



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

October 10, 2008

SBER Royal Mills, LLC
c/o Quentin Chafee, Development Director
1040 Hull Street, Suite 200
Baltimore, MD 21230

Insignificant Alteration – Permit

RE: Application No. 07-0356 in reference to the property and proposed project located:

Approximately 300 feet southeast of Providence Street, approximately 400 feet south of the intersection of Providence Street and Hay Street, Assessor's Plat 26, Lots 10, 11, 18, and 19, West Warwick, RI.

Dear Mr. Chafee:

Kindly be advised that the Department of Environmental Management's ("DEM") Freshwater Wetlands Program ("Program") and the Water Quality Certification Program has completed its review of your **Request for Preliminary Determination** application. This review included a site inspection of the above referenced property ("subject property") and an evaluation of the proposed reconstruction and operation of a hydro-electric facility at the Royal Mills as illustrated and detailed on site plans submitted with your application. These site plans were received on September 5, 2007.

Our observations of the subject property, review of the site plans and evaluation of the proposed project reveals that alterations of freshwater wetlands are proposed. However, pursuant to Rule 9.00 of the Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (Rules), this project may be permitted as an **insignificant alteration** to freshwater wetlands under the following terms and conditions:

Terms and Conditions for Application No. 07-0356:

1. This letter is the DEM's permit for this project under the R.I. Fresh Water Wetlands Act, Rhode Island General Laws (RIGL) Section 2-1-18 *et seq.*
2. This permit is specifically limited to the project, site alterations and limits of disturbance as detailed on the site plans submitted with your application and received by the Program on September 5, 2007. A copy of the site plans stamped approved by the DEM is enclosed. Changes or revisions to the project that would alter freshwater wetlands are not authorized without a permit from the DEM.

3. Where the terms and conditions of the permit conflict with the approved site plans, these terms and conditions shall be deemed to supersede the site plans.
4. You must notify this Program in writing immediately prior to the commencement of site alterations and upon completion of the project.
5. A copy of the stamped approved site plans and a copy of this permit must be kept at the site at all times during site preparation, construction, and final stabilization. Copies of this permit and the stamped approved plans must be made available for review by any DEM or Town representative upon request.
6. Within ten (10) days of the receipt of this permit, you must record this permit in the land evidence records of the Town of West Warwick and supply this Program with written documentation obtained from the Town showing this permit was recorded.
7. The effective date of this permit is the date this letter was issued. This permit expires four (4) years from the date of issue unless renewed pursuant to the Rules.
8. Any material utilized in this project must be clean and free of matter that could pollute any freshwater wetland.
9. Prior to commencement of site alterations, you shall erect or post a sign resistant to the weather and at least twelve (12) inches wide and eighteen (18) inches long, which boldly identifies the initials "DEM" and the application number of this permit. This sign must be maintained at the site in a conspicuous location until such time that the project is complete.
10. You are responsible for the proper installation, operation, maintenance and stability of any mitigative features, facilities, and systems of treatment and control which are installed or used in compliance with this permit to prevent harm to adjacent wetlands until such time that you document that this responsibility has been assumed by another person or organization.
11. You are obligated to install, utilize and follow all best management practices detailed or described on the approved site plans in the construction of the project to minimize or prevent adverse impacts to any adjacent freshwater wetlands and the functions and values provided by such wetlands.
12. All construction activities involving soil disturbances within watercourses must be limited to the low flow period (i.e., the period from July 1 to October 31 of any calendar year). Soil disturbance in these watercourses must temporarily cease in the event of any abnormally high stormwater runoff event during the low flow period.

This permit also serves as the 401 Water Quality Certification in accordance with Clean Water Act, as amended (33 U.S.C. 1251 et.seq.; Chapter 42-35 pursuant to Chapters 46-12 and 42-17.1 of Rhode Island General Laws of 1956, as amended).

- A. The applicant shall operate the project in an instantaneous run-of-river mode, whereby inflow to the project will equal outflow from the project at all times and water levels above the dam are not drawn down below the dam for the purpose of generating power. Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the applicant, or for short periods upon mutual agreement between the applicant, the U.S. Fish and Wildlife Service, and the Rhode Island Department of Environmental Management.
- B. The applicant shall discharge a minimum flow of 36 cfs, or inflow, if less, over the dam at all times for the protection of in-stream habitat, water quality and aesthetics; a portion of this flow will be passed through a downstream bypass weir, with the remainder discharged across the spillway. The amount of flow to be released through the weir shall be determined pursuant to Condition 3 below.
- C. The applicant shall install a downstream bypass weir and plunge pool to facilitate the movement of resident fish. The bypass system (location, dimensions, etc.) shall be designed in consultation with, and the designs shall require approval by, the U.S. Fish and Wildlife Service in consultation with the Rhode Island Department of Environmental Management, Division of Fish and Wildlife. The bypass system shall be operational within three years of project start-up.
- D. The applicant shall install trash-racks that meet the following criteria: (1) have an approach velocity less than or equal to 2 fps (as measured six inches in front of the racks); (2) have clear spacing of one inch or less; and (3) extend full-depth. The trash-racks shall be installed and operational concurrent with project start-up. Trash-rack modifications (e.g., reduced spacing and/or velocity) may be necessary in the future as part of American eel fish passage requirements if the applicant chooses to not cease generation during the downstream eel migration period.
- E. Recognizing that the spill over the Royal Mills Dam adds oxygen to the Pawtuxet River, the amount of which changes seasonally, the applicant shall cause no net loss of dissolved oxygen to this reach of the South Branch of the Pawtuxet River (as measured at the confluence of the bypass reach and tailrace) due to hydropower operations. The applicant shall provide data to the RIDEM sufficient to verify compliance with this no net loss requirement within one (1) year of the commencement of hydropower operations. At a minimum, this shall include sampling upstream of the dam, immediately downstream of the dam and at the mixing area of the river and tailrace. The data must be collected at least one time per week through the year. The applicant shall summarize the data in a water quality report to the Department that also includes the operating protocols necessary to achieve water quality compliance. The applicant shall report annually to RIDEM Water Quality data showing the level of compliance with the dissolved oxygen criteria. The applicant shall add tailrace aspiration if it is deemed necessary to meet the "no net loss of dissolved oxygen".

- F. The applicant shall, within three (3) months of the date of issuance of a FERC exemption from licensing, prepare and file for approval by the Rhode Island Department of Environmental Management, Water Quality Certification Program, a plan for maintaining and monitoring run-of-river operation and bypass flows at the project. The plan shall include a description of the mechanisms and structures that will be used, the level of manual and automatic operation, a trash rack cleaning procedure, the methods to be used for recording data on run-of-river operation and bypass reach flows, an implementation schedule, and a plan for maintaining the data for inspection. The applicant and RIDEM shall have six (6) months to finalize this approval.
- G. The applicant shall implement a refill procedure whereby, during impoundment refilling after draw-downs for maintenance or emergency purposes, 90% of inflow is passed downstream and the head pond is refilled on the remaining 10% of inflow to the project. This refill procedure may be modified on a case-by-case basis with the prior approval the Rhode Island Department of Environmental Management.
- H. The applicant shall be responsible for constructing, operating, maintaining and evaluating upstream and downstream fish passage facilities at this project when notified by the U.S. Fish and Wildlife Service and/or the Rhode Island Department of Environmental Management, Division of Fisheries and Wildlife that such fishways are needed. All plans and schedules associated with the design, construction, and evaluation of any prescribed fishways shall be developed by the applicant in consultation with, and require approval by, the U.S. Fish and Wildlife Service. The fishways shall be operated and maintained in accordance with the schedule identified by the agencies.
- I. Upon completion of the upstream and/or downstream fish passage facility, the applicant shall notify the Rhode Island Department of Environmental Management. A set of as-built drawings shall be furnished with the notification. Such notice shall be sent within 30 days of start-up.
- J. The applicant shall allow the Rhode Island Department of Environmental Management to inspect the project area at any time while the project operates under an exemption from FERC licensing to monitor compliance with their terms and conditions.
- K. The applicant shall incorporate the aforementioned terms and conditions in any conveyance—by lease, sale or otherwise—of its interests so as to legally assure compliance with said conditions for as long as the project operates under an exemption from licensing.
- L. In addition to any necessary enforcement actions stemming from the violation of any of the terms or conditions of this Water Quality Certificate or wetlands permit, issuance of this permit does not bar the Department, or any of its various Divisions, from instituting any investigation and/or enforcement actions that it may deem necessary for violations of any and all applicable statutes, regulations and/or permits, including but not limited to violations of the terms or conditions of any previous permit issued to you as an applicant or for this site.

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Pursuant to the provisions in Rule 7.09 and 11.04, as applicable, any properly recorded and valid permit is automatically transferred to the new owner upon sale of the property.

Kindly be advised that this permit is not equivalent to a determination of the type or extent of freshwater wetlands on the subject property. Should you wish to obtain such verification, you may submit an application in accordance with Rule 8.03.

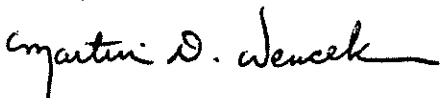
You are required to comply with the terms and conditions of this permit and to carry out this project in compliance with the Rules at all times. Failure to do so may result in an enforcement action by this Department.

In permitting the proposed alterations, the DEM assumes no responsibility for damages resulting from faulty design or construction.

This permit does not remove your obligation to obtain any local, state, or federal approvals or permits required by ordinance or law and does not relieve you from any duties owed to adjacent landowners with specific reference to any changes in drainage.

Please contact Joseph Casey of my staff (telephone: 401-222-6820, Ext. 7412) should you have any questions regarding this letter.

Sincerely,



Martin D. Wencsek, Permitting Supervisor
Office of Water Resources
Freshwater Wetlands Program



Alisa Richardson, Permitting Supervisor
Office of Water Resources
Water Quality Certification Program

MDW/JC/jc

Enclosure: Approved site plans

xc: Stephen Murray, West Warwick Building Official
John R. Lavigne, Jr., P.E., The H.L. Turner Group, Inc.
Alisa Richardson, P.E., DEM Water Quality Certification Program