of the New Bedford Conservation Commission shall have the right to enter and inspect the property at reasonable times and upon reasonable notice to evaluate compliance with this Certificate.
35. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Certificate.
36. **The applicant shall notify this Office in writing of any proposed changes in plans affecting waters or wetlands. The Department's Southeast Regional Office, Division of Wetlands and Waterways, shall determine whether the changes require revision to this certification.**

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

This certification does not relieve the applicant of the obligation to comply with other appropriate state or federal statutes or regulations.

The applicant is reminded that he is required to comply with the U.S. Army Corps of Engineers Section 404 Programmatic Permit, Category II, issued September 14, 2005, including all requirements and conditions of the general permit. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Notice of Appeal Rights:

Appeal Rights and Time Limits

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, who have submitted written comments within the public comment period; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) DEM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a *Notice of Claim* must be made in writing and sent by certified mail or hand delivery to the Department *with the appropriate filing fee* specified within 310 CMR 4.10 along with an *Adjudicatory Appeal Fee Transmittal Form* (available at <http://www.mass.gov/oa/feetrans.htm>), within twenty-one (21) days of the date of issuance of this decision and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the DEP at:

DEP-SOUTHEAST REGIONAL OFFICE
20 Riverside Drive
Lakeville, MA 02347

Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) the DEP Transmittal Number and DEP Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "person aggrieved" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the DEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Filing Fee and Address

A copy of the Notice of Claim along with a *Adjudicatory Appeal Fee Transmittal Form* and a valid check payable

to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
 Department of Environmental Protection
 Commonwealth Master Lockbox
 P.O. Box 4062
 Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under M.G.L. c.21, §16, 314 CMR 9.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have any further questions on this decision, please contact Dorothy Blickens of my staff at (508) 946-2781.

Very truly yours,



Elizabeth A. Kouloheras,
 Bureau of Resource Protection

K/db/

CERTIFIED MAIL # 7002 2030 0006 4995 1949

cc: New Bedford Conservation Commission

Frederick M. Kalisz, Jr., Mayor
 City of New Bedford
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Jacqueline Coucci
 City of New Bedford
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Alan Hanscom ✓
 BETA Group
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Brian Valiton, Regulatory Branch
 U.S. Department of the Army
 New England District, Corps of Engineers
 696 Virginia Road
 Concord, MA 01742-2751
 [CENAE-R-PEA Permit Number: 2005-2131]

ecc: DEP-SERO-Attn: Gary Moran, Regional Director
DEP-SERO-BRP-Attn: David DeLorenzo, Deputy Regional Director
DEP-SERO-BWSC-Attn: Millie Garcia-Surette, Deputy Regional Director
DEP-SERO-BWSC-Attn: Gerard Martin, Site Management