



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SOUTHEAST REGIONAL OFFICE

April 5, 2013

Ms. Lisa Magee  
Special Projects  
Philadelphia Regional Port Authority  
3460 North Delaware Avenue  
Philadelphia, PA 19134

Andrew Clark, Esq.  
Deputy Chief Counsel  
Pennsylvania Department of General  
Services  
Room 603, North Office Building  
Harrisburg, PA 17125

Re: Water Obstruction and Encroachment  
Permit Nos. E51-242 and E09-968  
South Port Marine Terminal Project and  
Jack's Marina Mitigation Site  
APS No. 807631, AUTH No. 969263  
APS No. 795534, AUTH No. 949539  
City of Philadelphia and Bristol Township  
Philadelphia and Bucks Counties

Dear Ms. Magee and Mr. Clark:

Enclosed is your State Water Obstruction and Encroachment Permit. Please review the permit so that you are aware of the extent of authorization and the conditions that apply.

Please be advised this permit does not include Federal authorization for this project and such authorization is required prior to starting the project. Contact the U.S. Army Corps of Engineers, 215.656.6724, concerning any Federal permits or approvals that are needed.

Prior to the commencement of construction, the enclosed *Acknowledgment of Notification of Permit Conditions* must be completed and signed by the permittee and an individual responsible for the supervision or control of the construction work acknowledging and accepting the general and special conditions, if any, contained in the permit. Unless the signed *Acknowledgment of Notification of Permit Conditions* is submitted to this office, the permit is void.

Also, a copy of both the permit and the *Acknowledgment of Notification of Permit Conditions* must be available at the work site for inspection upon request by any officer or agent of the Department or any other Federal, State, County, and Municipal agency.

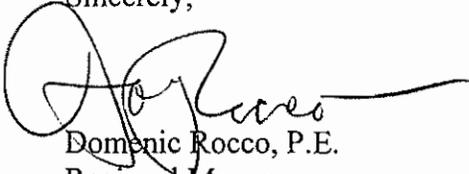
Finally, the Completion Report form must be signed by you and the supervising engineer indicating that the work has been completed as approved. The Completion Report must be submitted to this office within 30 days of the completion of the approved project.

Ms. Lisa Magee  
Andrew Clark, Esq.

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If you have any questions concerning this matter, please call Mr. Abdel Nassani at the phone number located in the first page footer.

Sincerely,

A handwritten signature in black ink, appearing to read "Domenic Rocco", with a long horizontal flourish extending to the right.

Domenic Rocco, P.E.  
Regional Manager  
Waterways and Wetlands

Enclosure

cc: U.S. Army Corps of Engineers  
Mr. Rutkowski – Weston Solution, Inc.  
Mr. Nassani  
Re 30 (joh13)068-3

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
SOUTHEAST REGIONAL OFFICE  
WATERWAYS AND WETLANDS**

**WATER OBSTRUCTION AND ENCROACHMENT PERMIT**

The Department of Environmental Protection ("Department"), established by the Act of December 3, 1970, P.L. 834 (71 P.S. §§ 510-1 et seq.) and empowered to exercise certain powers and perform certain duties under and by virtue of the Act of November 26, 1978, P.L. 1375, as amended by the Act of October 23, 1979, P.L. 204 (32 P.S. §§ 693.1 et seq.) known as the "Dam Safety and Encroachments Act"; Act of October 4, 1978, P.L. 851 (32 P.S. §§ 679.101 et seq.) known as the "Flood Plain Management Act"; Act of June 22, 1937, P.L. 1987 (35 P.S. §§ 691.1 et seq.) known as the "Clean Streams Law"; and the Administrative Code, Act of April 9, 1929, P.L. 177, as amended, which empowers the Department to exercise certain powers and perform certain duties by law vested in and imposed upon the Water Supply Commission of Pennsylvania and the Water and Power Resources Board, hereby issues these permits to:

**Philadelphia Regional Port Authority  
3460 North Delaware Avenue  
Philadelphia, PA 19134**

**and**

**Pennsylvania Department of General Services  
Room 603, North Office Building  
Harrisburg, PA 17125**

**giving its consent to perform the following water obstruction and encroachment activities on approximately 116 acres of land within the Delaware River(WWF-MF) and its floodplain for the construction, operation and maintenance of the proposed Southport Marine Terminal Facility located along the Delaware River, starting in the east end of the former Philadelphia Navy Base and extending to an existing sheet pile bulkhead just south of Pier 124 (Philadelphia, PA, USGS Quadrangle N:3.7 inches, W:4.00 inches) in the City of Philadelphia, Philadelphia County, and to perform compensatory mitigation activities:**

- 1. To place and maintain fill within approximately 88.38 acres of floodplain including 3.75 acres of non-tidal wetlands, associated with the construction of the proposed marine terminal and various support facilities, including, but not limited to, construction of a utility trench, pile-supported crane rails, container yard, gantry cranes, various buildings, and stormwater management facilities.**
- 2. To construct and maintain sheet pile bulkhead and rip-rap stabilization along the shoreline perimeter of the project.**
- 3. To install and maintain a 2,128-foot-long x 100-foot-wide high deck pile-supported elevated wharf and a 915 foot-long x 50-foot-wide high deck pile-supported wharf in the Delaware River.**
- 4. To place and maintain fill within approximately 11.43 acres of open waters including inter-tidal and sub-tidal habitats within the tidal freshwater zone of the Delaware River.**

5. **To relocate and maintain approximately 1,000 linear feet of unnamed tributary to the Delaware River and to construct and maintain a 20-foot-wide by 5-foot-high box culvert across this tributary to support a proposed marine terminal access road.**
6. **To dredge approximately 1,008,000 cubic yards of dredge material from an area encompassing approximately 35 acres of the Delaware River to a depth of 40 feet below mean low water with an allowable over-depth dredging of 2 feet between the new bulkheads and the federally maintained navigation channel to provide vessel access to the marine terminal wharves. Permit E51-242 also authorizes maintenance dredging. All dredge material shall be disposed of within an approved confined disposal facility.**

**Permit E51-242 is conditioned on performance of compensatory mitigation as described below:**

1. **To create, enhance and preserve, approximately 35.4 acres of uplands and intertidal areas within the 100-year floodplain of Neshaminy Creek at the former Jack's Marina located near the intersection of 4th Avenue and Central Drive (Beverly, PA, USGS Quadrangle N:14.50 inches, W:4.75 inches) in Bristol Township, Bucks County in accordance with the approved mitigation plan. Water obstruction and encroachment activities for this Jacks Marina mitigation project are authorized and governed by Permit E09-968.**
2. **To install and maintain underwater reef structures along the south facing shoreline of the Southport site in the Delaware River.**
3. **To permanently preserve Marshall Island (130+ acres) located in Tinicum Township, Bucks County as a natural area by means of an approved restrictive covenant.**

**The issuance of these permits also constitutes approval of a Water Quality Certification under Section 401 of the Federal Water Pollution Control Act [33 U.S.C.A. 1341(a)] with the exception noted in Special Condition J.**

If this work is not completed on or before the **31st** day of **December** A.D. **2016**, these permits, if not previously revoked or specifically extended by the Department, in writing, shall become void without further notification.

These permits are issued in response to applications filed with the Department on the **16th** day of **July** A.D. **2010**, and with the understanding that the work shall be performed in accordance with the maps, plans, profiles, and specifications filed with and made a part of the applications on **February 25, 2011, December 3, 2011, December 11, 2012, January 17, 2013, and March 5, 2013**, subject, however, to the provisions of the Dam Safety and Encroachments Act, the Flood Plain Management Act, the Clean Streams Law, the Administrative Code, the Rules and Regulations promulgated thereunder and the following conditions and restrictions:

1. The permittee shall sign the *Acknowledgement of Notification of Permit Conditions* thereby expressly certifying the permittee's acceptance of, and agreement to comply with, the terms and conditions of these permits. The permittee shall return a signed copy of the *Acknowledgement of Notification of Permit Conditions* to the Department. Unless the *Acknowledgement of Notification of Permit Conditions* form is completed and filed with the Department, these permits are void.

2. The Department, in issuing these permits, has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of these permits, such information and data prove to be false, incomplete or inaccurate, these permits may be modified, suspended, or revoked, in whole or in part, and the Department may, in addition, institute appropriate legal proceedings.

3. These permits do not give any property rights, either in real estate or material, nor any exclusive privileges, nor shall they be construed to grant or confer any right, title, easement, or interest in, to, or over any land belonging to the Commonwealth of Pennsylvania; neither do they authorize any injury to private property or invasion of private rights, nor any infringement of Federal, State, or Local laws or regulations; nor do they obviate the necessity of obtaining Federal assent when necessary.

4. The work shall, at all times, be subject to supervision and inspection by representatives of the Department, and no changes in the maps, plans, profiles, and specifications as approved shall be made except with the written consent of the Department. The Department, however, reserves the right to require such changes or modifications in the maps, plans, profiles, and specifications as may be considered necessary. The Department further reserves the right to suspend or revoke these permits.

5. These permits authorize the construction, operation, maintenance, and normal repair of the permitted structures conducted within the original specifications for the water obstruction or encroachment, and in accordance with the regulations of the Department and terms and conditions of these permits. Any repairs or maintenance involving modifications of the water obstruction or encroachment from its original specifications, and any repairs or reconstruction involving a substantial portion of the structure as defined by regulations of the Department shall require the prior written approval and permit of the Department.

6. Waste materials, scrap, or excess construction materials may not be disposed of in any watercourse, floodway or body of water, but shall be collected, stored, and disposed of in accordance with the Solid Waste Management Act (35 P.S. §§ 6018.101–6018.1003), the Municipal Waste, Planning, Recycling and Waste Reduction Act (53 P.S. §§ 4000.101–4000.1904), the Clean Streams Law (35 P.S. §§ 691.1–691.1001) and related rules and regulations.

7. There shall be no unreasonable interference with the free discharge of the river or stream or navigation during construction.

8. If, in the future, the Department determines that the water obstruction or encroachment causes unreasonable obstruction to the free passage of floodwaters or navigation, the permittee shall, upon due notice remove or alter the water obstruction or encroachment, without expense to the Commonwealth of Pennsylvania, so as to increase the flood carrying capacity of the channel or render navigation reasonably free, easy, and unobstructed, in such manner as the Department may require. No claim shall be made against the Commonwealth of Pennsylvania on account of any such removal or alteration.

9. The permittee shall notify the Department, in writing, of the proposed time for commencement of work at least 15 days prior to the commencement of construction.

10. If construction work has not been completed within the time specified in the permits and the time limit specified in the permits has not been extended, in writing, by the Department or if a permit has been revoked for any reason, the permittee shall, at his own expense and in a manner that the Department may prescribe, remove all or any portion of the work as the Department requires and restore the water course and floodplain to their former condition.

11. The permittee shall fully inform the engineer or contractor, responsible for the supervision and conduct of work, of the terms, conditions, restrictions, and covenants of these permits. Prior to the commencement of construction, the permittee shall file with the Department in writing, on a form provided by the Department, a statement signed by the permittee and an individual responsible for the supervision or conduct of the construction work acknowledging and accepting the general and special conditions contained in the permits. Unless the acknowledgment and acceptance have been filed, the permit is void. A copy of the permit and the acknowledgment shall be available at the work site for inspection upon request by an officer or agent of the Department or another Federal, State, County, or Municipal Agency.

12. The permittee shall operate and maintain the structure or work authorized herein in a safe condition in accordance with the permit terms and conditions and the approved maps, plans, profiles, and specifications.

13. These permits may not be transferred without prior written approval from the Department, such approval being considered upon receipt of the properly executed "Application of Transfer of Permit" form.

14. If and when the permittee desires to discontinue use or abandon the activity authorized herein, he must remove all or part of the structure or work authorized and take other actions as are necessary to protect safety and the environment in accordance with a permit issued by the Department.

15. If the use of explosives in any waterways is required, the permittee shall secure the prior written permit from the Pennsylvania Fish and Boat Commission, pursuant to the Pennsylvania Fish and Boat Code, Act 1980-175 Title 30 Pennsylvania Consolidated Statutes, Section 2906. Requests should be directed to the Pennsylvania Fish and Boat Commission, Division of Environmental Services, 450 Robinson Lane, Bellefonte, Pennsylvania 16823-9616, Telephone: 814.359.5140.

16. Permittee shall implement and monitor the Erosion and Sedimentation Control Plan prepared in accordance with Chapter 102, so as to minimize erosion and prevent excessive sedimentation into the receiving watercourse or body of water.

17. The project site shall, at all times, be available for inspection by authorized officers and employees of the Pennsylvania Fish and Boat Commission. Prior to commencement and upon completion of the work authorized by these permits, the permittee shall notify the Pennsylvania Fish and Boat Commission's Southeast Regional Office, P.O. Box 8, Elm, Pennsylvania 17521, Telephone: 717.626.0228.

18. The project site shall, at all times, be available for inspection by authorized officers and employees of the County Conservation District. Prior to commencement and upon completion of the work authorized by these permits, the permittee shall notify the following:

For E09-968: Bucks County Conservation District  
1456 Ferry Road  
Suite 704  
Doylestown, PA 18901  
Telephone: 215.345.7577

For E51-242: Department of Environmental Protection  
Dams, Waterways, and Wetlands Section  
2 East Main Street  
Norristown, PA 19401  
Telephone: 484.250.5970

19. **Work may not commence until a signed copy of the *Acknowledgement of Notification of Permit Conditions* is received by the Department.** Any work authorized by these permits conducted prior to the Department's receipt of a signed copy of the *Acknowledgement of Notification of Permit Conditions* is a violation of the Dam Safety and Encroachments Act and the Clean Streams Law, and you may be subject to fines and penalties pursuant to those Acts.

**SPECIAL CONDITIONS**

- A. With the exception of the access road box culvert (which shall be completed in accordance with Special Conditions H and I), no in-stream work shall occur before a final compensatory mitigation plan has been approved by this office.
- B. If state or federal listed species of concern are encountered during any phase of this project then work will be ceased and the permittee shall immediately call the Department (484.250.5970) and the Pennsylvania Fish and Boat Commission (PFBC) (814.359.5236) and the responsible federal agencies.
- C. The permittee shall conduct a pre-construction meeting with the Department prior to work commencing at the Jack's Marina mitigation site.
- D. The permittee shall conduct a field meeting with the Department after rough grading and prior to final grading at the Jack's Marina mitigation site.
- E. The construction of compensatory mitigation at the Jack's Marina site shall be conducted at the commencement of or prior to placement of fill authorized by permit E51-242. Within 30 days of completing construction of the compensatory mitigation projects, the permittee shall submit "as-built" plans prepared and sealed by a registered surveyor, of the compensatory mitigation habitats to the Department.

- F. Permittee shall monitor the compensatory mitigation sites for at least five years. Reports shall be submitted to the Department every six months for the first two years after construction and annually for three years thereafter. The monitoring reports shall contain information describing the success of the site at the time of inspection, an inventory of the surviving plant species and percent aerial coverage, photographs of the replacement sites with plans showing the location and orientation of each of the photographs, and a written plan to correct any deficiencies identified during the monitoring phase.
- G. If the approved compensatory mitigation site has not achieved design objectives within the monitoring period, remedial work will be required to assure establishment of **9.89 acres** of functional habitats in accordance with the final compensatory mitigation plan. Replacement habitats shall be considered successful when they meet the design objectives as stated in the approved final compensatory mitigation plan are met.

**Stormwater Channel:** The following measures will be necessary in order to avoid impacts to red-bellied turtles (*Pseudemys rubriventris*) during the relocation of the storm water channel located on the Southport site:

- H. Draining or dewatering of the work area of the stormwater channel shall be **prohibited between October 16 and April 14**. This time period is designed to avoid disturbance to the red-bellied turtle during their brumation period, thus allowing turtles to avoid the dewatered sections prior to periods of inactivity. In addition the following actions shall be conducted by a qualified biologist, who possesses the required Scientific Collector's Permit issued by the PFBC:
1. Project oversight including stop work authority in order to protect red-bellied turtles from harm during construction.
  2. Oversight and directions for installing the turtle barrier fencing and water diversions.
  3. A preconstruction salvage to remove red-bellied turtles, other reptiles, amphibians and fish from the work area before filling the existing channel and installing the barriers. This salvage operation shall include the use of basking traps and baited hoop nets to capture turtles.
  4. Captured turtles shall be examined by the biologist who shall record specific location where the turtle was found, its gender, the length and width of the carapace, and any unique markings and then release the turtles immediately upstream or downstream of the work site.
  5. The biologist shall notify the PFBC (814.359.5236) and the Department (484.250.5970) within 24 hours and provide them with the collected information of any animals encountered.
  6. The permittees shall prepare a detailed work plans to be provided to the PFBC for their review and approval before commencing this construction.

- I. The same avoidance measures shall be followed when the temporary diversion channel is abandoned, in case turtles have colonized this new channel.

**Dredging:**

- J. Permit E51-242 also authorizes perpetual maintenance dredging by hydraulic or environmental bucket method to the design depth in all berthing areas and the facility approach channel to a depth of 40 feet below mean low water with an allowable over-depth dredging of 2 feet. **Permit E51-242 does not authorize nor does it include a 401 Water Quality Certification for the discharge of decanted water from disposal of maintenance dredged material in the Commonwealth of Pennsylvania.** The permittee shall provide the Department with a Dredge Maintenance Plan (DMP) for review and approval prior to performing any maintenance dredging work at the site. The DMP will describe the current dredging process and include a description of available environmental, operational, and logistical constraints that provide a facility maintenance dredging baseline condition. Future maintenance dredging events that deviate from the baseline condition would require submitting an amended DMP to the Department.
- K. The Department and PFBC shall be notified prior to the start of any maintenance dredge work.
- L. In-water work, including dredging activities, pile driving activities, and the discharge of any fill material including rip-rap within aquatic areas at the Southport site are prohibited between **March 15 and June 30** of any year.
- M. Prior to the beginning of dredging, all public water suppliers or other water-related activities that may be affected by the turbidity increases or other water quality changes caused by said work shall be notified in advance to allow for preparation of water quality changes.
- N. The permittee agrees to post signs at the facility calling attention of river users that dredging operation are progressing in accordance with 105.384(b) of Chapter 105, Dam Safety and Waterway Management Regulations related to the protection of stream users.
- O. “Economic loading” or spillover of decanted water from barges during hydraulic maintenance dredging is prohibited.
- P. During dredging activities, a qualified red-bellied turtle biologist shall inspect the project work area and dredged materials for the presence of red-bellied turtles. If any red-bellied turtles are captured during the dredging, the biologist shall notify the PFBC and the Department within 24 hours and provide information on the specific location where the turtle was found, its gender, the length and width of the carapace, and any unique markings. Following collection of this information, any animals encountered shall be released in the river immediately upstream or downstream of the work site.

- Q. Dredging equipment shall allow animals to escape from the silt pile or avoid the activity.

**Docks and Bulkheads:**

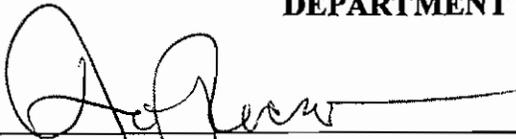
- R. The project site shall at all times be available for inspection by officers and employees of the Department and PFBC.
- S. Permit E51-242 authorizes installation and maintenance of aids to navigation which are required by the United States Coast Guard.
- T. Bilges, ballast or wastewater pumped from vessels or other floating craft docked at the permitted facility will not be discharged in the Delaware Estuary without removal of oils, toxic compounds, or biological organisms in a manner acceptable to the Department.
- U. Permit E51-242 is not to be considered an approval of the structural analysis, the engineering specifications or the construction methods of the culvert, deck structures, bulkhead, or other structural measures associated with this project.

**Compensatory Mitigation Site:** The following measures will be necessary in order to avoid impacts to red-bellied turtles and other aquatic life during the construction of the compensatory mitigation site under Permit E09-968:

- V. In-stream construction activities (especially dredging, filling or grading) are prohibited between **October 16 and April 14** in order to protect turtles during their brumation period. In addition, a qualified biologist who possesses the required Scientific Collector's Permit issued by the PFBC shall plan and oversee the installation of effective barriers across the mouth of the former boat basins at Jack's Marina and other adjacent intertidal areas that will isolate the work areas from red-bellied turtles. The following activities shall also be conducted by a qualified biologist:
1. Project oversight including stop work authority in order to protect red-bellied turtles from harm during construction.
  2. Oversight and directions for installing the turtle barrier fencing.
  3. A preconstruction salvage to remove red-bellied turtles, other reptiles, amphibians and fish from all work areas after the barriers are installed. This salvage operation shall include the use of basking traps and baited hoop nets to capture turtles.
  4. Captured turtles shall be examined by the biologist who shall record specific location where the turtle was found, its gender, the length and width of the carapace, and any unique markings and then release the turtles immediately upstream or downstream of the work site.

5. The biologist shall notify the PFBC and the Department within 24 hours and provide them with the collected information any animals encountered.
  6. The permittees shall prepare a detailed work plan and provide it to the PFBC for their review and approval before construction is initiated.
- W. A silt fence barrier shall be placed around the edge (between the water and the upland) of the proposed area of upland disturbance to prevent turtles seeking nesting areas from accessing active work zones. This fence shall be installed prior to the nesting period of the red-bellied turtle (install between **October 15 to May 15**) so that active turtles or their nests do not get trapped in the work zone. The qualified biologist shall inspect the enclosed areas and remove any trapped turtles from the work areas.

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**



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Domenio Recco, P.E.  
Regional Manager  
Waterways and Wetlands

April 5, 2013

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Issue Date

Re 30 (joh13)068-3a

## **NOTICE OF APPEAL RIGHTS:**

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

Commonwealth of Pennsylvania  
Department of Environmental Protection  
Southeast Region – Field Operations  
Watershed Management Program – Permits & Technical Services Section

ACKNOWLEDGEMENT OF NOTIFICATION OF PERMIT CONDITIONS

Project Location: \_\_\_\_\_

County: \_\_\_\_\_

Township: \_\_\_\_\_

Gentleman:

Acknowledgement is made that I, \_\_\_\_\_  
(Permittee name)

and \_\_\_\_\_  
(Name, address and telephone of individual responsible for supervision of work)

have been notified of and are familiar with the terms and conditions of Permit No. \_\_\_\_\_

issued to \_\_\_\_\_ giving its consent to \_\_\_\_\_  
(Permittee) (Work authorized as stated on permit)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Return to:

Department of Environmental Protection  
Southeast Region – Field Operations  
Watershed Management Program – Permits & Technical Services Section  
2 East Main Street  
Norristown, PA 19401

\_\_\_\_\_  
(Permittee signature)

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

\_\_\_\_\_  
(Signature of individual responsible for supervision of work)

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