



DRAFT

PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
CWM CHEMICAL SERVICES LLC

1550 BALMER RD
MODEL CITY, NY 14107

Facility:
CWM CHEMICAL SERVICES - MODEL CITY
SITE

1550 BALMER RD
MODEL CITY, NY 14107

Facility Location: in PORTER in NIAGARA COUNTY

Facility Principal Reference Point: NYTM-E: 176.957 NYTM-N: 4793.671
Latitude: 43°13'35.9" Longitude: 78°58'40.0"

Authorized Activity: The project involves the construction of a new Drum Management Building (DMB) and associated infrastructure. There will be permanent impacts to approximately 32,171 square feet of the regulated 100-foot-wide Adjacent Area of NYS Freshwater Wetland RV-8 as a result of grading and construction of the DMB. A Final Mitigation Plan will be developed and submitted to the Department for approval prior to construction. Appropriate sedimentation and erosion controls will be utilized to maintain the water quality of the wetland.

Permit Authorizations

Freshwater Wetlands - Under Article 24

Permit ID 9-2934-00022/00231

New Permit Proposed Effective Date: _____ Proposed Expiration Date: No Exp. Date

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 9-2934-00022/00232

New Permit Proposed Effective Date: _____ Proposed Expiration Date: No Exp. Date

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 ____/____/____

**Distribution List**

Law Enforcement
CHARLES P ROSENBURG
BUFFALO DISTRICT U S ARMY CORPS OF ENGINEERS

DRAFT**Permit Components**

NATURAL RESOURCE PERMIT CONDITIONS

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Notice of Intent to Commence Work

**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following
Permits: FRESHWATER WETLANDS; 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 Great Lakes Environmental and Safety Consultants, Inc., Drawing No. C-3 titled "Grading, Drainage, and Soil Erosion/Sediment Control Plan", revised October 22, 2013 and drawing No. C-5 titled "Fuels Transfer Ramp Details", revised June 11, 2013.
- 2. Notice of Intent to Commence Work** The permittee shall submit a Notice of Intent to Commence Work to Regional Permit Administrator at least 48 hours in advance of the time of commencement and shall also notify him/her promptly in writing of the completion of work.
- 3. Prior Approval of Changes** If the Permittee desires to make any changes in construction techniques, species to be planted, the site plan, any mitigation plan, scheduling or staging of construction, or any other aspect of this project, the Permittee shall submit a written request to the Regional Permit Administrator to make such proposed changes and shall not make such changes unless authorized in writing by the Department.
- 4. Construction Fencing** Before commencement of land clearing activities, the approved limit of disturbance shall be temporarily marked by the installation of orange colored construction fence to prevent inadvertent impacts to NYS Freshwater Wetland RV-8 or its regulated 100-foot-wide adjacent area. The fencing shall be no less than three (3) feet high so that it is readily observable.

5. 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.

6. Equipment Storage All construction equipment, fuels, chemicals, etc. shall be stored and safely contained at least 100 feet from wetland RV-8 during the construction period.

7. Invasive Species (Non-native Vegetation) To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within wetland RV-8 or its 100-foot-wide adjacent area.

8. Monitor for and Remove Invasive Species Monitoring for and removal of invasive species such as purple loosestrife, Phragmites, reed canary grass and glossy buckthorn within wetland RV-8 and its adjacent area shall be done for a period of five growing seasons.

9. Vegetation Removal The removal of trees and shrubs should be minimized as much as possible.

10. Excess Material Disposal Any spoils or other excess materials must be properly disposed of at an approved location greater than 100 feet from wetland RV-8. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area; and must be disposed of in accordance with all local, state, and federal statutes, regulations, or ordinances.

11. Seeding Disturbed Areas (straw mulch only) All areas of soil disturbance resulting from the approved project shall be stabilized with an erosion control seed mix and mulched with straw (or hydro-mulched) immediately following project completion. Mulch must be comprised of straw only; the use of hay is prohibited.

12. Minimum Vegetative Cover The permittee must establish a minimum of 90% vegetative cover across all disturbed areas within 100 feet of wetland RV-8 (by the end of the first complete growing season).

13. Final Mitigation Plan A Final Mitigation Plan shall be developed and submitted for Department approval prior to construction of the new Drum Management Building. This plan must include the following:

- The planting of a minimum of 50 trees and shrubs along the north side of the Drum Management Building and in other open areas between the building and NYS Freshwater Wetland RV-8. Tree and shrub plantings must consist of native species and exclude species such as American elm and green ash that may be susceptible to disease and insect damage.
- Tree & shrub plantings should be No. 3 container stock or larger.
- A care, maintenance, inspection, and replacement schedule for tree and shrub plantings to ensure an 85% survival rate for five growing seasons must be established.
- The plan must identify a native seed mix for establishing herbaceous cover in the tree and shrub planting areas.

- CWM must submit an annual report to DEC describing survival rates for tree and shrub plantings, for five growing seasons (by Dec 31st of each year).

14. 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.

15. 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.

16. 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.

17. 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 NYS Department of Environmental Conservation hereby certifies that the subject project will not contravene effluent limitations or other limitations or standards under Sections 301, 302, 303, 306 and 307 of the Clean Water Act of 1977 (PL 95-217) provided that all of the conditions listed herein are met.

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, NY 14203 -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: Freshwater Wetlands, 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.