



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**WETLANDS &
SUBAQUEOUS LANDS**

PHONE
(302) 739-9943

Diamond State Port Corporation
Port of Wilmington
C/o: Eugene R. Bailey, Executive Director
820 N. French Street, 4th Floor
Wilmington, DE 19801
Tax Parcel: 0615300006

Subaqueous Lands Permit: SP-101/20
Date of Issuance: 9/29/2021
Construction Expiration Date: 9/29/2026
Amended Date: N/A

SUBAQUEOUS LANDS PERMIT

GRANTED TO:

Diamond Sate Port Corporation

FOR THE FOLLOWING ACTIVITIES:

To construct a new shipping container port facility on the Delaware River. Initial construction activities include:

- **To remove all existing in-water structures, consisting of three (3) piers, pilings, water intake structure and portions of seawall**
- **To install 3,200 linear feet of new bulkhead, and to place approximately 20,107 cubic yards of backfill material**
- **To construct a 112-foot wide by 2,600-foot-long concrete wharf structure along the new bulkhead, resulting in the loss of approximately 5.5 acres of subaqueous lands**
- **To conduct new hydraulic dredging in an area approximately 4,000 feet in length, extending to the boundary of the federal navigation channel, removing approximately 3.3 million cubic yards of material, to a depth of -45 feet below mean low water to create a shipping access channel and berthing area**
- **To place up to 500,000 cubic yards of dredged material in an upland, onsite beneficial reuse area, and to dispose of the remaining dredged material at the Wilmington Harbor North and/or Wilmington Harbor South confined disposal facilities located in Edgemoor, New Castle County, Delaware**

LOCATED:

**In the Delaware River,
At the new Edgemoor Container Port,
4600 Hay Road,
Edgemoor, New Castle County, Delaware**

Pursuant to the provisions of 7 Del. C., §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 29th day of September, 2021, to conduct the above-referenced activities in accordance with the approved plans (18 sheets), as approved on September 29, 2021; and the application dated March 10, 2020, and received by this Division on March 13, 2020, and with subsequent information received on March 16, 2020, June 11, 2020, June 19, 2020, March 4, 2021, July 1, 2021, and September 24, 2021.

WHEREAS, Diamond State Port Corporation, has applied for permission to conduct the above-referenced activities to construct a new shipping container port facility; and

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW THEREFORE, this Permit is issued subject to the attached Subaqueous Lands Permit General Conditions and the following Special Conditions:

SPECIAL CONDITIONS:

1. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
2. This Permit is granted for the purpose of constructing a new shipping container port facility on the Delaware River. Any other use without prior approval shall constitute reason for this Permit being revoked.
3. In order to protect Atlantic Sturgeon (*Acipenser oxyrinchus*) and Shortnose Sturgeon (*Acipenser brevirostrum*), no in-water work shall occur from March 15th through June 30th of any year.
4. This Permit authorizes the depths below mean low water as specified on page 1, with an allowable, maximum 3-foot over-dredge.
5. Disposal areas shall be inspected prior to dredging and effectively maintained in a manner that prevents the entrance of the dredged material into any surface water or wetland.
6. All dredging activities, including the disposal of materials into any and/or all of the three disposal facilities as well as Cherry Island Flats shall be monitored in accordance with the attached DNREC-approved *Monitoring Plan for Construction Dredging and Dredged Slurry – Port of Wilmington Edgemoor Expansion* dated August 2021. Any observed activities or measured water quality parameters that are likely to result in or do result in exceedances of applicable Surface Water Quality Standards, shall be addressed in accordance with section 6.2 *Corrective Action* in the above-referenced plan.
7. Total suspended solids (TSS) in surface water shall be maintained at a maximum of 250 mg/l at a distance 200 feet down current from the cutterhead during active dredging activities. As a means of real-time monitoring, turbidity readings in nephelometric turbidity units (NTU) shall be collected on a continuous basis during active dredging activities. A turbidity reading of 170 NTU or less is expected to meet the 250 mg/L TSS water quality performance standard. Exceedances

of this permit condition shall be addressed in accordance with section 6.2 *Corrective Action* in the DNREC approved monitoring plan.

8. Total suspended solids (TSS) in surface water shall be maintained at an average concentration less than 3,000 mg/L (with an instantaneous maximum concentration of 4,000 mg/l) at any and/or all three CDF effluent discharge points. As a means of real-time monitoring, turbidity readings in NTU shall be collected on a continuous basis during active effluent discharge periods. A turbidity reading less than 1,700 NTU (with an instantaneous maximum reading of 2,200 NTU) is expected to meet the TSS water quality performance standard. Exceedances of this permit condition shall be addressed in accordance with section 6.2 *Corrective Action* in the DNREC approved monitoring plan.
9. The Wetlands and Subaqueous Lands Section (WSLS) shall be notified within 24 hours of any monitoring events where the turbidity levels exceeded the NTU limits specified in Conditions 7 and 8 above.
10. All dredging and disposal shall be conducted in a manner consistent with sound conservation and water pollution control practices.
11. All dredging and construction activities shall be performed in a manner that minimizes impacts to navigation.
12. A post-dredging bathymetric survey of the dredged area, showing depths relative to mean low water, shall be submitted to DNREC WSLS in both digital and plan form within 60 days of the completion of the dredging.
13. There shall be no movement of equipment within subaqueous lands not specifically authorized by this Permit. Any such areas disturbed shall be returned to preconstruction conditions/elevations and appropriately stabilized.
14. Compensatory mitigation for the loss of 5.5 acres of public subaqueous lands shall be provided in accordance with the attached DNREC-approved *Port of Wilmington – Edgemoor Expansion State of Delaware Compensatory Mitigation Plan* dated September 24, 2021. Final construction plans for both the State-required mitigation and the Federally-required mitigation shall be submitted to DNREC WSLS for review and approval prior to construction.
15. DNREC WSLS shall be provided with a copy of all status and/or monitoring reports generated and submitted to the US Army Corps of Engineers (USACE) and/or other federal agencies associated with any approved Federal Compensatory Mitigation Plan for this project.
16. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook, and any New Castle County-required erosion and sediment control practices to minimize entry and dispersal of sediment and other contaminants in surface waters.
17. The work authorized by this Permit is subject to the terms and conditions of all appropriate USACE authorization.

IN WITNESS WHEREOF, I, Steven M. Smailer, the duly authorized representative of Shawn M. Garvin, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this 29th day of September 2021.

By Steven M. Smailer, Environmental Program Administrator
Division of Water

Katie Esposito, Environmental Scientist
Wetlands and Subaqueous Lands Section



WETLANDS AND SUBAQUEOUS LANDS SECTION

PERMIT NO.: SP-101/20

CONSTRUCTION EXPIRATION DATE: 9/29/2026

TO CONDUCT THE FOLLOWING ACTIVITIES:

To construct a new shipping container port facility on the Delaware River. Initial construction activities include:

- **To remove all existing in-water structures, consisting of two (2) piers and pilings**
- **To install 3,200 linear feet of new bulkhead, and to place approximately 20,107 cubic yards of backfill material**
- **To construct a 112 foot wide by 2,600 foot long concrete wharf structure along the new bulkhead**
- **To conduct new hydraulic dredging in an area approximately 4,000 feet in length, extending to the to the boundary of the federal navigation channel (87 acres), removing approximately 3.3 million cubic yards of material, to a depth of 45 feet below mean low water to create a shipping access channel and berthing area**
- **To place up to 500,000 cubic yards of dredged material in an upland, onsite beneficial reuse area, and to dispose of the remaining dredged material at the Wilmington Harbor North and/or Wilmington Harbor South confined disposal facilities located in Wilmington, New Castle County, Delaware**

LOCATED:

**In the Delaware River,
At the Edgemoor Container Port,
4600 Hay Road,
Edgemoor, New Castle County, Delaware**

ISSUED TO: Diamond State Port Corporation

LOCATION OF WORK: Same as above

**DISPLAY THIS CERTIFICATE IN A HIGHLY
VISIBLE LOCATION ON THE JOB SITE.**

Authorized by: _____



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

**OFFICE OF THE
SECRETARY**

PHONE
(302) 739-9000

September 29, 2021

Mr. Eugene R. Bailey
Executive Director
Diamond State Port Corporation
820 N. French Street, 4th Floor
Wilmington, DE 19801

**RE: Delaware Coastal Management Program — Federal Consistency Certification for Port
of Wilmington Edgemoor (FC 2020.0043)**

Dear Mr. Bailey:

The Delaware Department of Natural Resources and Environmental Control (DNREC), through the Delaware Coastal Management Program (DCMP), has completed its review of the above referenced project. This letter is in response to the federal consistency certification dated and received on March 18, 2020, submitted by you on behalf of Diamond State Port Corporation (DSPC). The review period was extended to six months on June 10, 2020. Additionally, the DCMP and DSPC entered a stay agreement for a period of 6 months, from August 3, 2020 to February 3, 2021, bringing the end of the review period to March 18, 2021. The DCMP and DSPC entered a second stay agreement for a period of one year, from February 26, 2021 to February 26, 2022, bringing the end of the review period to March 18, 2022.

PROPOSED ACTION

DSPC proposes to construct a new shipping container port facility on the Delaware River at DSPC's Edgemoor property, 4600 Hay Road, Edgemoor, New Castle County, DE 19809, Tax Parcel ID 0615300006 and 0615300003. This project would include the removal of existing in-water structures; the construction of an approximately 2,600-foot-long, pile-supported concrete wharf structure; new hydraulic dredging to remove approximately 3.3 million cubic yards of river sediments and underlying soil; excavating the berth and access channel to a depth of -45 feet mean low water; and bulkheading 3,200 linear feet of shoreline. Dredged materials would be stored at the Wilmington Harbor North and/or Wilmington Harbor South confined disposal facilities (CDFs) and a portion of the dredged materials would be used as fill. The use of shoaling fans, proposed in the original application materials, was removed from the scope of the proposed activities after consultation with the applicant.

FEDERAL CONSISTENCY WITH STATE COASTAL MANAGEMENT PROGRAMS

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, any applicant for a required federal license or permit to conduct an activity, in or outside of the coastal zone, that can have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone of that state, shall provide a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. The National Oceanic and Atmospheric Administration (NOAA) is required to review and approve a proposed state management program for it to become effective. Under the CZMA implementing regulations, Federal Consistency with Approved Coastal Management Programs (15 CFR 930), subpart D, state agencies are directed to develop a list of federal license or permit activities to be included as part of the management program, with the federal license or permit activities described in terms of the specific licenses or permits involved. Any applicant for a federal license or permit selected for review by a state agency should obtain the views and assistance of the state agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program.

During the period when the state agency is reviewing the consistency certification, the applicant and the state agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit state agency concurrence.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.61, the public was invited to participate in the review of the Port of Wilmington Edgemoor expansion project. On August 23, 2020, DNREC published a joint public notice in the Delaware State News, The Wilmington News Journal, and the DNREC public notices list service that included the federal consistency certification received from DSPC and notice of a joint public hearing to be held by DNREC on September 29, 2020. The public comment period was originally scheduled to close on November 1, 2020, which represents a 71-day comment period. On October 30, 2020, at the request of members of the public, DNREC extended the public comment period to December 1, 2020, which represents a 101-day comment period.

During the public comment period DNREC received 196 comments, 3 of which were submitted live during the September 29, 2020 public hearing, 193 of which were submitted in writing before or after the public hearing.

DNREC received comments of opposition and support. Comments opposing the proposed structure included the following topics of concern: homeland security, impacts of the proposed shoaling fans, community engagement and transparency, public health/environmental justice, violation of House Joint Resolution Ten (HJR-10), fishing/crabbing, natural resources, air quality, navigational concerns, and water quality. Comments in favor of the proposed project noted the benefit to Delaware from building a port of call for larger container ships, job creation and economic development, and the cleanup and redevelopment of a currently inactive parcel.

At the request of the Hearing Officer, DNREC generated a Technical Response Memorandum (TRM) to address comments and questions submitted to DNREC during the project's public comment period, from August 23, 2020 to December 1, 2020 (see DNREC Public Hearing Docket #2020-P-Multi-0024).

FEDERAL CONSISTENCY ANALYSIS

The DCMP coordinates the review of consistency certifications with agencies administering the enforceable and advisory policies of the program. The following agencies participated in this review:

- DNREC, Division of Air Quality (DAQ)
- DNREC, Division of Fish and Wildlife (DFW)
- DNREC, Division of Waste and Hazardous Substances (DWHS)
- DNREC, Division of Water (DW)
- DNREC, Division of Watershed Stewardship (DWS)
- Department of Transportation (DelDOT)
- Department of State, State Historic Preservation Office (SHPO)

The location of this project on the Delaware River is known habitat of the Atlantic sturgeon (*Acipenser oxyrinchus*) and shortnose sturgeon (*Acipenser brevirostrum*), two species that are listed as endangered under the Endangered Species Act (ESA). In order to minimize impacts to sturgeon and other commercially and recreationally valuable species during their spawning periods, DNREC requires that no in-water work occurs from March 15th through June 30th. This time-of-year restriction will be observed for all in-water work including, but not limited to, pile driving, construction, installation of temporary bulkhead wall and sheet pile walls, and all dredging including maintenance dredging. In addition, DNREC requires a soft start on all pile driving activities. (7 DE Admin. Code 2201, subsections 5.11.2.1, 5.11.3.2)

Cherry Island Flats is an important fish habitat and one of the major striped bass spawning areas of the Delaware River. Due to the proximity of the project to Cherry Island flats, DNREC also requires in-situ turbidity monitoring of the flats during dredging activities associated with the construction of the port to ensure that the activity is not adversely impacting sensitive species. (7 DE Admin. Code 2201, subsections 5.11.2.1, 5.11.3.2)

To ensure long term protection of human and ecological health from contaminants in the sediment, DSPC is required to properly manage the dredged material and associated CDF elutriate generated during dredging for port construction. As such, DNREC required that DSPC generate a monitoring plan for construction dredging and dredged slurry. On August 18, 2021, DNREC received a final monitoring plan from DSPC; this plan was reviewed and approved by both DNREC and the U.S. Army Corps of Engineers (USACE). (7 DE Admin. Code 2201, subsections 5.3.1.4, 5.3.1.17)

Mitigation is required by the State of Delaware for the loss of 5.5 acres of subaqueous lands. DNREC requires that the applicant implement the DNREC-approved mitigation plan which includes the creation of approximately one acre of intertidal wetland at the north end of Fox Point State Park (FPSP), an expanded environmental DNA (eDNA) monitoring program in the Delaware River and other strategic locations within the basin before, during and after dredging/construction activities, and a FPSP enhancement plan involving landscaping and other upland improvements. (7 DE Admin. Code 2201, subsection 5.4.18)

In addition to the state-required compensatory mitigation, DSPC is also proposing additional mitigation measures as part of their federal compensatory mitigation requirements. These additional mitigation measures will include habitat improvement that will benefit American shad, hickory shad, and other anadromous fish species. The proposed federal mitigation is in addition to the mitigation DNREC requires to meet the state's permitting criteria. (7 DE Admin. Code 2201, subsection 5.4.18)

Please be advised that coordination with the NOAA National Marine Fisheries Service (NMFS) should be considered for protection of endangered species. (7 DE Admin. Code 2201, subsection 5.11.3.2)

Additionally, the DCMP received input from United States Coast Guard (USCG) on the navigational components of this proposed project. On September 17, 2021, USCG Sector Delaware Bay stated that it does not see this project posing a risk to safe navigation. (7 DE Admin. Code 2201, subsection 5.4.22.3)

The proposed activity is to be implemented in a manner consistent with the enforceable policies of the DCMP under 7 DE Admin. Code 2201, Section 5.0 including but not limited to: Coastal Waters Management, Subaqueous Lands and Coastal Strip management, Port of Wilmington, Historic and Cultural Areas, Living Resources, Transportation Facilities, Air Quality Management, and Pollution Prevention (7 DE Admin. Code 2201, subsections 5.3.1.4, 5.3.1.17, 5.4.18, 5.4.22.3, 5.8.1.1, 5.8.1.3, 5.8.1.4, 5.10.1.4, 5.11.2.1, 5.11.3.2, 5.19.1.1, 5.19.2.6, 5.20.2, 5.20.2.2, 5.20.2.6, 5.20.2.8, 5.20.2.9, 5.20.2.12, 5.24.1.1).

CONDITIONAL CONCURRENCE

Based on its review, the DCMP conditionally concurs that the Port of Wilmington Edgemoor as proposed above is consistent with Delaware's enforceable policies.

To protect living resources of the state, DFW recommended a specific time of year restriction for all in-water work including, but not limited to, pile driving, construction, installation of temporary bulkhead wall and sheet pile walls, and all dredging, including maintenance dredging, as well as requiring a soft start on all pile driving activities. DFW also requires in-situ turbidity monitoring of Cherry Island Flats during dredging activities associated with the construction of the port to ensure that the activity is not adversely impacting sensitive species. DW Wetlands and Subaqueous Lands Section (WSLS) requires mitigation for the loss of subaqueous lands. Additionally, the DWS Watershed Assessment & Management Section and the DWHS Remediation Section conducted a review of the sediment analysis. On August 18, 2021, the applicant submitted a final monitoring plan for construction, dredging and dredged slurry as a condition of this concurrence.

As such, to be consistent with the DCMP's enforceable policies, the following conditions must be satisfied as they relate to the Coastal Waters Management, Subaqueous Lands and Coastal Strip Management, and Living Resources policies (7 DE Admin. Code 2201, subsections 5.3.1.17, 5.4.18, 5.11.2.1, and 5.11.3.2):

1. A time-of-year restriction from March 15th to June 30th for all in-water work including, but not limited to, pile driving, construction, installation of temporary bulkhead wall and sheet pile walls, and all dredging including maintenance dredging;
2. A soft start on all pile driving activities;
3. The initiation and implementation of the DNREC-approved monitoring plan for construction, dredging and dredged slurry, and in-situ turbidity monitoring of Cherry Island Flats, as described above;
4. The initiation and implementation of the DNREC-approved mitigation package to mitigate the loss of 5.5 acres of subaqueous lands, as described above; and
5. Submittal of the construction plans for the federally-required mitigation for review and approval prior to construction.

Failure to comply with 15 CFR §930.4 as it relates to the conditions above will result in this conditional concurrence being deemed an objection. Under this scenario, the applicant is advised that pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, a request may be submitted to the Secretary of Commerce to override this objection. In order to grant an override request, the Secretary of Commerce must find that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the DCMP and the federal permitting or licensing agency. The Secretary of Commerce may collect fees for administering and processing your request.

Pursuant to 15 CFR 930.66, DSPC shall notify the DCMP of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described.

Please be advised that this federal consistency review does not negate the need for any other authorizations that may be required.

Thank you for the opportunity to review and respond to the Port of Wilmington Edgemoor federal consistency certification. If you have any questions, please contact me or Laura Mensch of my staff at (302) 739-9283.

Sincerely,

Shawn M. Garvin
Secretary

cc: Todd Schaible, USACE