

**ATTACHMENT 6 – WETLAND AND WATERWAY PERMIT APPROVALS  
AUGUST 28, 2023**

**State of Wisconsin**  
**DEPARTMENT OF NATURAL RESOURCES**  
N7725 Hwy 28  
Horicon, WI, 53032

Tony Evers, Governor  
Adam N. Payne, Secretary  
Telephone 608-266-2621  
Toll Free 1-888-936-7463  
TTY Access via relay - 711



August 28, 2023

IP-SE-2023-68-00722

Daniel Otzelberger  
W124 S10629 S. 124th Street  
Muskego, WI 53150

RE: Application to Wetland Individual Permit in the City of MUSKEGO, Waukesha County

Dear Mr. Otzelberger:

The Department of Natural Resources has completed its review of your application for a permit to in the City of MUSKEGO, Waukesha County. You will be pleased to know your application is approved.

I am attaching a copy of your permit, which lists the many important conditions that must be followed to protect water quality and habitat. A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you.

You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (920) 296-6507 or email [marty.dillenburg@wisconsin.gov](mailto:marty.dillenburg@wisconsin.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read 'Marty Dillenburg'.

Marty Dillenburg  
Water Management Specialist

Email CC: Luke Specketer, Tetra Tech  
A.J. Kitchen, Project Manager, US Army Corps of Engineers  
David Buser, Hydrogeologist – Waste and Materials Management, Wisconsin DNR  
Tom Nedland, Wetland Section Manager, Wisconsin DNR  
Scott Kroeger, Public Works and Development Director, City of Muskego  
Chris Jors, Sr. Specialist-Biologist, SEWRPC

**STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES**

**WETLAND INDIVIDUAL PERMIT  
IP-SE-2023-68-00722**

Application of Daniel Otzelberger, docket IP-SE-2023-68-00722 is hereby granted under Section 281.36, Wisconsin Statutes, and 33 U.S.C.S §1341 (CWA §401), to impact wetlands located at NE 1/4, SW 1/4, Sec. 36, T. 05, R. 20E, City of MUSKEGO, Waukesha County, subject to the following conditions:

**PERMIT**

1. You must notify Marty Dillenburg at phone (920) 296-6507 or email [marty.dillenburg@wisconsin.gov](mailto:marty.dillenburg@wisconsin.gov) before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described **on or before August 28, 2026**. If you will not complete the project by this date, you must submit a written request for an extension prior to expiration of the initial time limit specified in the permit. Your request must identify the requested extension date. The Department shall extend the time limit for an individual permit or contract for no longer than an additional 5 years if you request the extension before the initial time limit expires. You may not begin or continue construction after the original permit expiration date unless the Department extends the permit in writing or grants a new permit.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit for good cause, including if the project is not completed according to the terms of the permit or if the Department determines the activity is detrimental to the public interest.
7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completing work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 281.36(13), Wis. Stats., for any violations of s. 281.36, Wis. Stats., or this permit.
11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at: [http://dnr.wi.gov/topic/stormwater/standards/const\\_standards.html](http://dnr.wi.gov/topic/stormwater/standards/const_standards.html).



12. All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.
13. The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.
  1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
  2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps.
  3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
  4. **Wash your equipment** with hot (>140° F) and/or high-pressure water, - OR - Allow your equipment to **dry thoroughly for 5 days**.
14. Final site stabilization requires the re-establishment of native vegetation and must not contain any exotic species.
15. No other portion of the wetland may be disturbed beyond the area designated in the plans dated 02/14/2023.

#### FINDINGS OF FACT

1. Daniel Otzelberger, W124 S10629 S. 124th Street, Muskego, WI 53150, filed an application with this Department on 02/27/2023, under section 281.36, Wisconsin Statutes, to impact wetlands located in the NE 1/4, SW 1/4, Sec. 36, T. 05, R. 20E, City of Muskego, Waukesha County.
2. Emerald Park Landfill, LLC (EPL) plans to expand its footprint by 26.7 acres horizontally to the west and as well as vertically on top of an un-capped portion of the existing landfill increasing its capacity by 7,178,000 cubic yards of disposal volume. The proposed project will ensure that EPL can continue operations providing waste disposal services and employment to the surrounding communities. This individual wetland and waterway permit application includes the proposed relocation of 1,060 feet of an existing agricultural ditch and the filling of 14.81 acres of wetlands. The drainage function of the existing agricultural ditch is proposed to be replaced by the new agricultural ditch in a different location designed and constructed to provide similar functionality. All stormwater throughout the construction period and the life of the facility and the proposed expansion area will be handled by the required Storm Water Pollution Prevention Plan (SWPPP), which includes surface water conveyance ditches and stormwater basins designed to release surface water at similar rates to pre-existing conditions. EPL's existing SWPPP will be amended to include the expansion area as is required during the Plan of Operation that needs to be completed and approved by the Wisconsin Department of Natural Resources (WDNR) prior to construction. The impacted wetlands are proposed to be mitigated through the WDNR's wetland banking system. EPL owns a 78.25 acres wetland bank that was established in 2004 and is approximately 600 feet northwest of the expansion area within the same watershed. 41.9 wetland bank credits from EPL's wetland bank were released in February 2023. EPL proposes to use the appropriate number of credits from its wetland bank to mitigate the wetland impacts from the proposed western expansion.
3. The discharge(s) from the proposed activity will comply with water quality requirements as authorized by this document.
4. The applicant proposed to compensate for wetland losses through mitigation. The Department evaluated the wetland mitigation proposal and determined that on-site mitigation was not feasible and the purchase of mitigation bank credits could fulfill the compensation obligation. The mitigation plan proposed the purchase of 18.68 acres of credit to compensate for the 14.81 acres of wetland lost. The credits were purchased August 23, 2023 and an Affidavit of Bank Credit Purchase was submitted to the Department fulfilling the compensation obligation.
5. Constructing to the north does not meet the project goals. While it does provide a technically sound design and arguably reduces environmental impacts to wetlands, the revised Alternative 3 eliminates the recently constructed and approved compost area which would have to be reconstructed on-site and would also require significant excavation and relocation of current stockpiles which could both potentially increase the wetland acres disturbed. The revised Alternative 3 area also would require the removal of a deed restriction and a WDNR exemption to excavate the FPDI and relocate the waste within the Alternative 3 footprint. The revised Alternative 3 also does not provide sufficient waste disposal capacity to justify the



development cost, increases costs due to the removal and reconstruction of the compost facility, the removal and relocation of stockpiles, and excavation of FPDl.

Constructing to the south does not meet the project goals. While it does provide a technically sound design and provides sufficient waste disposal capacity to justify the development cost, it increases the environmental impacts by directly impacting a higher quality wetland area, a navigable waterway, and an unnamed intermittent stream, and by removing a larger habitat area due to clearing of wooded areas to relocate existing site features.

Constructing to the east is does not meet project goals due to available area west of S 124<sup>th</sup> St.

The no build alternative for the site is not practicable as it would lead to the closure of the landfill when capacity is reached if no additional capacity is added.

Off-site alternatives were not considered because the proposed project is required for an existing industrial, commercial, agricultural, or aquacultural facility that is in existence at the time the application was submitted, per 281.36(3n)(a)1.b.b., Wis. Stats.

6. All practicable measures to minimize adverse impacts to the functional values of the wetland have been taken. Minimization of wetland impacts has occurred to the maximum extent possible and considers resource manager feedback, project purpose and need, and considerations of geographic constraints. During the permitting process the horizontal expansion acreage was reduce from 29.3 acres to 26.7 acres resulting in a reduction to direct impacts to 1.6 acres of wetland along western side of the proposed expansion. No further wetland impact minimizations were practicable.

7. The proposed project will not result in significant adverse impacts to wetland functional values, significant impacts to water quality, or other significant adverse environmental consequences. Functional values for all wetlands to be impacted were rated low to medium. Floristic integrity was rated low to medium across all wetlands to be impacted due to the plant species and communities present. Human use values are rated as low across the wetlands due to the private nature of the land and location adjacent to an active landfill and cropped farm fields. Wildlife habitat is provided by the wetlands to generalist species that can tolerate human activity nearby. Groundwater processes and flood and stormwater storage were rated low to medium across the wetlands to be impacted due to the storage and slowing of precipitation on the landscape. Impacts to wetland functional values of the wetlands that are being filled will be offset by the proposed mitigation plan of purchasing credits from a nearby wetland bank that is approximately 600ft northwest of the proposed expansion and within the project watershed. Due to its location, Wetland 2 is the only wetland to provide a degree of shoreline protection and fish and aquatic life habitat to the stream that is proposed to be realigned due to the heavy vegetative cover in the herbaceous layer along the stream banks.

Significant impacts to water quality will not occur as a result of the proposed project. The functional values for Wetland 2A were rated low and medium, with a high rating for water quality protection. Wetland 2A will be fully preserved to help retain the functional values. Water quality protection functional values for all wetlands to be impacted were rated as low or medium. These impacts will be offset by stormwater detention features that will be placed on the landscape around the landfill as well as the wetlands located in the adjacent mitigation bank that were purchased through credits.

Based upon information provided by the applicant, review of natural resource impacts, feedback from natural resource managers, and the quantity and location of mitigation credits purchased, no significant adverse environmental consequences will occur as a result of the proposed project.

8. The proposed project will fill 14.81 acres of wetlands, whose functional values will be offset by the proposed mitigation plan of purchasing credits from a nearby wetland bank that is approximately 600ft northwest of the proposed expansion and within the proposed watershed. The DNR finds these impacts to functional values will be offset by the approved wetland mitigation bank located nearby, where credits were sourced.

9. Cumulative impacts on site including the past filling of what appears to be a farmed wetland/pasture complex visible in 1941 aerials before the landfill was created. Also present is the currently existing wetland complex located adjacent to the landfill to the south, which is continuing to be avoided through this proposed landfill expansion. At this time there are no reasonably anticipated impacts caused by similar projects in the area affected by the project.

10. Secondary impacts of the project to the wetland functional values include alterations to the site hydrology as surface flows are diverted from current status. Storm and floodwater storage will occur in stormwater basins and the adjacent mitigation



bank as opposed to the current wetlands. The project's stormwater conveyance system will be designed to release water at similar rates as pre-development conditions the remaining wetlands will receive similar surface water inputs. Wildlife use of the area will likely decrease in the immediate vicinity while shifting west and north to utilize remaining natural areas adjacent to the landfill.

11. Functional values resulting from the mitigation project will be provided in the areas of floristic integrity, human use values, wildlife habitat, fish and aquatic life habitat, shoreline protection, flood and stormwater storage, water quality protection, and groundwater processes. This mitigation bank was developed to provide functional values that were intended to offset anticipated impacts to wetlands on-site related to landfill expansions.

12. Based upon information provided by the applicant, review of natural resource impacts, feedback from natural resource managers, and the quantity and location of mitigation credits purchased, a net neutral environmental impact exists for the proposed project.

13. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.

14. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an equivalent analysis action under s. NR 150.20(2), Wis. Adm. Code. The Department has considered the impacts on the human environment, alternatives to the proposed projects and has provided opportunities for public disclosure and comment. The Department has completed all procedural requirements of s. 1.11(2)(c), Wis. Stats., and NR 150, Wis. Adm. Code for this project.

15. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 281.36, Wisconsin Statutes and Chapters NR 102 and 103 of the Wisconsin Administrative Code.

#### CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

2. The project as proposed and subject to the conditions of this permit meets the standards for issuance of the permit under Section 281.36(3n)(c).

3. The Department has complied with s. 1.11, Wis. Stats.

#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

**The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30 day period for filing a petition for judicial review.**

A request for contested case hearing must meet the requirements of section 281.36 (3q), Wis. Stats., and section NR 2.03, Wis. Adm. Code, and if the petitioner is not the applicant the petition must include the following information:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed discharge under the wetland individual permit is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.
3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.
4. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at the Horicon Service Center, Wisconsin on August 28, 2023.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: 

Marty Dillenburg

Water Management Specialist

**State of Wisconsin**  
**DEPARTMENT OF NATURAL RESOURCES**  
N7725 Hwy 28  
Horicon, WI, 53032



August 28, 2023

Daniel Otzelberger  
W124 S10629 S. 124th Street  
Muskego, WI 53150  
[sent electronically]

IP-SE-2023-68-00721

RE: Application to Changing stream course in the City of MUSKEGO, Waukesha County

Dear Mr. Otzelberger:

The Department of Natural Resources has completed its review of your application for a permit to realign a section of stream channel of WBIC 5038269 located in the NE 1/4, SW 1/4, Section 36, Township 05, Range 20E, City of Muskego, Waukesha County. You will be pleased to know your application is approved.

I am attaching a copy of your permit, which lists the many important conditions that must be followed to protect water quality and habitat. A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you.

Before you start your project, you must first obtain any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers. You are responsible for contacting these local and federal authorities to determine if they require permits or approvals for your project. These local and federal authorities are responsible for determining if your project complies with their requirements. Development in conjunction with this project, such as construction or filling, must conform to State Floodplain Management Standards and local zoning regulations.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (920) 296-6507 or email [marty.dillenburg@wisconsin.gov](mailto:marty.dillenburg@wisconsin.gov).

Sincerely,

Marty Dillenburg  
Water Management Specialist

Email CC: Luke Specketer, Tetra Tech  
A.J. Kitchen, Project Manager, US Army Corps of Engineers  
David Buser, Hydrogeologist – Waste and Materials Management, Wisconsin DNR  
Tom Nedland, Wetland Section Manager, Wisconsin DNR  
Scott Kroeger, Public Works and Development Director, City of Muskego  
Chris Jors, Sr. Specialist-Biologist, SEWRPC



STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

CHANNEL CHANGES PERMIT  
IP-SE-2023-68-00721

Application of Daniel Otzelberger is hereby granted under Sections Ch 30.195(1) and Ch 30.208, Wisconsin Statutes, to change the channel of WBIC 5038269 located in the NE 1/4, SW 1/4, Section 36, Township 05, Range 20E, City of Muskego, Waukesha County, subject to the following conditions:

PERMIT

1. You must notify Marty Dillenburg at phone (920) 296-6507 or email [marty.dillenburg@wisconsin.gov](mailto:marty.dillenburg@wisconsin.gov) before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described **on or before August 28, 2026**. If you will not complete the project by this date, you must submit a written request for an extension prior to expiration of the initial time limit specified in the permit. Your request must identify the requested extension date. The Department shall extend the time limit for an individual permit or contract for no longer than an additional 5 years if you request the extension before the initial time limit expires. You may not begin or continue construction after the original permit expiration date unless the Department extends the permit in writing or grants a new permit.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. Before you start your project, you must first obtain any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers. You are responsible for contacting these local and federal authorities to determine if they require permits or approvals for your project. These local and federal authorities are responsible for determining if your project complies with their requirements.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit for good cause, including if the project is not completed according to the terms of the permit or if the Department determines the activity is detrimental to the public interest.
7. **You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway**, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood, and agreed to follow all conditions of this permit.
9. **You must submit a series of photographs to the Department, within one week of completing work on the site.** The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes, or this permit.
11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at: [http://dnr.wi.gov/topic/stormwater/standards/const\\_standards.html](http://dnr.wi.gov/topic/stormwater/standards/const_standards.html) .
12. All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.

1. **Inspect and remove** aquatic plants, animals, and mud from your equipment.
2. **Drain all water** from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps.
3. **Dispose** of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
4. **Wash your equipment** with hot (>140° F) and/or high-pressure water,  
- OR -  
Allow your equipment to **dry thoroughly for 5 days**.

#### STREAM RELOCATION CONDITIONS:

13. Construction must take place during low water periods and no in-water construction can take place between March 1 and June 15 of each calendar year to protect fish spawning, movement, and egg incubation periods.

14. Development in conjunction with this project, such as construction or filling, must conform to State Floodplain Management Standards and local zoning regulations.

15. The bank slopes of the new channel must be in accordance with the approved plans dated 02/06/2023.

16. The new channel's banks must be stabilized before it is opened up to receive stream flow. To minimize erosion, the downstream end of the new channel must be opened first. Once the stream flow is passing through the new channel, the existing channel can be filled. The upstream and downstream end of the fill in the old channel must be protected from erosion in accordance with the plans dated 02/06/2023 and approved by this permit.

#### FINDINGS OF FACT

1. Daniel Otzelberger, W124 S10629 S. 124th Street, Muskego, WI 53150, filed an application with this Department on 02/27/2023, under sections Ch 30.195(1) and 30.208, Wisconsin Statutes, to change the channel of WBIC 5038269 located in the NE 1/4, SW 1/4, Sec. 36, T. 05, R. 20E, City of Muskego, Waukesha County.

2. Emerald Park Landfill, LLC (EPL) plans to expand its footprint by 26.7 acres horizontally to the west and as well as vertically on top of an un-capped portion of the existing landfill increasing its capacity by 7,178,000 cubic yards of disposal volume. The proposed project will ensure that EPL can continue operations providing waste disposal services and employment to the surrounding communities. This individual wetland and waterway permit application includes the proposed relocation of 1,060 feet of an existing agricultural ditch and the filling of 14.81 acres of wetlands. The drainage function of the existing agricultural ditch is proposed to be replaced by the new agricultural ditch in a different location designed and constructed to provide similar functionality. All stormwater throughout the construction period and the life of the facility and the proposed expansion area will be handled by the required Storm Water Pollution Prevention Plan (SWPPP), which includes surface water conveyance ditches and stormwater basins designed to release surface water at similar rates to pre-existing conditions. EPL's existing SWPPP will be amended to include the expansion area as is required during the Plan of Operation that needs to be completed and approved by the Wisconsin Department of Natural Resources (WDNR) prior to construction. The impacted wetlands are proposed to be mitigated through the WDNR's wetland banking system. EPL owns a 78.25 acres wetland bank that was established in 2004 and is approximately 600 feet northwest of the expansion area within the same watershed. 41.9 wetland bank credits from EPL's wetland bank were released in February 2023. EPL proposes to use the appropriate number of credits from its wetland bank to mitigate the wetland impacts from the proposed western expansion.

3. The Department has reviewed the proposal provided by the applicant and any information from public comments and the public informational hearing.

4. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.



5. WBIC 5038269 is a navigable water (and no bulkhead exists at the project site).
6. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
7. The proposed project will impact wetlands if constructed in accordance with this permit (authorized under wetland individual permit IP-SE-2023-68-00722 and mitigated for at adjacent wetland mitigation bank).
8. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an integrated analysis action under s. NR 150.20(2), Wis. Adm. Code. The Department has considered the impacts on the human environment, alternatives to the proposed projects and has provided opportunities for public disclosure and comment. The Department has completed all procedural requirements of s. 1.11(2)(c), Wis. Stats., and NR 150, Wis. Adm. Code for this project.
9. The applicant is the owner of land upon which the change in course of the navigable stream will occur.
10. The proposed change of course of the navigable stream will improve the aesthetic value of the applicant's land through the addition of a 50 foot vegetated buffer zone on either side of the realigned stream.
11. The proposed change of course of the navigable stream will not adversely affect the flood flow capacity of the stream.
12. The proposed change of the course of the navigable stream will not be detrimental to the rights of other riparian owners located on the stream as the applicant owns all of the riparian property adjacent to the stream.
13. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 30.195(1) and 30.208, Wisconsin Statutes and Chapters NR 102, and 103 of the Wisconsin Administrative Code.
14. The stream relocation will not be detrimental to the public interest. A riparian buffer zone of 50 feet will be provided on both sides of the realigned drainage ditch. This riparian buffer will provide increased habitat for fauna and vegetation, lower the water temperature (when water is present) through shading from the vegetation and increase the water quality by trapping sediments and contaminants before they can enter the channel. The addition of the riparian buffer will allow the realigned agricultural drainage ditch to provide more wildlife habitat and improved water quality compared to the existing drainage ditch. Seasonal fisheries habitat will also be available in the realigned drainage.
15. The activity will not cause environmental pollution as defined in s. 299.01(4).
16. The newly relocated stream channel is considered navigable and public as a result of this authorization and project. The newly relocated stream channel is considered navigable for local zoning purposes and local permits/approvals are required for work proposed within the shoreland zone of this waterway.

#### CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.
2. The project as proposed and subject to the conditions of this permit meets the standards for issuance of the permit under s. 30.195(2)(c).
3. The Department has complied with s. 1.11, Wis. Stats.

## NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

**The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.**

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and sections NR 2.03, 2.05, and 310.18, Wis. Admin. Code, and if the petitioner is not the applicant the petition must include the following information:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed permit or contract is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the project, as proposed, may result in a violation of Chapter 30, Wis. Stats.;
3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at the Horicon Service Center, Wisconsin on August 28, 2023.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
For the Secretary

By: 

Marty Dillenburg

Water Management Specialist