

New York State Canal Corporation

Occupancy and Work Permit Accommodation Guidelines



Office of Real Property Management

TAP-922 (07/2011)

**SUBMIT PERMIT APPLICATIONS TO THE APPROPRIATE CANAL
CORPORATION DIVISION CANAL PERMIT ENGINEER**

<u>DIVISION</u>	<u>CANAL SECTIONS</u>	<u>DIVISION LIMITS</u>
Albany	Fort Edward Waterford Fonda	Erie Canal from the Hudson River to the Montgomery/Herkimer County line. Champlain Canal including the Glens Falls Feeder Canal, Port Henry & Plattsburg Terminals
Syracuse	Utica Syracuse Lyons	Erie Canal from the Herkimer/Montgomery County line to the Wayne/Monroe County line. Oswego Canal and Cayuga-Seneca Canal. Reservoirs, Feeders and Adirondack Canal Lands.
Buffalo	Albion	Erie Canal from the Monroe/Wayne County line to the Niagara River

TELEPHONE NUMBERS AND ADDRESSES

<u>TELEPHONE</u>	<u>ADDRESS</u>
Albany Division Canal Permit Engineer (518) 471-5033, Fax (518) 471-5035	Albany Division Canals P.O. Box 833 Albany, NY 12201-0833 Overnight mail address Route 9W, Interchange 23 Building 1 Albany, NY 12209
Syracuse Division Canal Permit Engineer (315) 438-2303, Fax (315) 461-0765	Syracuse Division Canals Suite 250, 2 nd floor 290 Elwood Davis Road Liverpool, NY 13088-0308
Buffalo Division Canal Permit Engineer (716) 635-6250, Fax (716) 626-5362	Buffalo Division Canals 455 Cayuga Road, Suite 800 Cheektowaga, NY 14225

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I. INTRODUCTION

These New York State Canal Corporation (Corporation) Occupancy and Work Permit Accommodation Guidelines (TAP-922) (Guidelines) set forth the fundamental requirements for all permitted use of real property and personal property under the jurisdiction of the Corporation (Corporation Property) and the issuance of Occupancy and Work Permits.

The design and construction requirements for the installation, modification, relocation, maintenance, operation and repair of all permitted facilities, including utility facilities, located over, under, along and on Corporation Property, are set forth in the Corporation's TAP-923 publication series:

- General Design and Construction Requirements for Occupancies (TAP-923A);
- Design and Construction Requirements for Residential/Non-Commercial Docks, Decks, Platforms and Boat Launches/Ramps (TAP-923B);
- Design and Construction Requirements for Non-Commercial Access to Canal Waters & the Non-Commercial Use of Corporation Property (TAP-923C); and,
- Design and Construction Requirements for Reduced Speed Buoys (TAP-923D).

Permittees must comply with these Guidelines, as well as the Canal Law, the Rules and Regulations of the Corporation and any conditions included in an issued Permit. The Corporation reserves the right to make changes in, or additions to, these Guidelines and such changes and additions shall be binding on all existing and new Permittees.

Copies of the most current Guidelines and appropriate Permit Applications may be obtained from the Division Canal Permit Engineer or from the Canal Real Property page of the Corporation's website (www.canals.ny.gov). Information pertaining to the contents of these Guidelines may be obtained by visiting, writing, faxing or telephoning the Corporation contacts listed on the inside front cover of these Guidelines.

II. DEFINITIONS

When used in these Guidelines and the TAP-923 Design and Construction series, unless otherwise stated, the following words shall have the following meanings:

Canal Corporation – the New York State Canal Corporation, a subsidiary of the New York State Thruway Authority, created pursuant to Section three hundred eighty-two of the Public Authorities Law.

Canalway Trail System – a network of multi-use, recreational trails across upstate New York. Major segments of the trail system utilize the old Canal towpath historically used by mules and horses to pull boats on the Canal and exist directly adjacent to the waterways of the New York State Canal System.

Canal Recreationway Commission (CRC) – a 24-member body consisting of State, local and private citizens who are broadly representative of the diverse canal interests and geographic areas of the Canal System. The CRC was constituted to prepare and periodically revise the statewide Canal Recreationway Plan, and to advise the Corporation in carrying out its duties related to the Canal System.

Canal Recreationway Plan (CRP) – comprehensive plan for development of the Canal System that was prepared by the CRC and adopted by the Corporation Board in 1995.

Canals – the channel and adjacent state-owned banks of the inland waterways of the state constructed, improved, or designated by authority of the legislature as canals and shall include canalized rivers and lakes, canal water supply reservoirs, canal water supply feeder channels and all appertaining structures necessary for the proper maintenance and operation of the canals.

Encroachment – a building, structure, or other personal property or parts of these erected, placed, maintained, or otherwise previously authorized to occupy Canal Property pursuant to a permit or lease that continues to occupy the Canal Property (i) after a permit has been revoked/terminated or a lease has been terminated, or (ii) such occupation has never been authorized by any legal instrument including a permit or lease.

Environmental Condition – any on-site condition which could potentially cause a detrimental environmental impact. These conditions include, but are not limited to: improper or unpermitted storage tanks; unpermitted operations including boat, car or other maintenance operations; unauthorized removal of vegetation; soil and sediment erosion (including gullyng); and unpermitted discharges (non-SPDES permit), etc.

MS4 – Municipal Separate Storm Sewer System.

Navigation Hazard – any on-site activity or structure which could potentially impede the safe navigation of the Canal. This includes, but is not limited to: unauthorized docks; unpermitted events, moorings or structures; unpermitted signs and lights; and unpermitted water withdrawals.

New York State Canal System – all the canals, canal lands, feeder canals, reservoirs, canal terminals and the terminal lands of the state.

SEQRA – the State Environmental Quality Review Act.

SPDES – State Pollutant Discharge Elimination System.

III. OCCUPANCY AND WORK PERMITS

Permits issued by the Corporation are revocable instruments granting temporary occupancy or use of lands or structures of the Canal System or for the diversion of canal waters for sanitary, farm or industrial purposes. Permits are revocable instruments granting certain limited privileges that can only be issued when the same can be done without detriment to canal navigation or damage to the banks or other structures thereof.

Permits do not convey or transfer a beneficial interest in real property. Permits are revocable in part to assure availability of the real property for Corporation or public purposes. Such temporary, revocable use is not considered a Disposal (conveyance or transfer of a beneficial interest) for purposes of these Guidelines. Permits include Occupancy and Work Permits.

Unless otherwise authorized by the Executive Director, where the issuance of an Occupancy Permit is contemplated, a Work Permit shall not be issued in advance of the issuance of the Occupancy Permit.

A. OCCUPANCY PERMITS

An Occupancy Permit is a revocable instrument that authorizes the temporary, restricted use of a specific site of real property under the jurisdiction of the Corporation (Permit Area), including, temporary use of canal lands or structures, and the diversion of canal waters for sanitary, farm purposes, or industrial use.

The Corporation reserves the right to issue more than one Occupancy Permit for any one location.

B. WORK PERMITS

A Work Permit is a revocable instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on a specific site of real property under the jurisdiction of the Corporation (Permit Area) or the use of Corporation Personal Property.

The Corporation reserves the right to issue more than one Work Permit for any one location.

NOTE: The Corporation may authorize the use of Corporation Personal Property by an entity for any period or term using a temporary, revocable permit, license or other document that does not convey or transfer a beneficial interest in the Personal Property.

Work Permits are required for all work or short term activities conducted on Corporation Property, including work conducted on Corporation Property under an

Occupancy Permit. Work Permits may not be required when activities are regulated by a contract or agreement, depending upon the terms contained therein. A separate Work Permit may be required for each work location.

The Corporation may require a separate Work Permit each time the Permit Area is entered for the purpose of maintaining facilities authorized under an Occupancy Permit, lease or grant of easement.

The Permittee's contractors and/or subcontractors, if any, may be required to each individually obtain the necessary Work Permit prior to entering the Permit Area.

The work authorized by a Permit shall be performed in a professional manner to the satisfaction of the Corporation. All work by or for a Permittee shall be done at no expense to the Corporation.

NOTE: A Construction Permit may be required for certain construction activities on the Permit Area. Construction Permit(s) shall be obtained from the local Code Enforcement Officer or from the Authority Division or Headquarters Code Enforcement Officer depending on the scope of the work. All work shall meet or exceed the requirements of the New York State Uniform Fire Prevention and Building Codes (19 NYCRR) and their referenced standards and the Americans with Disabilities Act.

IV. PERMIT REQUIREMENTS, CONDITIONS AND PROVISIONS

A. REVOCABILITY

All Permits are revocable and their duration is at the Corporation's sole discretion.

B. APPLICATION, FEES AND EXPENSES

1. Permit Application

The Corporation reserves the right to review and approve or reject all requests for the use and occupancy of Corporation Property, and all requests for work to be conducted on such Property.

a. Occupancy Permit Application

Requests for approval to occupy Corporation Property are made by completing and submitting a CANAL PERMIT APPLICATION (TA-99072).

A Canal Permit Application must be accompanied by detailed plans and maps indicating the proposed occupancy. For any proposed structures to be used on the Permit Area or any proposed physical alterations to the Permit Area, engineering design plans for Corporation review must also accompany the Application. As-built plans, hard copy and electronic, may be required upon completion of the work. All Applications must be submitted to the Division Canal Permit Engineer. Once an Occupancy Permit is approved, the Permittee must obtain a Work Permit for any work not within the scope of the approved Occupancy Permit to be conducted on the Permit Area.

The nature of the Application and the size of the project may affect the length of time it takes the Corporation to process an Occupancy Permit Application. If a submitted Application is found deficient or unacceptable, the Corporation will contact the applicant requesting additional information.

The Permittee must submit to the Division Canal Permit Engineer any written requests for changes to an issued Permit; the Permittee must receive an Amendment to the Occupancy Permit or, if determined by the Division Canal Engineer, a Work Permit before implementing any requested changes.

b. **Work Permit Application**

Requests for approval to perform work on Corporation Property or the use of Corporation Personal Property are made by completing and submitting a CANAL PERMIT APPLICATION (TA-99072). The nature of the Application and the size of the project may affect the length of time it takes the Corporation to process a Work Permit Application. If a submitted Application is found deficient or unacceptable, the Corporation will contact the applicant requesting additional information.

Once a Work Permit is issued, the Permittee shall contact the appropriate Corporation personnel as indicated on the Work Permit prior to the start of work and upon completing the work as authorized by the Permit.

The Permittee must submit to the Division Canal Permit Engineer written requests for changes to an issued Permit; the Permittee must receive an Amendment to the Permit before implementing any requested changes.

2. Permit Fees

The Corporation reserves the right to charge a Permit applicant appropriate Application, Amendment and/or Annual Fees for Occupancy and Work Permits. Such fees are set forth in the Rules and Regulations of the Corporation.

3. Expenses

In addition to the Application, Amendment, and/or Annual Fees, the Permittee must also pay any and all expenses (e.g., labor, materials, equipment, inspections, etc.) incurred by the Corporation as a result of the Permittee's actions. For any approved work on the Canal System requiring an onsite inspection by Corporation staff of one-half day or more, the inspection charge is \$250.00 per occurrence.

C. PROPERTY CONDITION AND MAINTENANCE

The Permittee must properly maintain, at its sole cost and expense, the Permit Area at all times throughout the occupancy or period of usage for work. Permittees shall also maintain all approved improvements as authorized by the Permit, subject to the risk of relocating or removing such improvements at the Permittees' own expense pursuant to the direction of the Corporation.

To this end the Permittee agrees to the following:

1. The Permittee shall be solely responsible for the installation, maintenance, and repair of any approved structures, appurtenances and works placed on the Permit Area pursuant to the Permit.

2. The Permittee, at its sole cost and expense, is responsible for any repairs, improvements or maintenance work of any kind on the Permit Area. The Permittee shall maintain the lands, trees, buildings and/or other structures in a neat, clean, sanitary and safe condition and shall be in compliance with all state and local building, zoning and health rules and regulations. The Permittee shall notify the Corporation immediately of any unsafe or hazardous conditions.
3. In the event of any damage to or destruction of the Permit Area or any improvements thereon from any causes whatsoever, the Permittee shall promptly give written notice thereof to the Corporation. The Permittee shall promptly restore and repair the Permit Area as nearly as possible to its condition immediately prior to such damage or destruction unless the Corporation and the Permittee mutually agree in writing that such repair and restoration is not feasible, or unless the Corporation for any other reason advises the Permittee in writing that such repair or restoration is not required or desired. In no way shall the foregoing limit the Corporation's rights or remedies with respect to any damages.
4. The Permittee shall exercise due diligence in maintaining the Permit Area.
5. The Permittee shall maintain the security of the Permit Area and provide the Corporation with access as needed, including, where applicable, all keys and security codes.
6. In the event of the discovery of any safety hazard on the Permit Area, the Corporation must be immediately notified by the Permittee. The Permittee shall then immediately undertake corrective measures as directed by the Corporation when the Corporation determines that a safety hazard exists on the Permit Area. When scheduling such corrective measures, the Permittee shall adjust for planned Corporation and/or New York State Thruway Authority (Authority) construction.
7. The Permittee shall be responsible for trash pick-up and solid waste removal from the Permit Area including all costs for such pick-up and removal.
8. The Permittee shall at all times maintain the Permit Area in a condition substantively the same as that at the beginning of the occupancy or period of usage for work, ordinary wear and tear damage by the elements excepted.
9. The Corporation shall be the sole judge of the condition of the Permit Area.

D. TRAFFIC CONTROL PLAN

Whenever a Permittee's work or maintenance activity will affect the movement or safety of Canalway Trail traffic or vehicle traffic, the Permittee shall implement a temporary traffic control plan approved by the Corporation to ensure the safe movement of traffic in and around the work site and the safety of the Permittee's workforce. Where Canal vessel traffic will be affected, United States Coast Guard approval may be required.

E. RIGHT TO ENTER

The Authority and the Corporation, its agents, employees and contractors, shall at all times have the right of entry upon the property defined by this Permit to perform whatever duties are deemed necessary.

F. RIGHT TO INSPECT

The Corporation reserves the right to inspect at any time any work being performed on the Permit Area, and the Permittee agrees to pay expenses incurred by the Corporation for the inspection of the work in accordance with the Rules and Regulations of the Corporation.

The Permittee must notify the Corporation when work being performed pursuant to a Permit has been completed and the Corporation shall have the right to make a final inspection of the work. The Corporation will advise the Permittee if there are any deficiencies in the work performed that require correction. Unfinished or unsatisfactory work that the Permittee refuses to correct may be completed or removed by the Corporation or its agents at the sole cost of the Permittee. The Corporation may require that the Permittee provide the certification of a licensed New York State professional engineer or other appropriate design professional that the work conforms with the terms of the Permit. Performance of an inspection by the Corporation does not constitute an assumption of liability by the Corporation or its agents for such work.

G. RIGHT TO STOP WORK

Notwithstanding the issuance of a Permit, the Corporation reserves the right to stop at any time any work being performed on the Permit Area. The Permittee, its agents, contractors and/or subcontractors, shall immediately cease work upon orders from the Corporation. Once work has been stopped, the Permittee shall immediately commence any corrective work ordered by the Corporation.

H. RESTRICTIONS IN USE OF AND WORK PERFORMED ON CORPORATION PROPERTY

The Permittee shall not take any action or use, occupy, suffer, or permit the Permit Area or any part thereof to be used in any manner, or suffer or permit

anything to be brought onto the Permit Area or kept thereon, that would, in the Corporation's judgment:

- Cause, or be likely to cause, death or injury to any person or damage to the Permit Area or to any personal property;
- Constitute a public or private nuisance;
- Violate any applicable building code for any structure or improvement on the Permit Area;
- Violate any applicable federal, state or local law, regulation or ordinance;
- Cause an increase in insurance premiums on policies that may be held by the Corporation covering the Permit Area;
- Violate any Rule or Regulation promulgated by the Corporation;
- Construct, maintain or allow the placement of any advertising devices on the Permit Area, without the express written consent of the Corporation;
- Disturb in any manner, or attach to in any manner, any underground or overhead utility facilities, without submitting written documentation to, and obtaining approval from, the owner of the utility facility;
- Perform any work on, or construction/modifications to, the Permit Area except that which is specifically authorized by the Permit. When the work specified by a Work Permit is completed, additional work and/or reentry to the Permit Area for the purposes of conducting work is prohibited without a new or amended Work Permit; or,
- Impair the Corporation's use of the Canal System and Corporation Property or adversely affect the safety of the traveling public and the free and safe flow of traffic and vessels.

I. ABUTTING LANDOWNERS/PERMIT AREAS

Nothing contained in these Guidelines, nor any Permit issued by the Corporation, shall be deemed to authorize a Permittee to engage in any activity that: 1) interferes with the property rights of abutting landowners or 2) interferes with other Permit Areas.

J. COMPLIANCE WITH GOVERNMENTAL REGULATIONS

Permits shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

The Permittee shall observe all federal, state and local laws, codes, rules, regulations, orders and directives that may pertain or apply to the Permit Area, the operations of the Permittee on the Permit Area or its occupancy of the Permit Area.

The provisions of this section shall not be construed as a submission by the Corporation to the application to itself of such laws, rules, regulations, requirements, ordinances, codes, orders or directives.

K. GOVERNMENTAL CHARGES

In addition to any Corporation permit fees, the Permittee shall promptly pay any and all taxes, assessments, fees or other charges that may be levied, assessed or imposed by any governmental or other lawful authority upon or against the Permittee's facilities, operations or occupancy.

L. ENVIRONMENTAL LAWS

1. General

The Permittee, at its sole expense, shall, with respect to the Permit Area covered by a Permit, including, but not limited to, any improvements located thereon strictly comply or cause strict compliance with all applicable Environmental Laws. As used herein, the term "Environmental Law" shall mean each and every federal, state, county and municipal statute, ordinance, rule, regulation, order, code, directive and requirement applicable to Hazardous Materials, as defined in Section IV. L. 2. hereof, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders and decrees, now or hereafter promulgated thereunder, and permits, licenses and deed restrictions now or hereafter required thereby, and amendments and successors to such statutes, regulations, orders and decrees as may be enacted or promulgated from time to time: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.); the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.); the Uranium Mill Tailings Radiation Control Act (42 U.S.C. § 7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7

U.S.C. §136 et seq.); the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); the Coastal Zone Management Act (16 U.S.C. § 1451 et seq.); the Endangered Species Act (16 U.S.C. § 1531); the New York State Environmental Conservation Law and the New York State Navigation Law; and any common law theory based on nuisance, trespass, negligence, strict liability, aiding and abetting or other tortious conduct.

The Permittee shall, upon written request from the Corporation, provide proper documentation that the Permittee or any Permittee Party (as defined in Section V. A.) is in compliance with all applicable Environmental Laws for activities being conducted on or about the Permit Area. The Permittee shall, in writing, require each Permittee Party, upon written request from the Permittee or the Corporation, to provide proper documentation that such Permittee Party is in compliance with all applicable Environmental Laws for activities being conducted on or about the Permit Area.

2. Prohibition on Hazardous Materials

The Permittee shall not, and shall not permit any Permittee Party or any other persons in or about the Permit Area, to generate, store, handle, treat, dispose of, or Release any “Hazardous Material” upon the Permit Area, except as allowed by applicable laws. As used herein, the term “Hazardous Material” shall include, but not be limited to, any and all substances (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, “Hazardous Wastes,” hazardous substances, hazardous materials, or word of similar meaning or regulatory effect under any Environmental Law, or that may have a negative impact on human health or the environment, including, but not limited to, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials soil vapor intrusion, flammables and explosives. As used herein, the term “Hazardous Wastes” shall mean those wastes identified in Part 371 of Title 6 of New York Codes, Rules and Regulations. As used herein, the term “Release” shall include, without limitation, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

3. Environmental Conditions

The Permittee shall not cause or permit the occurrence of any Environmental Condition on or at the Permit Area. As used herein, the term “Environmental Condition” shall mean any condition with respect to the Permit Area (including any conditions contained therein or derived therefrom, of any kind or nature, including without limitation, structural, architectural, engineering and environmental conditions) soil, surface waters, groundwaters, land, stream sediments, surface or subsurface condition and ambient air (including, but not limited to, Hazardous Materials on or about the Permit Area) whether or not yet discovered, that violates or requires any act pursuant to any Environmental Laws.

4. Representation and Warranty Regarding Hazardous Materials

The Permittee represents and warrants that the Permittee does not intend to, and will not, use any Hazardous Material (as defined in Section IV. L. 2.) on the Permit Area. The Permittee must receive the written approval of the Corporation prior to using any Hazardous Material (as defined in Section IV. L. 2.) on the Permit Area.

5. Notification of the Corporation and Permittee Responsibility with Regard to Environmental Conditions

In the event of any Environmental Condition (including, without limitation, the presence or Release of any Hazardous Material), the Permittee must immediately notify the Corporation in writing and by phone.

If the Environmental Condition appears to be the result of conduct of the Permittee or any of the Permittee Parties, including, but not limited to, any Release of Hazardous Materials resulting from the use, operation and/or maintenance of the Permit Area, the Permittee shall promptly remediate such Environmental Condition to the satisfaction of the Corporation. In the event the Permittee does not with reasonable promptness remediate such Environmental Condition, the Corporation may, at its option, elect to remediate same and recover all direct and indirect costs incurred for such remediation through appropriate legal means for such recovery.

In the event the Permittee encounters any Environmental Condition in connection with the Permit Area not introduced directly or indirectly by the Permittee or by any of the Permittee Parties, the Permittee shall be responsible and held liable for any investigation, removal, or remedial activities or measures necessitated by the increase in areal extent or severity of the Environmental Condition which was caused, either in whole or in part, by the Permittee's actions or activities or that of any of the Permittee Parties. If the Permittee does not with reasonable promptness perform such investigation, removal or remedial activities or measures, the Corporation may, at its option, elect to do so and recover all direct and indirect costs incurred for same through appropriate legal means for such recovery.

In the event the Permittee is given Notice of any violation of any Environmental Law, the Permittee shall immediately notify the Corporation in writing and by phone and commence remedial actions as set forth herein. As used herein, "Notice" shall mean any communication, written or oral, actual or threatened, from any governmental entity or any other public or private entity or individual, concerning any violation of any Environmental Law, or any act or omission resulting or which may result in the Release of Hazardous Materials into the waters or on the lands of the State of New York, including, but not limited to, the Permit Area.

The Corporation reserves the right to require the Permittee to conduct a closure Environmental Site Assessment of the Permit Area.

M. EMPLOYMENT PRACTICES OF PERMITTEE

To the extent required by Article 15 of the New York State Executive Law (also known as the New York State Human Rights Law) and all other local, state and federal statutory and constitutional non-discrimination provisions, the Permittee will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, genetic predisposition or carrier status, or marital status.

N. PROHIBITION OF EMPLOYMENT OF CORPORATION, AUTHORITY AND STATE EMPLOYEES

The Permittee shall not engage any person who is or has been at any time in the employ of the Corporation, the Authority or New York State to perform services in connection with the Permit, without the consent of the Corporation. The Corporation may request that the Permittee provide it with whatever information the Corporation deems appropriate about such person's engagement, work cooperatively with the Corporation to solicit advice from the New York Commission on Public Integrity, and, if deemed appropriate by the Corporation, instruct such person to seek the opinion of the New York Commission on Public Integrity. Permittee agrees that any such employee assigned to perform services in connection with the Permit shall be assigned in accordance with provisions of the Public Officers Law and any other laws, rules, regulations, guidelines or policies applicable to the service of current or former Corporation, Authority or New York State employees. Further, no person who is employed by the Permittee and who is disqualified from providing services in connection with the Permit pursuant to the Public Officers Law or any other applicable laws, rules, regulations, guidelines or policies may share in any net revenues Permittee derives from the Permit. Without limiting the Corporation's rights under IV. A., the Corporation shall have the right to cancel or terminate a Permit at any time if any work performed in connection with the Permit is in conflict with the provisions of the Public Officers Law, other laws applicable to the service of current or former Corporation, Authority or New York State employees, and/or the rules, regulations, guidelines or policies promulgated or issued by the New York Commission on Public Integrity.

O. ASSIGNMENT/TRANSFER

A Permit may not be assigned, transferred, leased, or otherwise conveyed by a Permittee nor may its right or interest therein be assigned, transferred, leased or otherwise conveyed.

P. TERMINATION

1. Occupancy Permit

An Occupancy Permit can be either revoked by the Corporation or terminated by the Permittee upon thirty (30) days written notice.

Within 30 days of the appropriate party receiving such notice, the Permittee shall completely restore the Permit Area in a manner authorized by a Work Permit. Such restoration must be to the satisfaction of the Corporation and may include, but is not limited to, removal of any and all structures, facilities and appurtenances of any kind, except for those which the Corporation has approved to remain, removal of personal property, replacement of landscaping and general cleanup. The costs of such restoration shall be the sole responsibility of the Permittee. Upon failure of the Permittee to restore the Permit Area, the Corporation or its representatives may without further notice summarily enter upon and remove from said premises any and all encroachments and property of the Permittee at the Permittee's own cost and expense. Permittee will also be liable for any legal costs incurred by the Corporation in collecting such reimbursement.

2. Work Permit

A Work Permit will terminate upon the expiration of the permit, but it may be revoked by the Corporation at any time, including but not limited to if it is determined that the permitted use is no longer consistent with the operational needs of the Corporation, whereupon the Permittee shall promptly discontinue operations under the same.

After termination, the Permittee shall completely restore the Permit Area in a manner authorized by a Work Permit. Such restoration must be made to the satisfaction of the Corporation and may include, but is not limited to, removal of any and all structures, facilities and appurtenances of any kind, except for those which the Corporation has approved to remain, removal of personal property, replacement of landscaping and general cleanup. The costs of such restoration shall be the sole responsibility of the Permittee. Upon failure of the Permittee to restore the Permit Area, the Corporation or its representatives may without further notice summarily enter upon and remove from said premises any and all encroachments and property of the Permittee at the Permittee's own cost and expense. Permittee will also be liable for any legal costs incurred by the Corporation in collecting such reimbursement.

Permittee shall notify the Corporation after the completion of the authorized work. Any continued use and occupancy of Corporation lands after the work is completed will require an Occupancy Permit or a lease agreement with the Corporation.

Q. NOTIFICATION OF UNSAFE/HAZARDOUS CONDITIONS

Permittee shall immediately notify the proper local authorities and then the Corporation by calling the Thruway Statewide Operations Center (TSOC) in Authority Headquarters at (518) 433-4924 or 1-800-842-2233 of any unsafe or hazardous conditions, including but not limited to those that endanger life, health, safety, the environment or the Canal System.

R. AMENDMENTS AND CHANGES

The Permittee must notify the Corporation in writing of any proposed changes to the Permit information for either an Occupancy or Work Permit. Such changes include, but are not limited to:

- Alteration of a Permit Area (e.g., addition/removal of structures or buildings, tree removal, etc.)
- Name and mailing address information
- Deletion/addition of a party to a Permit
- Expansion of a dock size
- Authorized Use/Work
- Increase/reduction to Permit Area
- Extension of time to complete work

Depending upon the type of change requested, the Permittee may be required to submit a new Permit Application requesting an amended Permit.

S. SEVERABILITY

If any term, provision, covenant or condition of this Permit is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Permit shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

V. LIABILITY, INDEMNITY, INSURANCE AND SURETY DEPOSITS/BONDS

A. LIABILITY OF PERMITTEE

1. The Permittee shall be responsible for any and all liabilities, penalties, fines, forfeitures, demands, losses, claims, suits, causes of action, judgments, (and the costs and expenses incidental thereto, including costs of defense, settlement, attorneys' fees, consultant fees and expert fees) and any and all damages, costs and expenses of any nature whatsoever (collectively, the "Claims," or individually a "Claim") related directly or indirectly, to:
 - a. Personal injury, death and/or damage to property arising directly or indirectly out of the installation, maintenance, use or existence of any facility or improvement authorized by, or relating to, the Permit issued to the Permittee, or arising directly or indirectly out of any work authorized by, or relating to, such Permit;
 - b. Personal injury, death and/or damage to property occasioned directly or indirectly by any act or omission of the Permittee and/or any of its officers, directors, agents, employees, contractors, subcontractors, assigns, successors, invitees and licensees (collectively, the "Permittee Parties", or individually, a "Permittee Party"); and
 - c. The use or occupancy of, or conduct of operations within, the Permit Area or any part thereof, by the Permittee or any of the Permittee Parties and/or any breach, violation, or non-performance on the part of the Permittee of any covenant, condition, or agreement in the Permit to be fulfilled by the Permittee.

The definition of Permittee Parties shall not be construed to alter the requirements of Section IV. O. of these Guidelines or to alter the privileges granted by the Permit, which shall not be deemed to grant the Permittee a leasehold, an easement or any other real property interest in the Permit Area, or any portion thereof.

2. Without limiting any of the Permittee's obligations under A.1. the Permittee hereby expressly agrees to pay for any and all Claims arising out of injury to, or destruction of, part or all of the Canal System or any other property of the Corporation or Authority caused directly or indirectly by, or arising out of, the existence, maintenance or use of any facilities covered by the Permit or of the work described in the Permit or relating in any way to the Permittee's use or occupancy of the Permit Area. The Permittee expressly agrees to reimburse the Corporation and/or Authority for any and all loss of revenues arising directly or indirectly out of the Permit, including, but not limited to, the performance of construction or maintenance work, or the existence of any facilities allowed by the Permit.

B. INDEMNIFICATION OF THE CANAL CORPORATION AND NEW YORK STATE

1. Indemnification

Notwithstanding any other provision of law, the Permittee hereby indemnifies and agrees to protect, hold harmless, and defend the Corporation, the Authority, the State of New York, and their respective officers, directors, board members, agents, employees, successors and assigns, from and against any and all Claims that are directly or indirectly caused by, or that arise out of or are in any way related to: (a) the use, occupancy or operation of the Permit Area, or any part thereof, by the Permittee or any of the Permittee Parties; and/or (b) the act, omission or negligence of the Permittee or any of the Permittee Parties; and/or (c) any breach, violation or non-performance by the Permittee of any covenant, condition or agreement in this Permit; and/or (d) any other occurrence or circumstance arising on or about the Permit Area. These Claims include but are not limited to those occasioned by percolation, changes in water elevation or overflow from the Canal or by flooding by the waters of the Canal and State waterways, and by any surface water or other waters accustomed to flow to, upon or over the Property.

The Permittee agrees that such indemnity shall survive the termination of this Permit and that such indemnity shall neither be limited by reason of insurance coverage required herein nor limit the Permittee's obligation to procure the insurance required by Section V. C. hereof.

2. Release and Covenant Not to Sue

The Permittee hereby releases and covenants, for itself, its board members, directors, officers, agents, and employees, and shall require the Permittee Parties that have written agreements with the Permittee (the "Permittee Party Agreements"), to release and covenant in such Permittee Party Agreements as follows: (a) that the Corporation, the Authority and the State of New York and their respective officers, directors, board members, agents, employees, successors and assigns are and shall be released from any and all Claims for: (i) any damage to, or loss of, property in or about the Permit Area belonging to the Permittee or to any of the Permittee Parties or any other persons in or about the Permit Area; (ii) personal injury to, or death of, persons in or about the Permit Area; and (iii) for any damage or loss suffered by the business of the Permittee, or any of the Permittee Parties, all from any cause whatsoever, whether said damage, loss, injury or death results from conditions arising upon the Permit Area or from conditions on or operation or existence of the Canal System or from any other sources; and (b) that no claim shall be made against the Corporation, the Authority or the State of New York and their respective officers, directors, board members, agents, employees, successors and assigns by the Permittee or by any of the Permittee Parties, for: any injury, including death, to any person or for any loss or damage to property of

the Permittee or that of the Permittee Parties in or about the Permit Area or for any loss or damage otherwise in connection with the Permittee's use, occupancy and/or operation of said Permit Area or that of any Permittee Party.

The Corporation or Authority shall not be liable for injury to, or death of any person occurring in, on or about the Permit Area or in any way relating to the use and occupancy of the Permit Area by the Permittee or by the Permittee Parties, or for any damage to, or loss of, property in, on or about the Permit Area belonging to the Permittee, or any of the Permittee Parties, or in any way relating to the use and occupancy of the Permit Area by the Permittee or by the Permittee Parties or for any damage or loss suffered by the business of the Permittee, or that of any of the Permittee Parties, from any cause whatsoever, whether said damage, loss, injury or death results from conditions arising upon the Permit Area or from other sources. Without limiting the foregoing, the Corporation, the Authority and the State of New York shall not be liable in any manner to the Permittee, the Permittee Parties or to any other person in, on or about the Permit Area, for any personal injury or death of any person in, on or about the Permit Area, or in any way relating to the use and occupancy of the Permit Area by the Permittee or by the Permittee Parties or to damage of property of the Permittee or of the Permittee Parties in or about the Permit Area caused by the criminal or intentional misconduct, or any act or negligence of the Permittee, any of the Permittee Parties or any other third party or caused by an accident or fire. Except as may be limited by law, in no event shall the Corporation, Authority or the State of New York be liable to the Permittee or any of the Permittee Parties, or any other persons in or about the Permit Area, for any consequential, incidental or special damages or lost profits sustained, or alleged to have been sustained by any of them, and the Permittee hereby waives any right to same and covenants to require such a waiver in the Permittee Party Agreements.

The Permittee agrees that such release and covenant not to sue shall survive the termination of this Permit and shall neither be limited by reason of insurance coverage required herein nor limit the Permittee's obligation to procure the insurance required by Section V. C. hereof.

3. Scope of Indemnification, Hold Harmless Agreement, Covenants by the Permittee and Permittee Parties; and Disclaimers by the Corporation
 - a. The indemnification of the Corporation, its Board members, officers, directors, agents, employees, successors and assigns (the "Corporation Indemnitees"), the agreement to hold harmless the Corporation Indemnitees, the covenants with regard to the Corporation Indemnitees, and the disclaimers by the Corporation, contained in this Section V. B. hereof shall apply to the fullest extent permitted by law.

- b. The indemnification of the Authority, its Board members, officers, directors, agents, employees, successors and assigns (the “Authority Indemnitees”), the agreement to hold harmless the Authority Indemnitees, the covenants with regard to the Authority Indemnitees, and the disclaimers by the Authority, contained in this Section V. B. hereof shall apply to the fullest extent permitted by law.
- c. The Indemnification of the State, its Board members, officers, directors, agents, employees, successors and assigns (the “State Indemnitees”), the agreement to hold harmless the State Indemnitees and the covenants with regard to the State Indemnitees contained in this Section V. B. shall apply to the fullest extent permitted by law.
- d. Nothing contained in this Section V. B. 3. shall in any way be deemed to be an admission of liability or a waiver of sovereign immunity by the Corporation, the Authority or the State of New York.

C. INSURANCE REQUIREMENTS

1. Insurance Conditions

The Permittee must procure prior to commencement of the Permit, and maintain in full force and effect until the Permit is terminated and all work performed thereunder is completed to the satisfaction of the Corporation, insurance of the kinds and in the amounts specified herein, covering all operations under the Permit, whether performed by the Permittee, or its contractor or subcontractors, in accordance with the following conditions:

- a. All insurance required by the Permit shall be obtained at the sole cost and expense of the Permittee.
- b. All insurance required by the Permit shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Corporation, with an A.M. Best rating of "A-" or better. The Corporation may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Corporation to accept insurance placed with a non-authorized carrier under any circumstances.
- c. All insurance required by the Permit shall be primary to any Corporation insurance policy or Corporation self-insurance program, which shall be excess and non-contributory.

- d. The Permittee shall require that any approved contractors and subcontractors carry insurance with the same limits and provisions set forth herein except for the Owners/Contractors Protective Liability Policy, if required.
- e. The Permittee shall furnish the Corporation with Certificate(s) of Insurance on ACORD Form 25, accompanied by the Corporation Supplemental Insurance Certificate (TA-W51343-9), for each insurance carrier involved. Such Certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with Corporation insurance requirements set forth herein. The Permittee shall furnish the Corporation with a copy of every Endorsement required herein. For work to be performed within New York State, proof of Workers' Compensation and Disability Benefits Insurance shall be indicated on the appropriate Workers' Compensation Board forms as listed in Sections 2. d. and e. below.

For residential permits, proof of Homeowner's insurance policy information, including but not limited to a policy declaration page, will be accepted in lieu of the ACORD 25/Supplemental insurance certificates.

- f. All policies, by specific Endorsement, shall provide for written notice to the Corporation no less than thirty (30) days prior to the cancellation, nonrenewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by mail to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Canal Corporation, P.O. Box 189, Albany, New York 12201-0189.
- g. If insurance policies utilized for Corporation projects contain Deductibles or Self-Insured Retentions (SIRs), they must be declared as such with applicable levels on the Certificate(s) of Insurance and the Corporation Supplemental Insurance Certificate. Insurance policies with deductibles in excess of \$50,000 will require review and approval by the Corporation. Additional security or other requirements may be imposed at the sole discretion of the Corporation.
- h. Insurance policies with Self-Insured Retentions (SIRs) of up to \$50,000 will generally be accepted when the SIR program is administered by a third party administrator and a complete description of the program is provided to the Corporation's Office of Investments and Asset Management. SIR programs in excess of \$50,000 must receive prior approval and meet additional security requirements. The Corporation, at its sole discretion, reserves the right to require the Permittee to provide additional collateral or to reject the use of an SIR by the Permittee. The Permittee will be solely responsible for all claims expenses and loss payments within the retention limit.

- i. The Permittee shall provide certified copies of all declarations pages or of the insurance policies themselves, upon request by the Corporation, within twenty (20) days of such request.
- j. Failure of the Corporation to demand such certificates, policies, endorsements, or other evidence of full compliance with the Corporation's insurance requirements, or failure of the Corporation to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of the Permittee's obligation to maintain such insurance.
- k. Failure to maintain the required insurance and provide proof of such coverage to the Corporation may, in the Corporation's sole discretion, result in termination of this Permit.
- l. At least two weeks prior to the expiration of any policy required by this Permit, evidence of renewal or replacement policies of insurance with terms no less favorable to the Corporation than the required minimum amounts set forth in Standard Insurance Limits – Work & Occupancy Permits (TAP-526) shall be delivered to the Corporation in the manner required for service of notice in Paragraph C.1.f. above.
- m. If, at any time during the term of this Permit, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Permit or proof thereof is not provided to the Corporation, the Permittee shall immediately cease work. The Permittee shall not resume work until authorized to do so by the Corporation. Any delay, time lost, or additional cost incurred as a result of the Permittee not having insurance required by the Permit or not providing proof of same in a form acceptable to the Corporation, shall not give rise to a delay claim or any other claim against the Corporation.
- n. If the Permittee fails to maintain the required insurance, the Corporation shall have the right, but not the obligation, to purchase said insurance at the Permittee's expense. The Permittee agrees that all premiums, costs, and expenses associated with such purchase, or the recovery of those purchase amounts by the Corporation, shall be added to the Permittee's fee for the Permit, or by any other lawful means.
- o. By requiring insurance, the Corporation does not represent that certain coverages and limits will necessarily be adequate to protect the Permittee, and such coverages and limits shall not be deemed a limitation on the Permittee's liability under the indemnities granted to the Corporation under any provision of the Permit or these Guidelines.

- p. The Permittee and its contractors and subcontractors shall waive all rights against the Corporation and its agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy, Business Auto Policy, and Umbrella policy, as required.
- q. Subject to Corporation approval, the Permittee may elect to self-insure the CGL and Umbrella coverage, provided evidence of tangible net worth in a sufficient amount is provided to the Corporation. The approval of a Permittee's request to self-insure is in the Corporation's sole discretion. If self-insurance is approved, all of the provisions of the Permit relating to or affected by insurance required to be maintained by the Permittee shall apply as if the Permittee had in fact maintained policies of insurance in lieu of self-insurance, including, without limitation, benefits, if any, available to additional insureds. The Corporation shall receive the same coverage and protection under the Permittee's self-insurance as if it were named as an additional insured under the policies required pursuant to this section. The Permittee waives all subrogation rights under such self-insurance to the same extent such waiver is required under third party insurance. **Please note that generally the Corporation approves only governmental agencies and utility companies for self-insurance.**
- r. The Permittee shall provide a copy of the Corporation Insurance Requirements to its insurance producer(s) and insurance carrier(s).

2. Coverages

The types of insurance required by the Corporation are described below. The required minimum amounts of these insurances are set forth in Standard Insurance Limits – Work & Occupancy Permit (TAP-526) which is available from the Division Canal Permit Engineer. Additional coverage may be required based on the type and extent of the Permit.

- a. **Commercial General Liability Insurance** - The Permittee shall maintain Commercial General Liability (CGL) Insurance with the following coverages:
 - Each Occurrence Limit (see TAP-526)
 - General Aggregate (see TAP-526)
 - Products/Completed Operations (same as Aggregate Limit)
 - Personal/Advertising Injury Liability (same as Occurrence Limit)
 - Fire Damage Legal Liability (\$100,000)

- Medical Expense (\$5,000)

CGL Insurance shall cover liability arising from the Permit Area operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability.

- b. **Commercial Umbrella Liability Insurance** – If the Permittee maintains Commercial Umbrella Insurance (Umbrella), it must be on a “follow form” basis.

The Corporation shall be included as an Additional Insured, using ISO Additional Insured Endorsement CG 20 10 11 85 or its equivalent, under the CGL, business auto and the Umbrella policies, as required.

- c. **Business Auto Liability Insurance** - If a motor vehicle is used during the performance of work under the Permit, the Permittee shall maintain Business Automobile Liability coverage which shall cover liability arising out of Permittee’s use of any motor vehicle, whether owned, leased, hired, or non-owned. The amount of coverage is listed in TAP-526.

If the Permit involves the removal of hazardous waste or environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos endorsement (CA 9948) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

- d. **Workers’ Compensation & NYS Disability Benefits Insurance** - The Permit shall be void and of no force and effect unless the Permittee shall provide and maintain coverage during the life of the Permit for the benefit of such employees as are required to be covered by the Workers’ Compensation/Disability Benefits Law.

If the Permit involves work on or near a shoreline, a U.S. Longshore and Harborworkers’ Compensation Act Endorsement must be provided. The Maritime Coverage Endorsement, on an “if any” basis, shall be attached to the policy.

The Permittee must provide proof of exemption, certified by the Workers’ Compensation Board, to obtain a waiver from the requirements of this provision. Evidence of Workers’ Compensation coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:

1. C-105.2 – Certificate of Workers’ Compensation Insurance.

2. U-26.3 – Certificate of Workers’ Compensation Insurance from the State Insurance Fund.
 3. GSI-105/SI-12 – Certificate of Workers’ Compensation Self Insurance
- e. **NYS Disability Benefits Insurance** - Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Commissioner of the Workers’ Compensation Board:
1. DB-120.1 – Certificate of Insurance Coverage under the NYS Disability Benefits Law.
 2. DB-155 – Certificate of Disability Self Insurance.
 3. CE-200 – Certificate of Attestation of Exemption. (Note: This form will only be accepted as evidence of an exemption from providing Disability Benefits.)
- f. **Railroad Protective Liability Insurance** - In the event that any work to be performed under the Permit involves railroad property or right-of-way, the Permittee shall provide and maintain Railroad Protective Liability coverage in the amounts required by the respective railroad.

D. SURETY/BOND REQUIREMENTS

1. The Corporation reserves the right to require the Permittee, as well as its contractors and/or sub-contractors, to furnish the following Surety or Bonds at the Permittee’s sole expense:
 - a. **Surety Deposit** – A cash deposit which ensures that all expenses incurred by the Corporation in relation to the Permit including, but not limited to, traffic control, engineering, inspections, restoration of property, etc., are reimbursed by the Permittee. The Corporation will determine the amount of the Surety Deposit and will indicate that amount on the approved Permit Application; or,
 - b. **Performance/Restoration Bond** - Covering the faithful performance of the Permittee. The Performance/Restoration Bond shall be in the amount established by the Corporation which amount will be indicated on the approved Permit Application.
 - If Bonds are provided, the Bonds shall be written by Sureties that are:
 - > licensed to provide surety bonds in New York State;
 - > on the U.S. Treasury Department List of Approved Sureties; and,

- > otherwise acceptable to the Corporation.
 - The Permittee shall pay the premiums for the Bonds, with the Corporation listed at the Obligee.
 - The Bonds shall be dated no later than the date of issuance of the Permit. The Bonds shall be delivered to the Division Canal Permit Engineer. No work or occupancy shall commence until the Corporation has accepted the Bonds.
 - Executed original Power of Attorney, Surety and Corporate Acknowledgement forms, and the Surety's most recent financial statement shall accompany the Bonds.
 - The Permittee shall provide a copy of the Corporation Bond Requirements to its insurance producer(s) and insurance carrier(s).
2. The Corporation reserves the right to hold Surety Deposits and/or Performance/Restoration Bonds until such time that the Corporation determines that all work has been completed, the Corporation expenses incurred have been reimbursed, and all disturbed areas within the Permit Area have been restored to their original condition. If the Corporation determines the Surety Deposit to be excessive, any unused monies will be returned by the Corporation to the Permittee.
 3. The amount of the Surety Deposit/Performance/Restoration Bond shall in no way limit the Permittee's obligations imposed by these Guidelines and the Permit.