

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 9
700 Delaware Avenue, Buffalo, NY 14209
P: (716) 851-7165 | F: (716) 851-7168
www.dec.ny.gov

March 24, 2023

Fred Cimato
Cimato Enterprises Inc.
9220 Transit Road
East Amherst, New York 14051-1622

Dear Fred Cimato:

PERMIT TRANSMITTAL LETTER DEC PERMIT No. 9-1422-00452

Enclosed is your permit which was issued in accordance with applicable provisions of the Environmental Conservation Law. The permit is valid for only that project, activity or operation expressly authorized.

The DEC permit number and Program ID number, if applicable, should be retained for your records and should be referenced on all future correspondence and applications related to the permit. If modifications are desired after permit issuance, you must submit the proposed revisions and receive written approval from the Permit Administrator prior to initiating any change. If the Department determines that the modification represents a material change in the scope of the authorized project, activity, operation or permit conditions, you will be required to submit a new application for permit.

Please note the expiration date of the permit. Applications for permit renewal should be made well in advance of the expiration date (minimum of 30 days) and submitted to the Regional Permit Administrator at the above address. For SPDES, Solid and Hazardous Waste Permits, renewal applications must be submitted 180 days in advance of permit expiration.

Please review all permit conditions carefully. In particular, identify your initial responsibilities under this permit in order to assure timely action if required. Since failure to comply precisely with permit conditions may be treated as a violation of the environmental conservation law, you are requested to provide a copy of the permit to the project contractor, facility operator, and other persons directly responsible for permit implementation (if any).

If you have any questions, please contact this office at the above address.

Respectfully,

David S. Denk
Regional Permit Administrator

DSD/slr
Enclosure

ec: Captain Joshua VerHague, Division of Law Enforcement, NYSDEC Region 9
Joe Rowley, U.S. Army Corps of Engineers, Buffalo District
Scott Livingstone, Earth Dimensions





PERMIT
Under the Environmental Conservation Law (ECL)

Permittee and Facility Information

Permit Issued To:
CIMATO ENTERPRISES INC
9220 TRANSIT RD
EAST AMHERST, NY 14051-1622
(716) 688-3536

Facility:
4300 Millersport Subdivision
4300 MILLERSPORT HWY
AMHERST, NY

Facility Location: in AMHERST in ERIE COUNTY

Facility Principal Reference Point: NYTM-E: 196.342 NYTM-N: 4773.833
Latitude: 43°03'23.2" Longitude: 78°43'43.4"

Authorized Activity: Impacts to approximately 0.76 acres of federal jurisdictional wetland associated with the construction of 38 single family homes and 13 townhouses and two commercial buildings on an approximately 67 acre parcel. The project is located at 4300 Millersport Highway in the Town of Amherst.

Note: Wherever used in this permit, ECL refers to New York State Environmental Conservation Law and 6 NYCRR refers to Title 6 of the New York Code, Rules, and Regulations.

Permit Authorizations

Water Quality Certification - Under Section 401 - Clean Water Act

Permit ID 9-1422-00452/00003

New Permit

Effective Date: 3/24/2023

Expiration Date: 3/23/2026

NYSDEC Approval

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.

Permit Administrator: LISA M CZECHOWICZ, Deputy Regional Permit Administrator

Address: NYSDEC Region 9 Headquarters
700 Delaware Ave
Buffalo, NY 14209

Authorized Signature: _____

Lisa M Czechowicz

Date 3 /24 /2023



Distribution List

Law Enforcement
Joe Rowley
Scott Livingstone

Permit Components

NATURAL RESOURCE PERMIT CONDITIONS

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**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following
Permits: WATER QUALITY CERTIFICATION**

1. Conformance With Plans All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by the permittee or their representative(s) and are identified in condition no. 2, which includes the relevant water quality standards and explanation for the condition..

2. Conformance with Plans List All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans include the following:

	Document	Description and Date
a.	Plans	Received on April 22, 2022
b.		
c.		

Water Quality Requirements: 6 NYCRR 608.9 Discharges prohibited without certification.

Explanation: This condition is necessary to identify what discharges are authorized by the certification. Any discharge not identified in the referenced plans is prohibited.

3. Precautions Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.



4. Precaution Against Contamination of Waters All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

Water Quality Standards: 6 NYCRR 703.2. Narrative water quality standards related to turbidity, suspended solids, toxic substances, color, and other deleterious substances.

Explanation: This condition is necessary to ensure that the permittee undertakes whatever additional measures are necessary, and not otherwise specified in the conditions of this permit, to prevent the contravention of water quality standards during the implementation of the project.

5. Install and Maintain Erosion Controls Appropriate soil erosion and sediment controls (such as silt fences, turbidity curtains, straw bales, and other appropriate measures) shall be installed, used, and maintained in effective operating condition during all work. Controls shall be installed prior to ground disturbance, inspected periodically to ensure that they are not damaged, repaired promptly when needed, and remain in place until the site is stabilized by the regrowth of suitable vegetation. Erosion controls shall be removed after the site is stabilized by the regrowth of suitable vegetation.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards for turbidity, suspended solids, and other deleterious substances.

Explanation: This condition is necessary to ensure that upland erosion is minimized and contained during project construction, preventing contravention of the water quality standards.

6. Construction Access Construction access shall be by means that avoid aquatic sites, unless specifically authorized on the approved plans.

Water Quality Standards: 6 NYCRR 608.9 Discharges prohibited without certification.

Explanation: This condition is necessary to ensure that the operation of construction equipment does not result in long-term or permanent alteration of waters, creating a discharge beyond the scope of the authorized discharge.

7. Temporary Work Areas Temporary causeways and work pads within regulated waters shall be constructed within the confines of a water control structure and shall consist of clean non-erodible material such as stone, timber, or steel. The temporary causeways and work pads shall not be installed until the water control structure is in place and the area has been completely dewatered and shall be removed prior to removal of the water control structure. Equipment staging and lay down areas shall not be located in wetlands, unless specifically authorized on the approved plans.

Water Quality Standards: 6 NYCRR 608.9: Discharges prohibited without certification. 6 NYCRR 703.2: Narrative water quality standards related to turbidity, suspended solids, toxic substances, and other deleterious substances.

Explanation: This condition is necessary to ensure that the construction of temporary work pads and staging areas do not result in long-term or permanent alteration of waters, creating a discharge beyond the scope of the authorized discharge, or result in a contravention of water quality standards.



8. Clean Fill Only All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, flyash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. The introduction of materials toxic to aquatic life is expressly prohibited.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards related to turbidity, suspended solids, garbage, cinders, ashes, oils, sludge, other refuse, toxic substances, and other deleterious substances.

Explanation: This condition is necessary to ensure that there are no unauthorized materials are discharged, and that those authorized materials do not contain any other materials that are toxic to aquatic life and, thereby, contravene water quality standards.

9. Heavy Equipment Heavy equipment working in wetlands must be placed on equipment mats, or other measures must be taken to minimize soil disturbance and compaction to the maximum extent practicable.

Water Quality Standards: 6 NYCRR 608.9 Discharges prohibited without certification.

Explanation: This condition is necessary to ensure that the operation of heavy equipment does not result in long-term or permanent alteration of waters, creating a discharge beyond the scope of the authorized discharge.

10. Equipment Cleaning To prevent turbid discharges and the potential introduction of invasive species into regulated waters from other areas, all equipment used in any project work area involving regulated waters will be inspected for, and cleaned of, any visible soils, vegetation, and debris before being used in regulated waters.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards related to turbidity, suspended solids and other deleterious substances.

Explanation: This condition is necessary to ensure that equipment used will not contribute to a contravention of water quality standards.

11. Temporary Dewatering Structures Where temporary dewatering is required or specified on the approved plans, temporary dewatering measures shall comply with the following:

- a. Temporary dewatering structures shall be constructed of clean material such as prefabricated impervious dikes/berms or sandbags. If stone is used, it shall be protected from erosion by plastic liners or filter fabric.
- b. Waters accumulated in isolated work areas shall be discharged to an upland settling basin or well vegetated area to provide for settling and filtering of solids and sediments. Return waters shall be as clear as the flowing water upstream of the work area.
- c. Temporary dewatering structures, including any plastic liners or filter fabric, and associated fill shall be completely removed, and the affected waters restored, immediately following the completion of work.



- d. To the maximum extent practicable, any fish trapped within the work area shall be netted and placed, alive and unharmed, in the water outside the work area.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards for turbidity, flow, suspended solids, and other deleterious substances. ECL 11-1301(4): Requires fish unintentionally taken to be returned to water without unnecessary injury.

Explanation: This condition is necessary to ensure that dewatering discharges from the work area do not result in erosion, fish kills, and contravention of the water quality standards.

12. Diversion Channels When the use of a diversion channel is specified on the approved plans, the diversion channel shall be excavated and restored in the dry using channel plugs. Diversion channels through soil, silt, or clay shall be lined with non-erodible material such as stone, or plastic to limit erosion and reduce particle suspension. If a diversion channel through gravel results in continuous turbidity, the use of channel lining material is required.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards for turbidity, suspended solids, and other deleterious substances.

Explanation: This condition is necessary to ensure that when a diversion channel is used to separate flowing water from the work area, erosion from scouring is minimized and contravention of water quality standards is prevented.

13. Stockpiles Fill or other excavated materials shall not be stockpiled in a manner conducive to erosion, or in areas with the potential to cause turbid runoff during storm events. Mats or geotextile fabric shall be placed under any temporary fill or stockpile and shall be removed following construction.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards for turbidity, suspended solids, and other deleterious substances.

Explanation: This condition is necessary to ensure that erosion from stockpiled materials is minimized and contained during project construction, preventing contravention of the water quality standards.

14. Concrete leachate During construction no fresh or wet concrete or leachate shall be allowed to escape into any wetland or water of New York State, nor shall washings from ready-mix concrete trucks, mixers, or other devices be allowed to enter any waters or wetlands. Wet concrete shall not be poured to displace water within the forms. Leakage from forms must be prevented from entering any wetland or water of New York State.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards for turbidity, suspended solids, toxic substances and other deleterious substances.

Explanation: This condition is necessary to ensure that concrete, concrete leachate and other materials contaminated by concrete, which are toxic to aquatic life, are contained during project construction, preventing contravention of the water quality standards.



15. Seed and Mulch Streambanks and Work Areas Within one week of final grading, all areas of soil disturbance from this project shall be seeded with an appropriate perennial grass seed and mulched with hay or straw, unless hydroseeded.. Mulch shall be maintained until a suitable vegetative cover is established. If seeding is impracticable due to the time of year, a temporary mulch shall be applied and final seeding shall be performed at the earliest opportunity when weather conditions favor germination and growth, but not more than six months after project completion.

Water Quality Standards: 6 NYCRR 703.2: Narrative water quality standards for turbidity, suspended solids, and other deleterious substances.

Explanation: This condition is necessary to ensure that upland erosion is minimized after construction is completed, preventing contravention of the water quality standards.

16. State May Order Removal or Alteration of Work If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

17. State May Require Site Restoration If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

18. State Not Liable for Damage The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

1. Water Quality Certification The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.



GENERAL CONDITIONS - Apply to ALL Authorized Permits:

1. Facility Inspection by The Department The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

2. Relationship of this Permit to Other Department Orders and Determinations Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

3. Applications For Permit Renewals, Modifications or Transfers The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator
NYSDEC Region 9 Headquarters
700 Delaware Ave
Buffalo, NY14209

4. Submission of Renewal Application The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

5. Permit Modifications, Suspensions and Revocations by the Department The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;



- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

6. Permit Transfer Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

Item B: Permittee's Contractors to Comply with Permit

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

Item C: Permittee Responsible for Obtaining Other Required Permits

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

Item D: No Right to Trespass or Interfere with Riparian Rights

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.