

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits

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November 10, 2022

VIA EMAIL

Richard Hendrick
Albany Port District Commission
106 Smith Boulevard
Albany, NY 12202
rhendrick@portofalbany.us

RE: SPDES GP-0-20-001 - Commencement of Site Preparation Activities
Marmen-Welcon Tower Manufacturing Plant
Port of Albany Beacon Island Parcel, Bethlehem NY, Albany County
DEC # 4-0122-00322/00002

Dear Mr. Hendrick:

By letter dated May 20, 2022, Albany Port District Commission (APDC) requested to commence site preparation activities¹ and authorization to discharge pursuant to the Stormwater State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activity (GP-0-20-001), for the Marmen-Welcon Tower Manufacturing Plant (Project). APDC has not obtained certain permits from the New York State Department of Environmental Conservation (NYSDEC) including an Air State Facility (ASF) permit and an individual SPDES permit, ("Uniform Procedures Act (UPA) Permits").² NYSDEC issued certain required construction permits on November 10, 2022, which includes the Article 15 Protection of Waters Permit and the Article 11 Incidental Take Permit.

APDC asserts in its request that good cause to grant the request for site preparation activities exists based on its committed construction schedule and specific requirements for site preparation, construction, and operational components. Pursuant to 6 NYCRR 621.3(a)(4), based on permitting considerations and the specific circumstances presented here, NYSDEC reviewed the May 20, 2022 request from APDC and, based upon the facts and conditions set forth herein, determined that there is good cause to grant the request.

¹ For the purposes of this letter, "site preparation activities" are defined as installing and maintaining erosion and sediment controls; removing stumps; clearing and grubbing; earthwork to perform cuts and fills using the on-site material to establish a level working subgrade; and surcharging (pre-loading) the site by importing fill material and stockpiling material to a height of 6-7 feet above the final grade to establish a heavy dead weight load to allow gravity to compact the native soils and deep layer of clay.

² According to Part II(C)(1) of GP-0-20-001, an owner or operator shall not commence any construction activity in any location until the authorization to discharge under the General Permit goes into effect. Additionally, under Part II(C)(2)(b) of GP-0-20-001, authorization to discharge under the permit will be effective, among other requirements, when the owner or operator has obtained, "all necessary Department permits subject to the Uniform Procedures Act ("UPA") (see 6 NYCRR Part 621), or the equivalent from another New York State agency" unless otherwise notified by the Department pursuant to 6 NYCRR 621.3(a)(4).

Demonstration of Good Cause

In evaluating whether there is good cause for NYSDEC to grant an exception to the authorization criterion contained in Part II(C)(2)(b) of SPDES GP-0-20-001, and allow authorization to discharge and the commencement of limited site preparation activities prior to obtaining all other necessary UPA permits, NYSDEC has considered the following factors:

- Pursuant to UPA regulations, Section 621.3(a)(4), APDC has submitted all applications for UPA Permits for the Project.
- The requirements of the State Environmental Quality Review Act (SEQR - Article 8 of the ECL) have been satisfied,³ for the Project as follows: (i) The Town of Bethlehem Planning Board was established as SEQR Lead Agency (Lead Agency) and a positive declaration was issued requiring a Draft Generic Environmental Impact Statement (GEIS); (ii) a Final GEIS was accepted as complete and a SEQR Findings Statement was adopted by the Lead Agency on June 2, 2020; (iii) the Lead Agency determined the Project may have potential to create one or more significant adverse environmental impacts not evaluated within the Final GEIS and issued a Positive Declaration requiring a Supplemental Draft EIS on July 6, 2021; (iv) a Supplemental Final EIS was accepted as complete and a SEQR Findings Statement was adopted by the Lead Agency on March 15, 2022; and (v) NYSDEC as an Involved Agency adopted SEQR Findings on November 10, 2022.
- The requirements of the State Historic Preservation Act (SHPA)⁴ have been complied with for the Project, as follows:
 - The Stockbridge Munsee Community issued their opinion in a March 2, 2022 letter that the Project will have No Adverse Effect on Historic Resources.
 - The New York State Historic Preservation Office (SHPO) issued a letter on March 25, 2022, stating that that no historic properties, including archaeological and/or historic resources, will be Adversely Affected by the Project, provided that a Restrictive Deed Covenant is filed to protect and maintain the vegetated buffer along the Hudson River shoreline.
- APDC has prepared a Stormwater Pollution Prevention Plan (SWPPP) dated June 20, 2022.
- On July 6, 2022, the Town of Bethlehem as a regulated, traditional land use control Municipal Separate Stormwater Sewer Systems (MS4) accepted the SWPPP and subsequently signed the MS4 Acceptance Form on August 10, 2022.
- APDC has represented to NYSDEC that a phased approach is required for the site preparation to allow building construction including implementation of a 3-month surcharge program to address poor soils and settlement concerns.
- APDC has represented to NYSDEC that the UPA Permits for the operational components of the Project (ASF and individual SPDES permits) require selection of manufacturing and processing equipment that must follow the Port of Albany procurement process and therefore, not all information is available prior to the construction bid. As a result, it is impossible for APDC to provide NYSDEC all necessary information to issue the ASF and individual SPDES permits prior to the completion of bidding and procurement by APDC.
- On October 28, 2022, NYSDEC validated APDC's Landfill Reclamation Registration

³ See Part II.C(2)(a) of SPDES GP-0-20-001

⁴ See Part I.F(8)(b)(iv) of SPDES GP-0-20-001

which acknowledges the requirements for APDC to comply with 6 NYCRR Part 360 regulations.

- On November 10, 2022, NYSDEC issued the Article 15 Protection of Waters Permit and the Article 11 Incidental Take Permit for the Project.

Commencement of Limited Site Preparation Activities

In consideration of the factors identified above, NYSDEC is hereby granting an exception to the authorization criterion contained in Part II(C)(2)(b) of SPDES GP-0-20-001. APDC is authorized to commence site preparation activities under SPDES GP-0-20-001 pursuant to the SWPPP approved by the Town of Bethlehem on July 6, 2022, subject to the following limitations:

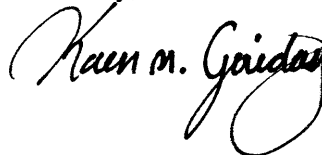
1. No on-site construction activities which are of a permanent nature, including but not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures, can commence until the Air State Facility permit is obtained.⁵
2. No construction of the Project's wastewater treatment facility can commence until the individual SPDES permit is issued and plan approval for the wastewater treatment facility has been obtained from NYSDEC.
3. No excavation, fill, or dredging activities can commence in any wetlands or other waters of the U.S., including the Hudson River, Normans Kill, and federally regulated wetlands, until required authorizations have been issued by the U.S. Army Corps of Engineers.
4. All other applicable terms and conditions of SPDES GP-0-20-001 are satisfied and complied with.
5. APDC must obtain all applicable local and federal approvals necessary to commence site preparation.

This exception to Part II(C)(2)(b) of SPDES GP-0-20-001 for the site preparation activities is only authorized until May 1, 2023, or until NYSDEC issues all UPA Permits, whichever comes first.

Please also note that granting of this request does not guarantee issuance of the individual permits identified above as the permits are still subject to public review and comment, and other applicable provisions of 6 NYCRR Part 621. As such, APDC assumes all risks in commencing site preparation.

Please contact me at karen.gaidasz@dec.ny.gov if you have any questions or concerns.

Sincerely,



Karen M. Gaidasz, Chief
Offshore Wind & Hydroelectric Section
Bureau of Energy Project Management

⁵ See 6 NYCRR 201-2.1(b)(9)