

ORIGINAL



Erin M. Crotty  
Commissioner

**New York State Department of Environmental Conservation**

**Division of Environmental Permits, 4<sup>th</sup> Floor**

625 Broadway, Albany, New York 12233-1750

Phone: (518) 402-9167 • FAX: (518) 402-9168

Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)

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FEDERAL ENERGY  
REGULATORY COMMISSION

September 19, 2002

Mr Jerry Sabattis  
Hydro Licensing Coordinator  
Reliant Energy  
225 Greenfield Parkway, Suite 201  
Liverpool, NY 13088

Re: Hoosic River Section 401 State Water Quality Certification, FERC Project # 2616,  
DECID# 4-3842-00109/00001

Dear Mr Sabattis:

Please find enclosed the Hoosic River Section 401 State Water Quality Certification, DEC Permit # 4-3842-00109/00001 issued to Erie Boulevard Power L.L.C. for the construction and operation of the Hoosic River Hydropower Project in Rensselaer County.

This permit contains significant conditions. If these conditions are unacceptable, you have the right to request a adjudicatory hearing within 30 days of this letter.

If you have any questions, or need further information please don't hesitate to contact me.

Sincerely,

Kent P. Sanders  
Environmental Analyst

cc: List Attached

95-20-6(10/90)-25c R3

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEC PERMIT NUMBER <b>4-3842-00109/00001</b>
FACILITY/PROGRAM NUMBER(s)



EFFECTIVE DATE <b>September 19, 2002</b>
EXPIRATION DATE Coincident with the expiration date of the license issued by the Federal Energy Regulatory Commission (FERC) for FERC Project P-2616

**PERMIT**

Under the Environmental Conservation Law (ECL)

TYPE OF PERMIT (Check All Applicable Boxes)				
<input checked="" type="checkbox"/> New	<input type="checkbox"/> Renewal	<input type="checkbox"/> Modification	<input checked="" type="checkbox"/> Permit to Construct	<input checked="" type="checkbox"/> Permit to Operate

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Article 15, Title 5: Protection of Water                 | <input type="checkbox"/> Article 17, Titles 7, 8: SPDES                          | <input type="checkbox"/> Article 27, Title 9; 6NYCRR 373: Hazardous Waste Management  |
| <input type="checkbox"/> Article 15, Title 15: Water Supply                       | <input type="checkbox"/> Article 19: Air Pollution Control                       | <input type="checkbox"/> Article 34: Coastal Erosion Management                       |
| <input type="checkbox"/> Article 15, Title 15: Water Transport                    | <input type="checkbox"/> Article 23, Title 27: Mined Land Reclamation            | <input type="checkbox"/> Article 36: Floodplain Management                            |
| <input type="checkbox"/> Article 15, Title 15: Long Island Wells                  | <input type="checkbox"/> Article 24: Freshwater Wetlands                         | <input type="checkbox"/> Articles 1, 3, 17, 19, 27, 37; 6NYCRR 380: Radiation Control |
| <input type="checkbox"/> Article 15, Title 27: Wild, Scenic & Recreational Rivers | <input type="checkbox"/> Article 25: Tidal Wetlands                              | <input type="checkbox"/> Other _____  |
| <input checked="" type="checkbox"/> 6NYCRR 608: Water Quality Certification       | <input type="checkbox"/> Article 27, Title 7; 6NYCRR 360: Solid Waste Management |   |

PERMIT ISSUED TO <b>Erie Boulevard Power L. L. C</b>		TELEPHONE NUMBER <b>(315) 413-2700</b>	
ADDRESS OF PERMITTEE <b>225 Greenfield Parkway, Suite 201, Liverpool, New York 13088</b>			
CONTACT PERSON FOR PERMITTED WORK <b>Sam Hirshey, Manager - Hydro Licencing &amp; Regulatory Compliance</b>		TELEPHONE NUMBER <b>(315) 413-2760</b>	
NAME AND ADDRESS OF PROJECT/FACILITY <b>Hoosic River Hydropower Project, Schaghticoke and Johnsonville Impoundments FERC Project # P-2616</b>			
LOCATION OF PROJECT/FACILITY <b>Hoosic River at Schaghticoke and Johnsonville, Rensselaer County.</b>			
COUNTY <b>Rensselaer</b>	TOWN <b>Schaghticoke</b>	WATERCOURSE/WETLAND NO. <b>Hoosic River</b>	NYTM COORDINATES <b>E: 621. N: 4750.00 E: 621.738 N: 4753.023</b>
DESCRIPTION OF AUTHORIZED ACTIVITY  <b>Operation and Maintenance of the Hoosic River Hydropower Project at Schaghticoke and Johnsonville on the Hoosic River in accordance with the applicable provisions of the June, 2002 Hoosic River Offer of Settlement and the attached conditions.</b>			

By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified (See Page 2) and any Special Conditions included as part of this permit.

PERMIT ADMINISTRATOR <b>William R. Adriaance</b>	ADDRESS <b>NYSDEC Div. of Envir. Permits, 4<sup>th</sup> Floor, 625 Broadway, Albany, NY 12233-1750</b>		
AUTHORIZED SIGNATURE <i>William R. Adriaance</i>	Date <b>9/19/02</b>	Page 1 of 5	

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

**NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS**

**Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee 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.

**GENERAL CONDITIONS**

**General Condition 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.

**General Condition 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.

**General Condition 3: Applications for Permit Renewals or Modifications**

The permittee must submit a separate written application to the Department for 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.

The permittee must submit a renewal application at least:

- a) 180 days before expiration of permits for State Pollutant Discharge Elimination System (SPDES), Hazardous Waste Management Facilities (HWMF), major Air Pollution Control (APC) and Solid Waste Management Facilities (SWMF); and
- b) 30 days before expiration of all other permit types.

Submission of applications for permit renewal or modification are to be submitted to:  
NYSDEC Chief Permit Administrator,  
625 Broadway, Albany NY 12233-1750, Telephone (518) 402-9167

**General Condition 4: Permit Modifications, Suspensions and Revocations by the Department**

The Department reserves the right to modify, suspend or revoke this permit in accordance with 6 NYCRR Part 621. 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.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

**Water Quality Certification**

**Certification**

1. The New York State Department of Environmental Conservation (Department) hereby certifies:

- the Department has reviewed the certificate holders' Application for Federal Hydroelectric License (hereafter referred to as "the Application") and all other available pertinent information, including studies submitted in support of the application and the Offer of Settlement filed with the Federal Energy Regulatory Commission (FERC) in August 2002.
- the Project will comply with Sections 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 the state statutory and regulatory requirements set forth in 6NYCRR Section 608.9(a); and
- the Project will comply with applicable New York State effluent limitations, water quality standards and thermal discharge criteria set forth in 6NYCRR Parts 700-706.

This Water Quality Certification is issued solely for the purposes of Section 401 of the Federal Water Pollution Control Act (33 USC 1341).

**CONTACTS:** Except as otherwise specified, all contact with the Department concerning this certificate shall be addressed to:

New York State Department of Environmental Conservation  
Chief Permit Administrator  
625 Broadway  
Albany, NY 12233-1750

Written submissions to the Department must include five (5) complete copies of the submission. One (1) copy must be sent to the Region 4 Permit Administrator, NYSDEC, 1150 Westcott Rd, Schenectady, NY 12306-2014.

**SPECIAL CONDITIONS**

**A. ADMINISTRATION**

1. This certificate includes and incorporates the Hoosic River "Offer of Settlement" (Settlement) dated June, 2002.
2. Inspections: The Project, including relevant records, is subject to inspection at reasonable hours and intervals, upon reasonable notice to the certificate holder, by an authorized representative of the Department to determine whether the applicant is complying with this certification. A copy of this certification, including the Hoosic River **Offer of Settlement** dated June, 2002 and the FERC license, including all maps, drawings, and special conditions, must be available for inspection by the Department during such inspections at the Project.
3. Emergencies: With the exception of emergency provisions described in the Settlement, the following procedures shall apply to activities conducted at the Project in response to an emergency.

Prior to commencement of emergency activities, the NYS DEC must be notified and must determine whether to grant emergency authorization. If circumstances require that emergency activities be taken immediately such that prior notice to the DEC is not possible, then the DEC must be notified by the certificate holder within 24 hours of commencement of the emergency activities and be provided sufficient information to make a determination whether to grant emergency authorization. In either case, notification must be by certified mail, telegram, or other written form of communication, including fax and electronic mail. This notification must be followed within 3 weeks by submission of the following information:

DEC PERMIT NUMBER  
4-3842-00109/00001

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

**SPECIAL CONDITIONS**  
(continued)

- 1) a description of the action;
- 2) location map and plan of the proposed action;
- 3) reasons why the situation is an emergency

All notifications, requests for emergency authorizations and information submitted to support such requests shall be sent to the Chief Permit Administrator at the address listed above.

4. Modifications and Revocations: The DEC reserves the right to modify suspend or revoke this certificate when:
- 1) the scope of the certified activity is exceeded or a violation of any condition of this certificate or provision of the ECL and pertinent regulation is found;
  - 2) the certificate was obtained by misrepresentation or failure to disclose relevant facts;
  - 3) new material information is discovered;
  - 4) environmental conditions, relevant technology, or applicable law or regulation have materially changed since the certificate was issued.

**B. OPERATING CONDITIONS**

- 5. Instream Flows: The certificate holder shall maintain instream flows in accordance with the Settlement, in particular, Section 3.2.
- 6. Flow Monitoring: The certificate holder shall develop a stream flow and water level monitoring plan consistent with the Settlement in particular Section 3.3.
- 7. Impoundment Fluctuations: The Schaghticoke and Johnsonville reservoirs (Project reservoirs) shall be operated in accordance with the Settlement (see subsection 3.1). Alternate impoundment operating plans must be reviewed and approved by NYS DEC prior to being implemented. Emergencies shall be dealt with in accordance with special conditions #3 of this certificate.
- 8. Fish Protection, Passage and Movement: Fish protection passage and movement provisions shall be provided in accordance with the Settlement (see Section 3.4).

**C. Project MAINTENANCE AND CONSTRUCTION**

Note: All matters pertaining to "Project Maintenance and Construction" shall be addressed to:

Chief Permit Administrator  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233

- 9. Maintenance Dredging: The certificate holder shall install and maintain appropriate turbidity control structures while conducting any maintenance dredging activities in the intake/forebay area of the Project.
- 10. Sediment Analysis and Disposal: The certificate holder must sample any sediments to be disturbed or removed from the Project waters and test them for contaminants. Sampling and testing shall be accomplished according to a protocol submitted to and approved by the Department prior to sampling.

Prior to dredging or other excavation, the certificate holder must secure Department approval for all disposal or interim holding locations for any sediments to be removed from the Project waters.

- 11. Erosion and Sediment Control: The certificate holder shall ensure that the following erosion and sediment/contaminant control measures, at a minimum, are adhered to during routine maintenance and construction (including maintenance dredging) that may result in sediments/contaminants entering the Project reservoirs or the Hoosic River.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

**SPECIAL CONDITIONS**

(continued)

- 1. Isolate in-stream work from the flow of water and prevent discolored (turbid) discharges and sediments caused by excavation, dewatering and construction activities from entering the waters of the Hoosic River.
  - 2. Prohibit heavy construction equipment from operating below the mean high water level of Project reservoirs and the Hoosic River until the work area is protected by a watertight structure and dewatered
  - 3. Minimize soil disturbance, grade so as to prevent or minimize erosion and provide temporary and/or permanent stabilization of all disturbed areas and stockpiles to minimize the potential for erosion and subsequent sedimentation within Project reservoirs or the Hoosic River.
  - 4. Protect all waters from contamination by deleterious materials such as wet concrete, gasoline solvents, epoxy resins or other materials used in construction, maintenance and operation of the Project.
  - 5. Install and maintain erosion control structures on the down slopes of all disturbed areas to prevent eroded material from entering Project reservoirs or the Hoosic River. Erosion control structures must be installed before commencing any activities involving soil disturbance and all erosion control structures must be maintained in a fully functional condition.
  - 6. Ensure complete removal of all dredged/excavated material and construction debris from the bed and banks of Project reservoirs and the Hoosic River in the vicinity of the Project.
  - 7. Ensure that all temporary fill and other materials placed in the waters of the river are completely removed, immediately upon completion of construction, unless otherwise directed by the Department.
- 12. Placement of cofferdams, construction of temporary access roads or ramps, or other temporary structures which encroach upon the bed or banks of the Hoosic River or Project Reservoirs: The design of all such structures must be approved by the Department prior to installation.
  - 13. River Flow: During any period of maintenance and/or construction activity, the certificate holder shall continuously maintain adequate flows immediately downstream of work sites consistent with the provisions of this certificate.
  - 14. Construction Drawdowns: Whenever construction and/or maintenance activities require that the water level of Project reservoirs be lowered, it shall not be drawn down more than 1 foot per hour. During refill, the water level of the impoundment shall not be allowed to rise more than 1 foot per hour.
  - 15. Turbidity Monitoring: During maintenance or construction-related activities in or near the Hoosic River or Project reservoirs, the certificate holder will monitor the turbidity of Project waters at a point immediately upstream of the work area and at a point no more than 100 feet downstream from the work area. The certificate holder specifically agrees that if, at any time, turbidity measurements from the downstream locations exceed the measurements from the upstream locations, all related construction on the Project will cease until the source of the turbidity is discovered and the situation is corrected.
  - 16. Notifications: The Chief Permit Administrator must be notified in writing at least two weeks prior to commencing any Project maintenance or construction work performed under the authority of this certificate.

**D. PUBLIC ACCESS AND RECREATION**

- 16. Public access and recreational opportunities shall be provided in conformance with the Settlement.

cc: List Attached

Betty Lou Bailey, Chairman  
Adirondack Mountain Club  
Canoe Route Subcommittee  
4029 Georgetown Square  
Schenectady, New York 12303-5300

Neil F. Woodworth, Counsel & Deputy Ex. Director  
Adirondack Mountain Club  
301 Hamilton St  
Albany, New York 12210-1707

Andrew Fahlund, Director of Hydropower Dev.  
American Rivers  
1025 Vermont Ave NW  
Washington, DC 20005-3516

John T. Gangemi, Conservation Director  
American Whitewater  
482 Electric Ave  
Bigfork, Mt. 59911-3641

Town Clerk  
Town of Cambridge  
Cobble Road  
Cambridge, NY 12816

Jacob S. Niziol, Coordinator  
Reliant Energy  
225 Greenfield Parkway, Suite 201  
Liverpool, NY 13088-6656

James A. Bessha  
Fourth Branch Assoc (Mechanicville)  
455 New Karner Road  
Albany, NY 12205-3821

Office of the Mayor  
Village of Hoosick Falls  
PO Box 247  
Hoosick Falls, NY 12090-0247

Jerry L. Sabattis, Hydro Licensing Coordinator  
Reliant Energy  
225 Greenfield Parkway, Suite 201  
Liverpool, NY 13088-6656

Mitchell F. Hertz, Esquire  
Kirkland & Ellis  
655 15<sup>th</sup> St NW, Suite 1200  
Washington, DC 20005-55701

Samuel S. Hirschey P.E., Manager  
Reliant Energy  
Erie Boulevard Hydropower, L.P.  
225 Greenfield Parkway, Suite 201  
Liverpool, NY 13088-6656

W, Thaddeus Miller  
Reliant Energy.  
7 E. Redwood St., Floor 10  
Baltimore, Md 21202-1115

Frances E. Francis, Esquire  
Spiegel & Diarmid  
1350 New York Ave NW, Suite 1100  
Washington, DC 20005-4710

Town Clerk  
Town of Hoosick  
56 Church Street  
Hoosick Falls, NY 12090-1644

Office of the Mayor  
Town of Mechanicville  
36 North Main Street  
Mechanicville, NY 12118-1985

David J. Miller  
National Audubon Society  
700 Broadway  
New York, NY 10003-9536

Richard Roos-Collins, Director of Litigation  
Natural Heritage Institute  
2140 Shattuck Ave, Floor 5  
Berkeley, Ca 94704-1210

Janet Hand Deixler, Commissioner  
New York Public Service Commission  
3 Empire State Plaza  
Albany, New York 12223-1000

Bruce .R. Carpenter, Executive Director  
Rivers United  
PO Box 1460  
Rome, NY 13442-1460

Director  
New York Sea Grant Institute  
SUNY  
Dutchess Hall  
Stony Brook, NY 11794-0001



Carol A. Howland  
New York State Electric & Gas Corp.  
PO Box 5224  
Binghamton, NY 13902-5224

John J. Gosek, Mayor  
City of Oswego  
Office of the Mayor, City Hall  
11 West Oneida Street  
Oswego, NY 13126

Town Clerk  
Town of Pittstown  
R.D. #1  
Valley Falls, NY 12185

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Law Offices of Huber Lawrence & Abell  
605 3<sup>rd</sup> Ave, Floor 27  
New York, NY 10158-2799

Paul V. Nolan  
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Arlington, Va 22205-2722

Raymond W. Coonrad  
Rensselaer County Conservation Alliance  
3119 6<sup>th</sup> Avenue  
Troy, NY 12180-1202

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Trout Unlimited  
1500 Wilson Blvd., Suite 310  
Arlington, Va 22209-2404

Office of the Mayor  
City of Troy  
1 Monument Square  
Troy, New York 12180-0824

Leonard P. Corin, Field Supervisor  
U.S. Fish & Wildlife Service  
3817 Luker Road  
Cortland, NY 13045-9385

Kevin Mendick  
U.S. National Park Service  
North Atlantic Region  
15 State Street  
Boston, Ma 02109-3502

Anthony R. Conte  
US Dept. of the Interior  
Suite 300  
70 Commercial Street  
Concord, NH 03301-5031

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Trout Unlimited  
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Delmar, NY 12054-3125

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Office of the Solicitor  
1849 C Street NW, MS 6456  
Washington, DC 20240-0001

Office of the Mayor  
Village of Valley Falls  
PO Box 157  
Valley Falls, NY 12185-0157

Bill Jolly  
Washington State Parks &  
Recreation Commission  
PO Box 42668  
Olympia, Wa 98504-2668

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US Dept. of the Interior  
1 Gateway Center, Suite 612  
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F. Michael Tucker  
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Three E-Comm 2  
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Winston & Strawn  
1400 L Street NW  
Washington, DC 20005-3509

County Clerk  
County of Washington  
Washington County Office Building  
Upper Broadway  
Fort Edward, NY 12828

John Costello  
Office of Hydropower Licensing  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

**Deborah Osborne**  
**Office of Dispute Resolution**  
**Federal Energy Regulatory Commission**  
**888 First Street, NE**  
**Washington, DC 20426**

**Thomas DeWitt**  
**Office of Hydropower Licensing**  
**Federal Energy Regulatory Commission**  
**888 First Street, NE**  
**Washington, DC 20426**

**Honorable Magalie R. Salas**  
**Federal Energy Regulatory Commission**  
**888 First Street, NE**  
**Washington, DC 20426**