



Craffey, Paul (DEP)

to:

Dave Dickerson

04/14/2010 05:09 PM

Hide Details

From: "Craffey, Paul (DEP)" <Paul.Craffey@state.ma.us>

To: Dave Dickerson/R1/USEPA/US@EPA

Superior Records Center

512486

BREAK: 5/1

OTHER: 512486

New Bedford

History: This message has been replied to.

2 Attachments



050509_DEP401WQC_Permit.pdf 20090211_401WaterQualCertif.pdf

I found the off site disposal permit and letter that refers to the permit amendment

The permit prohibit disposal between Jan 1 to May 15th There are other restrictions conditions depending on what is in the area.

The original permit was for 135,000 cubic yds, the amendment (bottom of page 2) increases the amount to 1, million cubic yards



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512486



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

February 11, 2009

Kristin Decas
Executive Director
New Bedford Harbor Development Commission
104-106 Co-Op Wharf
New Bedford, MA 02745

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07, Major project dredging

At: New Bedford Harbor, NEW BEDFORD

401 WQC Transmittal No: X226893
Wetlands File No:
ACoE Application No: NAE 2007-2709

Dear Ms. Decas:

The Department has reviewed your application for Water Quality Certification (WQC), as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 *et seq.*), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of New Bedford Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SB. Such waters are intended "as habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Background: The City of New Bedford and the Town Fairhaven prepared a Dredged Material Management Plan (DMMP) to address the issue of finding environmentally sound disposal sites for the dredged material from the Commonwealth Designated Port Area (DPA) that are unsuitable for unconfined ocean disposal.

New Bedford Harbor is an active superfund site, consisting of approximately 18,000 acres of tidal estuary and shoreline areas encompassing City of New Bedford; and the Towns of Acushnet and Fairhaven. The Department requested the Environmental Protection Agency (EPA) to include in the Record of Decision (ROD), an enhancement of remedy in accordance with 40 CFR 300.515(f), adding approximately 1.7 million cubic yards of dredging in navigation channels to the ROD. The areas covered by the remedy enhancement are contaminated with Polychlorinated Biphenyls (PCBs) below EPA's action level for human health and environmental risk and would cause complication when conducting navigational maintenance dredging. However, by combining navigational maintenance dredging and remediation dredging at the same time, sediment management (i.e. onsite disposal) is more feasible and achievable. The siting, construction, filling, and management of the NBHDC CAD cells are handled under the State Enhancement Remedy (SER) and would not require any further permitting.

The DMMP involved development of disposal options for dredged material. The Draft EIR completed in 2002 evaluated two potential disposal locations within the Harbor, Channel Inner (CI) and Popes Island North (PIN). The Final EIR completed in 2003 selected PIN as the preferred site. A conceptual layout of CAD cells presented in the FEIR consisted of one large 1,800,000 yd³ capacity cell and five small 50,000 yd³ capacity cells for a total capacity of approximately 2,050,000 yd³.

The Final EIR Certificate was issued on December 1, 2003, which found the FEIR "adequately and properly complied" with the Massachusetts Environmental Policy Act (MEPA).

State Enhance Remedy (SER): The Department is the lead agency providing oversight and review of the project documents, inspections and audit functions, interpretation and coordination with other Resource agencies and serves as technical liaison between Federal and State agencies. Under the SER, the Department has the overall approval authority for the projects conducted by the New Bedford Harbor Development Commission (NBHDC).

A Memorandum of Agreement (MOA) between the NBHDC and the Department laid out the framework for the SER process, roles and responsibilities. Projects conducted under the auspices of the SER will be conducted as Tasks or Phases with the preparation of various guidance documents that detail the plan for the work to be conducted under that Task.

On May 9, 2005, the Department issued a 401 Water Quality Certification (WQC) to NBHDC for the construction of a CAD cell (Hereinafter in this document referred to as Cell #1) located in New Bedford Harbor. The CAD cell encompassed approximately 182,400 ft² reaching depth of -60 ft Mean Low Water (MLW) with one-foot overdredge allowance, generating a dredge volume of approximately 130,000 yd³ of dredged material suitable for unconfined ocean disposal at the Cape Cod Bay Disposal Site (CCBDS).

At the present time, Cell 1 is at its full capacity and construction of Cell #2 has been recently completed. On July 7, 2008, the Department issued an amendment to the May 9, 2005 WQC, expanding the DMMP footprint to 182 acres and increasing the dredge volume to 1,000,000 yd³ (CAD Cell # 2) for unconfined ocean disposal at CCBDS.

The majority of the dredged material from Cell #2 were disposed at the CCBDS and a small amount was used as cap material for the borrow pit site.

Proposed project: On May 5, 2008, NBHDC submitted a Notice of Project Change (NPC) for the expansion of the CAD cell footprint indentified in the FEIR in order to meet the anticipated needs of the New Bedford/Fairhaven Harbor Maintenance Dredging Program. The original footprint will be expanded by 87 acres from 95 acres to 182 acres. The overall dredge volume for the construction of the CAD cells has not changed from the FEIR. The expansion of the disposal footprint is caused by logistical, technical and financial constraints. Data collected from the vibracores indicated the "mud" in the existing DMMP area is as much as 30+ feet thick. It is anticipated that a series of "smaller capacity CAD cells" to be constructed in the expanded area where the mud is less than 5-feet thick. Potentially, including CAD cells #1 and #2, a total of 26 CAD cells could be constructed within the expanded DMMP area.

The dredging component of the future construction of CAD cells is covered under the SER. Only the proposed off-site disposal/reuse is under the purview of this 401 WQC.

In addition to unconfined ocean disposal at CCBDS, NBHDC is considering other potential disposal alternatives. As viability of these potential disposal locations becomes apparent, NBHDC will submit an amendment to the Certification indicating the "proposed" final disposal or reuse location(s). As such, Condition No. 8 requires NBHDC to develop a comprehensive upland sediment reuse/disposal management plan detailing the process of determining "as viability of these disposal locations becomes apparent".

In general, dredged material from future CAD cells will be dredged using mechanical dredging system. For disposal at CCBDS, the dredged material will be placed into a dump scow and transported via tug to the disposal site. For beach nourishment, the dredged material will be transported via tug to the appropriate nourishment location and placed hydraulically. For upland disposal/reuse, the dredged material will be transported via tug to an approved dewatering location where it will be dewatered prior to transportation by trucks to the disposal/reuse location(s).

Sediment dewatering: Dewatering location(s) for upland disposal/reuse has yet to be determined. Although preference is to have sites adjacent to the harbor, however, sites are rarely available. Condition No. 9 requires NBHDC to keep the Department informed regarding the site selection, containment, dewatering process and management of the free/excess water generated from the dewatering operation.

Sediment sampling data: A Dredged Material Data Package is included as Attachment G of the 401 application. 10 samples were collected at various depths from four locations for gradation analysis. Results of the gradation analysis revealed that sediment passing the No. 200 U.S. Standard Series Testing Sieve ranged from 2.9 percent to 85.9 percent.

Three samples were collected for chemical analysis. Results of the chemical analysis indicated the presence of low level of Acetone, Methylene Chloride, bis(2-Ethylhexyl)phthalate, and heavy metals.

However, it is important to note that the samples were collected either in the vicinity or within the footprint of CAD cell #2, which is only a portion of the expanded DMMP area. As indicated in the 401 application, if beach nourishment is the preferred beneficial reuse of the dredged material, then upland sediment reuse/disposal management plan will have to include additional sampling program to ensure that the dredged material is compatible to be used as beach nourishment material or conform to the disposal facility requirements.

Public Notice: The Department received no comment during the 21-day public comment period for this application, which began on August 22, 2008 on the New Bedford Times.

Section 61 Findings. Pursuant to M.G.L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this project was reviewed as EOE No. 11669 and the Secretary's Certificate, issued on April 25, 2008 found that a Supplemental Environmental Impact Report (EIR) would not be required.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. The Department further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, the Department has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project as implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00.

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.
3. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.
4. Work in waters and wetlands shall conform substantially to the State Enhance Remedy (SEM). The Department shall be notified if there are modifications and or deletions of work as specified in the SEM. Depending on the nature of the scope change, approval by the Department may be required.
5. The Department shall be notified, attention Ken Chin 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.
6. The Certification remains in effect for the same duration of the federal permit that required it.
7. Future maintenance dredging is not authorized under this Certification.
8. The applicant shall prepare a Dredged Material Beneficial Reuse/Disposal Management Plan and submit to the Department for review and approval. At a minimum, the Management Plan shall include the names of the receiving site(s) or facility(ies), estimated volume, sampling data (e.g., gradation for beach nourishment, chemical analysis for upland disposal), schedule, placement of the beach nourishment material (i.e. above Mean High Tide), and the criteria for site or facility selection. In addition, the management plan shall

include an outreach program with the surrounding municipalities and Coastal Zone Management in an effort identifying beach nourishment locations.

9. The applicant or the selected contractor shall submit the location of the dewatering area when it is finalized to the Department. At a minimum, the submittal shall include the containment details, dewatering process and management of the free/excess water generated from the dewatering operation.
10. It is the applicant's responsibility to meet and or satisfy the requirements of the licensed facility for upland disposal.
11. A Dredged Material Tracking Form (DMTF) or Material Shipping Record (MSR) shall be used to track the dredged material to the licensed upland facility. A fully executed copy of the DMTF or MSR shall be provided to the Department within 30 days of final shipment to the reused location or facility. If the licensed facility is located out of state, documentation shall be provided to the Department that the dredged material disposal has been approved by the receiving state in accordance with 314 CMR 9.07(13)(b).
12. Best Management Practices (BMPs) shall be implemented during transportation of the dredged material to the licensed receiving facility. At a minimum, when transported upon public roadways, all dredged material shall have no free liquid as determined by the Paint Filter Test or other suitably analogous methodology acceptable to the Department, and a tarpaulin or other means shall be used to cover sediment during transport.
13. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.
14. Disposal of dredged material at CCBDS shall not occur between January 1st and May 15th of any year in order to protect right whales.
15. Four weeks prior to commencement of the dredging activity, the applicant shall submit a notification procedure outlining the reporting process to the Department for incidents relating to the dredging activities impacting the surrounding resource area and habitats such as, but not limited to, observed dead or distressed fish, or other aquatic organisms, observed oily sheen on surface water, sediment spill, observed turbidity plume beyond the deployed BMPs, barging or equipment accident/spill. If any time during implementation of the project a fish kill or significant water quality problem occurs in the vicinity of the project, all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures employed to the satisfaction of the Department.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

- a. the applicant or property owner;

- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental

Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Ken Chin at 617-292-5893.

Sincerely,



Glenn Haas
Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form
Material Shipping Record

cc:

Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, DMF, 838 South Rodney French Blvd., New Bedford, MA 02744
Paul Craffey, DEP Boston Office
New Bedford Conservation Commission, Boston City Hall – Room 805, Boston, MA 02201
Chet Myers, Apex Companies, LLC, 115 Broad St., Suite 200, Boston, MA 02110

KC/W226782



**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
Governor

ELLEN ROY HERZFELDER
Secretary

KERRY HEALEY
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.
Commissioner

May 9, 2005

Mr. John Simpson
City of New Bedford Harbor Development Commission
104-106 Co-op Wharf
New Bedford, MA 02745

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07, Disposal at CCDS

From: New Bedford Harbor, NEW BEDFORD

Transmittal No: W062451

Dear Mr. Simpson:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of New Bedford Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SB Waters. Such waters are intended "as habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Proposed project: The project entails dredging of the confined aquatic disposal cells located in New Bedford Harbor. The cell depths will be cover approximately 182,400 ft², reaching depth of -60 ft Mean Lower Low Water with a one-foot overdredge allowance. Up to 135,000 yd³ of sediment will be dredged mechanically. The sediment will be placed into barges, which will transport the material to Cape Cod Bay Disposal Site (CCDS), where it will be dumped. The U.S. Army Corps of Engineers approved the disposal of the sediment at CCDS in permit Number 2004-3963.

The Department received no comments during the 21-day public comment period for this application, which began April 4, 2005.

This information is available in alternate format by calling our ADA Coordinator at (617) 574-6872.

DEP on the World Wide Web: <http://www.state.ma.us/dep>

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401 Water Quality Certification, Disposal at CCDS
Transmittal No: W062451

Page 2

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law:

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of in-water work, the Department shall be notified of any proposed change(s) in plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.
3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: Figure 1, prepared by Apex Environmental, Inc., unsigned, unstamped and undated.
4. Sediment shall be disposed of at Cape Cod Bay Disposal Area as per the following:
 - a. At least ten working days in advance of the start date, the First Coast Guard District, Aids to Navigation Office, 617-223-8356, shall be notified of the location and estimated duration of the dredging and disposal operations.
 - b. Prior to disposal, the Department of Environmental Management, Office of Waterways, 349 Lincoln Street, Building 45, Hingham, MA 02043 shall be notified as to the anticipated start date for disposal of dredged material at the CCDS.
 - c. Every discharge of dredged material at the disposal site shall be witnessed by an onboard inspector who has been trained by, and who holds a current certification from, the New England District of the Corps of Engineers. The disposal inspector shall be contracted and paid for by the permittee. A list of currently certified inspectors can be obtained from the New England District Regulatory Division at 978-318-8292.
 - d. The permittee shall ensure that a separate Corps of Engineers disposal inspection report (scow log) is fully completed by the inspector for every trip to the disposal site and that this report is received by the Corps' New England District within one week of the trip date. The Regulatory Division telefax number is 978-318-8303. The original of this report must be mailed to: U.S. Army Corps of Engineers, Regulatory Division, Policy Analysis and Technical Support Branch, 696 Virginia Road, Concord, MA 01742-2751. For each dredging season during which work is performed the permittee must notify the Corps upon completion of dredging for the season by completing and submitting the form that the Corps will supply for this purpose when disposal-point coordinates are specified. A copy disposal inspection report (scow log) shall be Massachusetts Department of Environmental Management, Office of Waterways, 349 Lincoln Street, Building 45, Hingham, MA 02043.
 - e. Except when directed otherwise by the Corps, all disposal of dredged material shall adhere to the following: The permittee shall release the dredged material at a specified buoy or set of coordinates within the disposal site. All disposal shall occur at the buoy or specified coordinates with the scow at a complete halt. This requirement must be

- followed except when doing so will create unsafe conditions because of weather or sea state, in which case disposal within 100 feet of the buoy or specified coordinates with the scow moving only fast enough to maintain safe control (generally less than one knot) is permitted. Disposal is not permitted if these requirements cannot be met due to weather or sea conditions. In that regard, special attention needs to be given to predicted conditions prior to departing for the disposal site.
- f. Disposal of dredged material at the Cape Cod Disposal Site (CCDS) shall not occur between January 1 and May 15 in order to protect right whales.
 - g. A marine mammal/turtle observer approved by National Marine Fisheries Service (NMFS) shall be present on the towing vessel for all disposal activities. The observer may be the dredged material disposal inspector provided that he or she is also approved by NMFS.
 - h. In the event that marine mammals or turtles are sighted within 1,500 feet of the marker buoy, the tug captain and observer shall observe the following disposal procedure:
 - i. If marine mammals or turtles are sighted within 1,500 feet of the marker buoy, note species, number of animals, direction of travel, and behavior (feeding, in transit, etc.).
 - ii. If the animals are within 1,500 feet of the marker buoy and appear to be moving away from the buoy wait until they have cleared the buoy by 1,500 feet and then proceed with disposal at the buoy.
 - iii. If the animals are within 1,500 feet of the marker buoy and appear to be remaining stationary, or are outside 1,500 feet but appear to be moving towards the buoy, proceed to the center of the CCDS and discharge the material at the position specified by the Water Quality Certification.
 - i. If the disposal occurs in darkness or otherwise limited visibility, the tug shall employ its searchlight for the benefit of the observer beginning 2,000 feet from the disposal buoy.
 - j. In all cases, no disposal shall occur within 1,500 feet of a sighted marine mammal or turtle.
 - k. The observer shall document each trip using the sighting log form supplied by the Corps of Engineers. The permittee must ensure that these sighting log forms are fully completed and received by the Corps' New England District within one week of the trip date. Address the submittal to: U.S. Army Corps of Engineers, New England District, Regulatory Division, Policy Analysis and Technical Support Branch, 696 Virginia Road, Concord, MA 01742-2751. The phone number is 978-318-8292, and the FAX number is 978-318-8303. A copy of the sighting log form shall also be sent to Massachusetts Department of Conservation and Recreation, Office of Waterways, 349 Lincoln Street, Building 45, Hingham, MA 02043.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment that has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 310 CMR 9.10(3):

- a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and

401 Water Quality Certification, Disposal at CCDS
Transmittal No. W062451

Page 5

- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4082
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Yvonne Unger at 617-292-5893.

Sincerely,



Glenn Haas
Director
Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc:

Crystal Gardner, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Alex Strysky, CZM, 251 Causeway Street, Suite 900, Boston, MA 02114
Vin Malkoski, Division of Marine Fisheries, Southeast Marine Fisheries Station, 50A Portside Drive, Pocasset, MA 02559

401 Water Quality Certification, Disposal at CCDS
Transmittal No: W062451

Page 6

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