



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

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Commissioner

JUL 15 2019

City of New Bedford – Department of Environmental Stewardship  
c/o Scott Heim  
TRC Environmental Corp.  
650 Suffolk Street  
Lowell, Massachusetts 01854

RE: WATER QUALITY CERTIFICATION  
Application for BRP WW 10  
Major Project Certification

AT: Keith Middle School  
225 Hathaway Boulevard  
New Bedford, Massachusetts 02740

Transmittal Number: X281861  
Wetlands File Number: SE 049-0802

**RECEIVED**

JUL 24 2019

**City of New Bedford  
Conservation Commission**

Dear Mr. Heim:

The Massachusetts Department of Environmental Protection (MassDEP) has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of MGL c.21, §§ 26-53, 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 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 project proposes remedial actions and post-remedy sampling in two discrete areas of the wetland located adjacent to an existing capped landfill slope area in order to address the requirements of the Massachusetts Department of Environmental Protection (MassDEP) and the United States Environmental Protection Agency (EPA) through the Massachusetts Contingency Plan (MCP) and Toxic Substance Control Act (TSCA), respectively, as related to oil and/or hazardous material. The project is needed to achieve site closure and benefit the surrounding community.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.  
TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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An estimated 536 square feet of Bordering Vegetated Wetland (BVW) and 3,044 square feet of Land Under Water (LUW) will be permanently impacted during excavation/capping activities. In addition, 3,732 square feet of LUW will be temporarily disturbed by Porta-dam installation and dewatering to perform work in the dry to safely implement remediation efforts and minimize resuspension of sediment during work. The dewatering is expected to occur within each area for approximately two weeks or less. Erosion and sediment controls will be installed at the limits of work and spill response equipment will be kept onsite ready for deployment in the event of a spill.

The proposed work, including Porta-dam installation, excavation, and cap construction, will be completed by hand with the exception that an excavator or telehandler will be used to assist with the transfer of materials from the top of the slope to the wetland edge to prevent damage to the embankment slope (existing capped area) and the adjacent wetland. In addition, the excavation and capping within the wetland area will occur by hand. Capping involves the above-grade covering of two polluted areas with three inches of Aquablock overlain by three inches of crushed stone, with one area requiring excavation 4.5 feet below existing grade. This area will be backfilled with clean sand to existing grade and then capped in the same method. Upon project completion, temporarily disturbed areas will be restored to pre-existing conditions.

With the implementation of these measures and the requirements of this Water Quality Certification, the Department is satisfied that adequate measures have been taken to avoid, minimize, and mitigate adverse impacts to wetland areas.

The 401 WQC application public notice was published in the Standard-Times on Tuesday, November 13, 2018, and the Department received no comment during the 21-day public comment period which ended on December 4, 2018.

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

1. The Work shall conform to the plans entitled:

**Keith Middle School Wetland, New Bedford, Massachusetts; Construction Sequence and Site Preparation Map; Prepared by: TRC; Revised April 03, 2019; Drawing-1**

**Keith Middle School Wetland, New Bedford, Massachusetts; Porta-Dam Cross Section Detail; Prepared by: TRC; July 2017; Drawing-2**

**Keith Middle School Wetland, New Bedford, Massachusetts; Cap Construction Detail; Prepared by: TRC; September 2017; Drawing 3**

**Keith Middle School Wetland, New Bedford, Massachusetts; Remedial Construction Details; Prepared by: TRC; Revised July 27, 2018; Drawing-4**

**Keith Middle School Wetland, New Bedford, Massachusetts; Final Conditions Plan;  
Prepared by: TRC; Revised November 05, 2018; Drawing-5**

2. All work shall conform to the project narrative contained in the supplemental project information included with the BRP WW10 Major Project 401 Water Quality Certification Application, prepared by TRC Environmental Corporation, and to the additional supplemental information provided:
  - Letter to Ruthann Brien, Regulatory Division, USACE New England District, and Maissoun Reda, Environmental Analyst, MassDEP; dated April 16, 2019; signed by: Scott J. Heim, Senior Ecologist; Re: Section 404/401 Permit Application Revisions, Keith Middle School, Wetland Remediation, NAE-2018-02900, MassDEP File # SE 049-0802
  - E-mail to Maissoun Reda (DEP) and Scott Heim (TRC Companies); dated May 17, 2019; from Ruthann Brien (USACE) ; Re: Keith Middle School – New Bedford, MA
  - E-mail to Maissoun Reda (DEP); dated May 28, 2019; from Scott Heim (TRC Companies); Re: Keith Middle School – New Bedford, MA
3. A copy of this Certification and referenced plans shall be kept available on the work site during all phases of construction.
4. Prior to commencement of any work at the site, erosion control measures shall be installed in accordance with the above-referenced plans, and shall be maintained for the duration of the project to protect the resource areas until all disturbed areas have been stabilized. All accumulated sediments shall be removed as needed and prior to the removal of the erosion control barrier.
5. Any tears, rips, breaks, or collapse of the erosion control barrier shall be repaired immediately (i.e., in no more than 24 hours).
6. Heavy equipment shall be mobilized/demobilized in a manner to prevent adverse impact to the BVW and surrounding resource areas.
7. The applicant shall notify the Southeast Region's Division of Wetlands and Waterways in writing of any proposed changes in plans affecting wetland resource areas. The Southeast Region's Division of Wetlands and Waterways shall make a determination as to whether the proposed changes require a revision to this certification.
8. Upon completion of the project and after the areas disturbed by construction activities have been stabilized with vegetation or other suitable measure approved by the USDA Natural Resources Conservation Service, the erosion control measures shall be removed and disposed of in accordance with all applicable laws, regulations, or ordinances.

9. Debris associated with the construction activities shall be disposed of in a suitable upland location.
10. Staff of MassDEP have the right to enter and inspect the area subject to this Certification at reasonable hours to evaluate compliance with the conditions stated in this Certification, and may require the submittal of any data deemed necessary by MassDEP for that evaluation.
11. This Certification remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Certification whichever comes first.

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 they are required to comply with the U.S. Army Corps of Engineers Massachusetts General Permit 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.

**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.**

### **Notice of Appeal Rights:**

#### **A) Appeal Rights and Time Limits**

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required: (a) the applicant or property owner; (b) any person aggrieved by the decision who has submitted written comments during the public comment period; any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or (d) any governmental body or private organization with a mandate to protect the environment which has submitted written comments during the public comment period. Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator  
Office of Administrative Appeals  
Department of Environmental Protection  
One Winter Street, 3<sup>rd</sup> Floor  
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection  
Southeast Regional Office  
20 Riverside Drive  
Lakeville, Massachusetts 02347

### **B) Contents of Hearing Request**

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

- (a) the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- (b) the complete name of the applicant and address of the project;
- (c) the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- (d) if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- (e) a clear and concise statement that an adjudicatory hearing is being requested;
- (f) a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- (g) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

### **C) Filing Fee and Address**

The hearing request along with a MassDEP Fee Transmittal Form and a valid check or money order 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

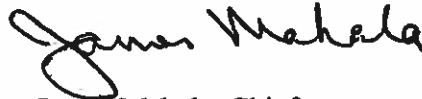
P.O. Box 4062  
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or 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 MGL c.21 §42, MGL c.21A §16, 314 CMR 9.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have further questions on this decision, please contact Maissoun Reda at (508) 946-2804.

Sincerely,



James Mahala, Chief  
Wetlands & Waterways Program

cc: New Bedford Conservation Commission

US Army Corps of Engineers  
New England District  
Regulatory Branch  
696 Virginia Road  
Concord, MA 01742-2751