



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

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Commissioner

April 5, 2018

Colonel William M. Conde  
Commander, New England District  
U.S. Army Corps of Engineers New England District  
696 Virginia Road Concord, Massachusetts 01742-2751

Re: **401 WATER QUALITY CERTIFICATION**  
Department of the Army  
General Permits for Massachusetts  
Effective: **April 5, 2018**  
Expires: **April 5, 2023**

Dear Colonel Conde,

The Massachusetts Department of Environmental Protection (the Department) has reviewed your request for the Commonwealth of Massachusetts to issue a 401 Water Quality Certification (WQC) of the Department of the Army General Permits for Massachusetts (MA GPs). In accordance with the provisions of Section 401 of the Federal Clean Water Act, 33 U.S.C. §1344, the Massachusetts Clean Waters Act, M.G.L. c.21, §§ 26-53, and the 401 Water Quality Certification regulations at 314 CMR 9.00, the Department has determined there is reasonable assurance the activities covered by the MA GPs that are certified herein will be conducted in a manner which will not violate the Massachusetts Surface Water Quality Standards (314 CMR 4.00) and other applicable requirements of state law, if carried out in accordance with this WQC and the provisions of the MA GPs.

The MA GPs regulate 23 categories of activity in Massachusetts. Each General Permit establishes specific conditions and limitations. Activities not authorized by the MA GPs require an Individual Permit in accordance with Section I (4) of the MA GPs. Section III of the MA GPs identifies the activities eligible for coverage as follows:

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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### General Permits

1. Repair, Replacement and Maintenance of Authorized Structures and Fills
2. Moorings
3. Pile-Supported Structures, Floats and Lifts
4. Aids to Navigation, and Temporary Recreational Structures
5. Dredging, Disposal of Dredged Material, Beach Nourishment, and Rock Removal, and Relocation
6. Discharges of Dredged or Fill Material Incidental to the Construction of Bridges
7. Bank and Shoreline Stabilization
8. Residential, Commercial and Institutional Developments, and Recreation Facilities
9. Utility Line Activities
10. Linear Transportation Projects Including Stream Crossings
11. Mining Activities
12. Boat Ramps and Marine Railways
13. Land and Water-Based Renewable Energy Generation Facilities and Hydropower Projects
14. Temporary Construction, Access, and Dewatering
15. Reshaping Existing Drainage Ditches and Mosquito Management
16. Oil Spill and hazardous Material Cleanup
17. Cleanup of Hazardous and Toxic Waste
18. Scientific Measurement Devices
19. Survey Activities
20. Agricultural Activities
21. Fish and Wildlife Harvesting and Attraction Devices and Activities
22. Habitat Restoration, Establishment and Enhancement Activities
23. Previously Authorized Activities

The MA GPSs also contain 44 General Conditions (GCs), with which all prospective permittees must comply, as applicable. Prospective permittees must calculate the cumulative impacts to jurisdictional resources from all activities encompassed by their proposed project. Each MA GPS includes resource impact thresholds for review (based on both temporary and permanent resource impacts). Depending on the individual threshold impacts, activities will be eligible for either Self-Verification (SV) or Pre-Construction Notice (PCN). Resource impacts beyond those qualifying for SV or PCN are not eligible for certification under the MA GPSs and require an Individual Permit (IP).

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In general, activities associated with the discharge of dredged or fill material in Massachusetts (e.g. MA GPs 1, 8-14, 16-20, and 23) are subject to the following area thresholds:

Resource	SV Eligible	PCN Required	IP Required
Non-tidal Waters of the U.S.	0-5,000 SF	>5,000 SF to 1 Acre	>1 acre
Tidal waters of the U.S.	not eligible	all discharges $\leq$ 1/2 acre	>1/2 acre
SAS <sup>1</sup> in Tidal Waters of the U.S. excluding vegetated shallows	not eligible	all discharges $\leq$ 1,000 SF	>1,000 SF
SAS in Tidal Waters of the U.S. consisting of only vegetated shallows only	not eligible	all discharges $\leq$ 100 SF (compensatory mitigation is required)	> 100SF

**Public Notice:** The Massachusetts Department of Environmental Protection's Public Notice to issue this 401 Water Quality Certification to the Department of the Army for the General Permits for Massachusetts was published concurrently with the Public Notice by the Department of the Army on September 7, 2017 and published in the MEPA Environmental Monitor on October 10, 2017.

**Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for the Massachusetts General Permits 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 projects or activities 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 WQC, the Massachusetts General Permits maintain and protect water quality to the level necessary to protect existing uses and High Quality Waters. Accordingly, the Department finds that the General Permits as implemented satisfy the Surface Water Quality Standards at 314 CMR 4.00.**

**A. Applicability**

This WQC applies to all activities in MA GPs (1 – 23) eligible for Self-Verification, subject to the limitations enumerated in (a)-(m) below. This WQC also applies to the activities covered by MA GPs 20 and 22 (agricultural and aquacultural) which require a PCN. Other than MA GPs 20 and 22, this WQC is not applicable to any other MA GPs activities that require a PCN or an IP.

This WQC is subject to the following additional requirements:

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<sup>1</sup> Special Aquatic Sites (SAS) consists of wetlands, mud flats, vegetated shallows, sanctuaries and refuges, coral reefs, and riffle and pool complexes as defined at 40 CFR 230 Part E.

- a) The permittee has a valid Final Order of Conditions or Emergency Certification under the Wetlands Protection Act, M.G.L. Ch. 131 sec. 40 and its regulations at 310 CMR 10.00, or was authorized by an Emergency Declaration, and, if applicable, a license or permit under the Public Waterways Act, M.G.L. Ch.91, prior to the commencement of activities subject to this WQC and MA GPs;
- b) If the activity subject to this WQC and the MA GPs occurs in an area subject to 310 CMR 10.00: *Wetlands Protection* and 33 U.S.C. 1251, *et seq.*, it will not result in the temporary and/or permanent loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water; (Bordering Vegetated Wetlands are defined in 310 CMR 10.55(2) and 314 CMR 9.02, Isolated Vegetated Wetlands are defined in 314 CMR 9.02 and Land under the Ocean is defined in 310 CMR 10.25(2));
- c) The activity is not in an Outstanding Resource Water as identified in 314 CMR 4.00 and 314 CMR 9.00;
- d) The activity is not associated with a Real Estate Subdivision, as defined at 314 CMR 9.04(3), unless there is a valid, unexpired Final Order of Conditions, a Certificate of Compliance, and a recorded deed restriction providing notice to subsequent purchasers limiting the amount of fill for the single and complete project to less than 5000 square feet cumulatively of bordering and/or isolated vegetated wetlands and land under water, and the discharge is not to an Outstanding Resource Water;
- e) With the exception of activities covered by 314 CMR 9.03(4) (agricultural and aquacultural), the activity is not exempt under M.G.L. c. 131, § 40;
- f) If the activity consists of routine maintenance of existing channels, such as mosquito control projects or road drainage maintenance, it will not result in the temporary and/or permanent annual loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetland and land under water;
- g) If the activity is in an area not subject to jurisdiction of M.G.L. c. 131, § 40, but is subject to 33 U.S.C. 1251 (*i.e.*, isolated vegetated wetlands), it will not result in the temporary and/or permanent loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water;
- h) The activity will not result in the discharge of dredged or fill material to an isolated vegetated wetland that has been identified as Rare Species Habitat by the Massachusetts Natural Heritage and Endangered Species Program;
- i) The activity will not result in the discharge of dredged or fill material in any salt marsh as defined in 314 CMR 9.02 and 310 CMR 10.32(2);

- j) Dredging or dredged material re-use or disposal activities are limited to less than 100 cubic yards and the work is not subject to an individual 404 permit by the Corps of Engineers. Dredged sediment generated from such activities shall be managed in accordance with the provisions of 314 CMR 9.07(9) through (11) and may be used for beach nourishment activities or reuse within the shoreline under a Final Order of Conditions issued under M.G.L. c. 131, § 40;
- k) All fill or discharges to bordering vegetated wetlands shall include a minimum of 1:1 restoration or replication under 310 CMR 10.55(4)(b) unless the activity constitutes an Ecological Restoration Project for the maintenance or repair (but not replacement, reconstruction, or substantial enlargement) of existing and lawfully located dams and is eligible for a Restoration Order of Conditions under 310 CMR 10.13;
- l) If applicable, the activity conforms to the stream crossing provisions of 310 CMR 10.24(10) and 10.53(8); and
- m) The proposed work does not require an application pursuant to 314 CMR 9.04.

#### **B. General Permit Specific Criteria and Conditions**

1. This WQC conditionally certifies MA GPs 1, 8 -14, 16-20, and GP 23 provided:
  - a) This WQC applies to activities that meet the SV thresholds if a permittee complies with the SV eligible requirements stated within the activity-specific MA GP and meets the Applicability requirements (a – m) above; and
  - b) This WQC is not applicable to projects or activities that are subject to the PCN or IP thresholds.

- 2) This WQC certifies the following MA GPs as conditioned below:

##### **MA GP 2: Moorings**

- a) This WQC applies to those MA GP 2 Mooring Activities which meet the SV eligible requirements; and
- b) the mooring activity is authorized by a valid Annual Permit for Moorings, Floats and Rafts Section 10A permit issued by the municipal harbormaster or other municipal official in accordance with 310 CMR 9.07(2) of the Waterways, Chapter 91 Regulations; and

##### **MA GP 3: Pile-Supported Structures, Floats and Lifts**

Any structure, such as an elevated walkway or other such structure, that is located over a salt marsh and/or submerged aquatic vegetation shall have no adverse effects on the salt marsh and/or submerged aquatic vegetation other than blocking sunlight from the underlying vegetation for a portion of each day and will not result in the loss of any portion of the underlying vegetation from said sunlight blocking.

**MA GP 5: Dredging, Disposal of Dredge, Beach Nourishment, Rock Removal, and Rock Relocation**

- a) Disposal does not involve beach nourishment, nearshore, open water, ocean, or confined aquatic disposal;
- b) The activity is limited to the reach of the Merrimack River between the Essex Dam and the mouth of the river as identified on the MADEP Mouth of River maps at:

<http://www.mass.gov/eea/agencies/massdep/water/watersheds/wetlands-maps-mouth-of-coastal-river.html>

- (c) Dredging activities must comply with the authorization requirements of 310 CMR 9.05, the notice requirements of 310 CMR 9.13(1)(c)(5), and the standards for dredging and dredged material disposal at 310 CMR 9.40.

**MA GP 7: Bank and Shoreline Stabilization**

- a) The Activity must not:
  - i) Impair the water carrying capacity of the existing channel within the Bank in accordance with 310 CMR 10.54(4)(a)(2); or
  - ii.) Reduce the water capacity within the defined channel in accordance with 310 CMR 10.56(4)(a)(1).
- b) Activities on Coastal Banks (as defined at 310 CMR 10.30(2)) shall:
  - i) Comply with the requirements of 310 CMR 10.30(3) and (4) when said bank is significant to storm damage prevention and flood control because it supplies sediment to Coastal Beaches, Coastal Dunes or Barrier Beaches; and
  - ii) Comply with the requirements of 310 CMR 10.30(6) and (7) when said bank is significant to storm damage prevention and flood control because it is a vertical buffer to storm waters.

**MA GP 14: Temporary Construction, Access, and Dewatering**

Temporary construction, access, including construction mats, and/or dewatering associated with an activity exempt under M.G.L. c. 131, § 40 is not certified by this WQC and shall file an individual WQC pursuant to 314 CMR 9.00.

**MA GP 19: Survey Activities**

The mouth of the Merrimack River is located identified by the MADEP Mouth of River maps at:  
<http://www.mass.gov/eea/agencies/massdep/water/watersheds/wetlands-maps-mouth-of-coastal-river.html>

**MA GP 20: Agricultural Activities**

This WQC certifies the Agricultural Activities under the SV and PCN thresholds subject to the following conditions:

- a) The activity complies with 314 CMR 9.03(4) - Activities not requiring an application, and constitutes normal maintenance or improvement of Land in Agricultural or Aquacultural Use, exempt from M.G.L. c. 131, § 40 Wetlands Protection Act, as defined in 310 CMR 10.04;
- b) The activity is not subject to 314 CMR 9.04 (10) - Agricultural Limited Projects not exempt under M.G.L. c. 131 § 40; and
- c) The activity is not eligible for SV, and does not require an IP, for any work in the Connecticut River from the MA/CT border to the Turners Falls Dam, the Merrimac River to the Essex Dam, or the Taunton River

**MA GP 22: Aquaculture**

This WQC certifies the MA GP for Aquaculture activities under the SV and PCN thresholds, if a permittee meets the criteria stated within this activity-specific MA GP and meets the following conditions:

- a) The activity complies with 314 CMR 9.03(4) - Activities not requiring an application, and constitutes normal maintenance or improvement of Land in Agricultural or Aquacultural Use, exempt from M.G.L. c. 131, § 40 Wetlands Protection Act, as defined in 310 CMR 10.04; and
- b) The activity is not subject to 314 CMR 9.04 (10) - Agricultural Limited Projects not exempt under M.G.L. c. 131 § 40.

**MA GP 23: Habitat Restoration, Establishment and Enhancement**

1. The activity meets the definition of an Ecological Restoration Project at 314 CMR 9.02 and complies with the provisions of 314 CMR 9.03(8).
2. This WQC is only applicable to activities that meet the SV threshold for this MA GP if the activity is not subject to 314 CMR 9.04(12) - Dredging 100 Cubic Yards or More.

**C. General Terms and Conditions**

The activities authorized by this WQC are subject to the following terms and conditions:

1. This WQC shall be valid until such time as the Department of the Army, General Permits for Massachusetts expire or are modified, suspended, revoked or reissued.
2. The Commonwealth of Massachusetts reserves the right to amend, modify, suspend, revoke or reissue this WQC if the MA GPs are amended, modified, suspended, revoked or reissued.

3. The activities authorized by this WQC shall be conducted in a manner that assures compliance with the anti-degradation provisions of the Massachusetts Surface Water Quality Standards at 314 CMR 4.00.
4. This WQC does not derogate from any present or future property rights or other rights or powers of the Commonwealth of Massachusetts, and does not convey property rights in real estate or material, or any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state, or local laws and regulations pertinent to the property or activity affected hereby.
5. In accordance with 314 CMR 9.04(11), the Department may invoke discretionary authority to require an application for an individual WQC based on cumulative effects of multi-phased activities, cumulative effects of dredging, or from the discharge of dredged or fill material to bordering or isolated vegetated wetlands or land under water, or other impacts which may jeopardize water quality. The Department will issue a written notice of and statement of reasons for its determination to invoke this discretionary authority not later than ten business days after its receipt of a valid Order of Conditions issued pursuant to 310 CMR 10.00.
6. MassDEP reserves the right to inspect any project or activity conducted, permitted or otherwise authorized by this WQC and their impacts on Surface Waters, including wetlands, as defined at 314 CMR 4.02, at any time to monitor compliance with the Massachusetts Surface Water Quality Standards.
7. The permittee is responsible for compliance with the terms and conditions of this Certification. Failure to comply with the terms and conditions of this WQC is grounds for enforcement by MassDEP including, without limitation, the assessment of civil, administrative, or criminal penalties pursuant to M.G.L. c. 21, §§ 42 and 44, M.G.L. c. 21, §16A, 310 CMR 5.00, M.G.L. c. 131, § 40, 310 CMR 10.08, and 314 CMR 9.11 or other possible actions/penalties as authorized by the General Laws of the Commonwealth.
8. Stormwater discharges to Surface Waters including wetlands during the construction period must comply with the Commonwealth of Massachusetts Surface Water Quality Standards established for each of the affected areas in 314 CMR 4.00. If applicable, and prior to land disturbance of one acre or more, the permittee shall file a Stormwater Pollution Prevention Plan (SWPPP) required by the EPA National Pollution Discharge Elimination System (NPDES) Construction General Permit (CGP) and provide MassDEP a copy of the filed SWPPP.
9. Any activity authorized by this WQC shall not result in any increase in turbidity to Surface Waters including wetlands either during normal or significant rainfall events. Excessive turbidity in wetlands or flowing water within, or in the vicinity of the Project site shall be presumed to have unacceptable adverse impacts on Surface Waters including wetlands.

10. Refueling, washing, or other maintenance of vehicles and construction equipment, and storage of hazardous materials shall not take place within Surface Waters including wetlands.

11. Any fill used in Surface Waters including wetlands shall comply with all provisions of the Wetlands Protection Act (M.G.L. Ch. 131 sec. 40), Wetlands Protection Regulations (310 CMR 10.00), M.G.L. c. 21 E, and the regulations promulgated pursuant thereto at 310 CMR 40.0000. Without limitation, fill shall not contain any trash, refuse, rubbish or debris, including, but not limited to lumber, plaster, construction materials, wire, lath, paper, cardboard, pipe, tires, ashes, metal, plastic, motor vehicles, or parts of any of the foregoing, hazardous waste, hazardous materials, or oil.

12. The activities authorized herein shall not commence until the permittee has obtained final approval pursuant to Section 404 of the Federal Clean Water Act from the Army Corps of Engineers, as applicable.

13. Upon final stabilization of disturbed surfaces, all temporary erosion controls shall be removed and disposed of in a legal manner, and shall not be disposed of in Surface Waters including wetlands.

14. This WQC does not relax, vary or waive requirements under the Surface Water Discharge/NPDES Municipal Separate Storm Sewer System (MS4) General Permit and EPA issued NPDES Construction General Permit. In the event of a conflict between requirements of this WQC and the referenced general permits, the permittee shall follow the more stringent requirement.

15. This WQC does not relieve the permittee of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the permittee's project or activity as described in the permittee's previous submittals will require further notification to the Department.

16. The permittee shall obtain, if applicable, Federal Consistency Concurrence from the Massachusetts Office of Coastal Zone Management prior to the start of work and shall comply with the conditions stated therein.

17. The permittee shall comply with GCs 1-44 in Section IV of the MA GPs.

#### **D. Notification of Appeal Rights**

314 CMR 9.10(1) provides that the following persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required under 314 CMR 9.04:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;

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- 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; and
- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

This WQC does not certify any activity that requires an application pursuant to 314 CMR 9.04.

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 and 310 CMR 1.01, 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 4.06, along with a DEP Fee Transmittal Form, within twenty-one (21) days from the date of the Certification, and addressed to:

Case Administrator  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> 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, 5<sup>th</sup> 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 Wetland 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 counselor 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 the Certification, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Certification Regulations, 314 CMR 9.00,

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- 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 Certification concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the Certification 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.

If you have questions on this decision, please contact me at 617-574-6882 or Michael Stroman at 617-292-5526.

Sincerely,



Lealdon Langley  
Director  
Wetlands and Wastewater

Cc: Robert J DeSista, ACOE, Acting Chief, Regulatory Division  
Barbara Newman, ACOE, Chief, Permits & Enforcement Branch (MA)  
Gregory R. Penta, ACOE, Regulatory Division  
Bruce Carlisle and Robert Boeri, Mass Office of Coastal Zone Management  
MassDEP, BWR, WQC David Wong and Derek Standish  
MassDEP, BWR, Wetland Program Staff  
MassDEP, BWSC, Albe Simenas  
MassDEP, OGC, Deidre Desmond  
Jacqueline LeClair, Edward Reiner, Mark Kern, EPA