

## DEPARTMENT OF THE ARMY PERMIT

Permittee: Diamond State Port Corporation

Permit No.: NAP-2019-00278-86

Permit Name: Port of Wilmington Expansion at Edgemoor

Issuing Office

Department of the Army  
U.S. Army Corps of Engineers, Philadelphia District  
1650 Arch Street  
Philadelphia, PA 19103-2004

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

### **Project Description:**

The Diamond State Port Corporation (DSPC) has been approved to repurpose an existing industrial site at the location of the former Chemours manufacturing facility by discharging fill material and conducting dredging and disposal activities within, and adjacent to, navigable waters of the United States at the Port of Wilmington Expansion Project at Edgemoor.

To make the approved port facility available to deep draft container cargo vessels, the applicant will conduct hydraulic dredging within the Delaware River. The dredging site is located adjacent to and north of the Delaware River Federal Navigation Channel, in the southern portion of Reach B of the river, at the intersection of the Cherry Island and Bellevue Ranges. The purpose of the proposed dredging is to deepen portions of the Delaware River adjacent to the federal navigation channel to create an access channel connecting the federal navigation channel to a ship berth located along the shoreline of the Edgemoor site. DSPC will also create this berth by hydraulic dredging.

The dredging will create a new access channel between the existing Delaware River Federal Navigation Channel and the Edgemoor ship berth site. The access channel will

have a maintained depth of -45 feet mean lower low water datum (MLLW). The access channel will terminate at the new ship berth, which will also be maintained by dredging to a corresponding depth of -45 MLLW.

The access channel and ship berth dredging activities would generate approximately 3,525,000 cubic yards (cy) of dredged material removed from the river. Following the initial dredging to construct the access channel and ship berth, it is anticipated that the access channel and berth site would require annual maintenance dredging to remove approximately 275,000 cubic yards of accumulated sediment. Annual maintenance dredging totals include 155,000 cubic yards for dredging of the access channel and 120,000 cubic yards for dredging the berthing area.

During the initial dredging event, DSPC will place the dredged material from initial construction in two locations, with a contingency for disposal at a third location. Up to 3,025,000 cy will be placed at Wilmington Harbor South, which is a Corps of Engineers-owned Confined Disposal Facility (CDF).

A portion of the dredged material from initial construction will be pumped to the Edgemoor site and contained on uplands and de-watered in a single use CDF constructed for the project until dried sufficiently for re-use. That material will represent approximately 400,000 to 500,000 cubic yards of material to be dredged and will be limited to sediments removed from stratum B, which are primarily sandy in texture. The applicant will re-use these materials in a beneficial manner on upland portions of the site landward of the proposed bulkhead.

In addition to these areas, there is contingency dredged material disposal capacity from initial construction at Wilmington Harbor North. Material from maintenance dredging of the berthing area will be disposed at Wilmington Harbor North.

The material generated by initial construction and all subsequent maintenance dredging from the berthing areas will be removed from the dredging area by hydraulic dredge and transported via hydraulic pipeline to one of the CDFs noted above as available capacity allows.

It is noted that the permittee's submission for Federal assumption of maintenance of the harbor channel under Section 204(f) of the Water Resources Development Act (WRDA) 1986 was approved by the Assistant Secretary of the Army for Civil Works on 31 March 2023. The CDFs utilized for the maintenance dredging of the access channel is the responsibility of the Operations Division of the Philadelphia District of the USACE.

The project includes the construction of an approximately 2600-foot long, pile-supported wharf and steel sheet pile retaining wall (bulkhead) along the landward side of the wharf structure. Imported granular fill will then be placed between the bulkhead and the elevation of mean high water (MHW) landward of the bulkhead. As mentioned above, a portion of the sandy textured dredged material will be placed on site and dewatered in a single-use CDF constructed for the project. After de-watering, some of that material will

also be used as on-site fill for the bulkhead portion of the project. During discharge operations, the dredged material will be contained by the bulkhead on the riverfront side and by higher elevation uplands which surround the containment area. Construction of the bulkhead will necessitate the discharge of fill material into 239,580 square feet (5.5 acres) of the river below the high tide line. The height of the fill behind the new bulkhead will be +18 feet NAVD88. The elevated wharf structure will be built waterward of the new bulkhead, and will be constructed of poured concrete, supported by 4500 twenty-inch diameter steel pipe pilings filled with concrete. The wharf will be a high deck structure, with fendering along the river, and would be 325,000 square feet in size.

Compensatory mitigation is required for the direct loss of approximately 5.5 acres of water associated with the proposed bulkhead filling and 7.5 acres associated with the shading resulting from the wharf construction. The selected projects are permittee-responsible compensatory mitigation projects, both out-of-kind, with a watershed approach.

The first mitigation project is the Fox Point State Park Wetland Rehabilitation project. This compensatory mitigation project will rehabilitate intertidal habitat and wetland area including features to provide productive foraging habitat for native fish species as well as habitat for other aquatic species. The project calls for the removal and treatment of the invasive plant phragmites from a 1.33-acre site that will be excavated down to appropriate elevations to provide more intertidal interaction and hydrology, creating a range of habitat communities from deep to shallow and emergent intertidal wetlands. Portions of an existing revetment will be removed to facilitate more intertidal flow to the wetland area and provide access to the wetland habitat for aquatic species.

The second mitigation project is the Brandywine Creek Dam No. 2 Fish Passage project. The project calls for a rock weir, nature-like fishway constructed downstream of the dam. The mitigation project will restore fish passage and access to approximately 12 acres of shallow and deeper water spawning and nursery habitats on the Brandywine Creek that, for nearly 200 years, have been inaccessible to anadromous fish.

All work associated with the port construction is to be completed in accordance with the plans referenced in special condition 1 below. All work associated with the mitigation projects is to be completed in accordance with the plan referenced in special condition 8 below.

**Project Location:**

Tax Parcels 0615300006 and 061530003, located at 4600 Hay Road in the Edgemoor section of unincorporated New Castle County, Delaware.

Latitude/Longitude: 39.74825°N / 75.496028°W (NAD 83).

## **Permit Conditions:**

### **General Conditions:**

1. The time limit for completing the work authorized ends on **December 31, 2036**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification and/or federal consistency concurrence has been issued for your project, you must comply with conditions specified in the certification and/or concurrence as special conditions to this permit.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

### **Special Conditions:**

1. All work performed in association with the above noted project shall be conducted in accordance with the project plans identified as "Permit Plan Port of Wilmington Edgemoor Expansion Brandywine Hundred ~ New Castle County ~

Delaware,” prepared by Duffield Associates, dated October 2019, last revised September 2021, sheets 1 through 18 of 18.

2. Construction activities shall not result in the disturbance or alteration of greater than 86.9 acres for dredging, 7.13 acres for the wharf and bulkhead, 5.5 acres for discharge of fill material landward of the bulkhead, and 0.43 acres for the removal of existing structures in waters of the United States.

Construction activities associated with the Fox Point State Park Wetland Rehabilitation mitigation project shall not result in the disturbance or alteration of greater than 1.33 acres of waters of the United States.

Construction activities associated with the Brandywine Creek Dam No. 2 Fish Passage project shall not result in the disturbance or alteration of greater than 0.37 acres of temporary impacts for access to the creek, and 1.25 acres of permanent impacts for the rock weir structures.

3. Any deviation in construction methodology or project design from that shown on the above noted drawings must be approved by this office, in writing, prior to performance of the work. All modifications to the above noted project plans shall be approved, in writing, by this office. No work shall be performed prior to written approval of this office.

4. This office shall be notified at least 10 days prior to the commencement of authorized work by completing and signing the enclosed “Notification of Commencement Form”; and this office shall be notified within 10 days of the completion of the authorized work by completing and signing the enclosed “Notification of Completion Form”.

5. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

6. The permittee is responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.

7. All stipulations in the Memorandum of Agreement entitled “MEMORANDUM OF AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE DELAWARE STATE HISTORIC PRESERVATION OFFICE PURSUANT TO 33 CFR § 325, APPENDIX C, 1, (g)(1) REGARDING EDGEMOOR PORT REDEVELOPMENT CITY OF WILMINGTON, NEW CASTLE COUNTY, DELAWARE”, signed by the Army Corps of Engineers on June 30, 2022, shall be adhered to in full to take into account the effect of the undertaking on historic properties.

8. All procedures in the “Stockbridge-Munsee Community Band of Mohican Indians Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently during Planned Activities” shall be adhered to in full in the event there is an inadvertent discovery of human remains that are identified as potentially Stockbridge-Munsee (Mohican).

9. All procedures in the “Delaware Tribe of Indians Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently during Planned Activities” shall be adhered to in full in the event there is an inadvertent discovery of human remains.

10. All items in the Compensatory Mitigation Plan entitled “Compensatory Mitigation Plan Wilmington Harbor – Edgemoor Expansion | Wilmington, Delaware”, dated March 7, 2022, last revised June 9, 2022, shall be adhered to in full to mitigate for the direct loss of 5.5 acres of water associated with bulkhead filling and 7.5 acres of shading of water associated with the wharf construction.

11. All Reasonable and Prudent Measures (RPMs) and Terms and Conditions (TCs) in the Biological Opinion entitled “NATIONAL MARINE FISHERIES SERVICE ENDANGERED SPECIES ACT BIOLOGICAL OPINION”, dated June 2, 2023, shall be adhered to in full during construction and operation of the port facility.

12. Within 60 days of the date of the permit, the permittee shall provide a document, e.g., table, schedule, report, etc., describing how the RPMs and TCs in the Biological Opinion described in Special Condition 11 above will be met.

13. To protect diadromous fish migration and spawning, in-water work shall be avoided from March 1 to June 30 of any year.

14. All pile driving activities will be conducted using the soft-start and vibratory methods to reduce noise impacts.

15. Bathymetric surveys shall be conducted to monitor and validate sediment modeling studies with respect to potential effects to Cherry Island Flats.

16. Within 60 days of the date of the permit, the permittee shall provide a document, e.g., table, schedule, report, etc., describing how the bathymetric surveys described in Special Condition 15 above will be met.

17. That the Corps shall be notified before any subsequent maintenance dredging takes place and shall be advised of the amounts of dredged material to be generated and of the location of the dredged material disposal sites.

18. No dredged material from initial construction, nor maintenance dredging from the berthing areas, shall be placed at the Wilmington Harbor North Confined Disposal Facility, until such time the permittee assumes ownership and operation of the property containing the Wilmington Harbor North Confined Disposal Facility.

19. No dredged material from initial construction nor maintenance dredging events shall be placed at the Wilmington Harbor South Confined Disposal Facility, unless the permittee meets their obligations under Section 217(b) of the Water Resources and Development Act (WRDA) of 1996, as amended.

20. No dredged material from maintenance dredging events from the access channel shall be placed at the Pedricktown Complex Dredged Material Placement Facilities, unless the permittee meets their obligations under Section 204(f) of the Water Resources and Development Act (WRDA).

21. All Section 408 Standard Terms and Conditions found in the Department of the Army "POLICY AND PROCEDURAL GUIDANCE FOR PROCESSING REQUESTS TO ALTER US ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS PURSUANT TO 33 USC 408, Appendix K," dated 10 September 2018, must be adhered to in full.

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act.

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.



When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)