



Commonwealth of Massachusetts  
Executive Office of Energy and Environmental Affairs

## Department of Environmental Protection

Address: 100 Cambridge Street, Suite 900, Boston MA 02114 | Phone: 617-292-5500

**Maura T. Healey**  
Governor

**Kim Driscoll**  
Lieutenant Governor

**Rebecca Tepper**  
Secretary

**Bonnie Heiple**  
Commissioner

December 17, 2025

Tammy Turley (via email: tammy.r.turley@usace.army.mil)  
Chief, Regulatory Division  
U.S. Army Corps of Engineers New England District  
696 Virginia Road Concord, Massachusetts 01742-2751

Re: **Section 401 WATER QUALITY GENERAL CERTIFICATION**  
Department of the Army  
Nationwide Permits for Massachusetts  
Effective: **Upon issuance of the 2026 NWP**s  
Expires: **Upon expiration of the 2026 NWP**s

Dear Ms. Turley,

The Massachusetts Department of Environmental Protection (MassDEP) has reviewed your June 18, 2025 request for the Commonwealth of Massachusetts to issue a Section 401 Water Quality Certification (WQC) of the Department of the Army Nationwide Permits (NWP)s, herein termed the "General NWP Certification." In accordance with the provisions of Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341, the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, and the Massachusetts 401 WQC regulations at 314 CMR 9.00, the Department has determined there is reasonable assurance the activities covered by the NWP)s **that are certified herein** will be conducted in a manner which will comply with the Massachusetts Surface Water Quality Standards (314 CMR 4.00) and other applicable water quality-related requirements of state law, if carried out in accordance with this General NWP Certification and the provisions of the NWP)s, including the Regional Conditions imposed by the USACE New England District.

### **I. Coverage of the General NWP Certification**

**This WQC conditionally certifies all activities authorized by USACE in NWP)s 1, 3-7, 9-20, 22-23, 27-29, 31-46, 48, 51-55, 57-59, and A so long as the activity is described in 314 CMR 9.03 and is not an activity described in 314 CMR 9.04, and so long as the activity meets all other requirements, terms and conditions of 314 CMR 9.03 and of this WQC. Additionally, emergency activities authorized by one or more of these NWP)s are certified if they meet the requirements of 314 CMR 9.12. Applicants must review this General NWP Certification and the current version of 314 CMR 9.03 and 314 CMR**

**9.04 as of the date of this letter (provided in the Appendix) prior to determining certification status. All other activities that are not described in 314 CMR 9.03 or are described in 314 CMR 9.04, unless they are authorized under 314 CMR 9.12, require an individual WQC application and issuance of an individual WQC from MassDEP.**

**Project proponents should note that most tidal impacts authorized by NWPs are likely not certified pursuant to this WQC and will require an individual application.**

## **II. Clarifications for Evaluating Applicability of this General NWP Certification**

### **1. All NWPs - Extent of MassDEP jurisdiction:**

MassDEP has jurisdiction under CWA § 401 and 40 C.F.R. Part 121 to evaluate water-quality related impacts from the activity subject to the NWPs on all Waters of the Commonwealth. Waters of the Commonwealth are defined at 314 CMR 9.02 to include all rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and ground waters. Surface Waters are defined at 314 CMR 9.02 to include all Waters of the Commonwealth other than ground waters. Bordering vegetated wetlands are also defined in 314 CMR 9.02. "Land Under Water," as used in 314 CMR 9.00, includes the bottom of, or land under, the surface of the ocean or any estuary, creek, river, stream, pond, or lake. All impacts to Land Under Water including creek, river, and stream impacts are quantified as square feet in Massachusetts. Where thresholds of applicability are determined in 314 CMR 9.03 or 9.04 according to specified Surface Water (including wetland) types, those shall be based on the applicable Surface Waters affected by the activity, not solely the federally jurisdictional subset of those waters.

In consideration of whether a proposed activity qualifies for coverage under this WQC, "activity" means the proposed project, scheme or plan of action resulting in the discharge of dredged or fill material authorized by the NWP. In determining thresholds for and conducting evaluations of applications, the entirety of the activity, including likely future expansions, shall be considered and not separate phases or segments thereof. The definition of "Single and Complete Project" in 314 CMR 9.02 does not differentiate between linear and non-linear projects; therefore, a linear project considered multiple projects by the USACE will likely be considered one activity by MassDEP. The activity includes temporary and permanent, direct and indirect, and cumulative impacts from the construction and ongoing operation of a project. The calculation of square footage shall include the total of the applicable areas proposed to be lost from the impacts of the activity, without reduction for replication or restoration.

### **2. All NWPs - Salt Marsh and Outstanding Resource Waters: Activities with a discharge of dredged or fill material in a salt marsh (except for Ecological Restoration projects per 314 CMR 9.03(8)), and activities with dredging or a discharge of dredged or fill**

material in an Outstanding Resource Water, require an individual WQC application. See 914 CMR 9.04(2) and (8).

3. **All NWPs - Dredging:** Dredging as defined in 314 CMR 9.02 includes the removal or repositioning of sediment or other material from below the mean high tide line for coastal waters and below the high water mark for inland waters (not including wetlands). Dredging of 100 cubic yards or greater will trigger an individual WQC application as identified in 314 CMR 9.04(12). Dredging less than 100 cubic yards does not require an individual application, as identified in 314 CMR 9.03(3) provided all of the requirements of this WQC are met, including all of the requirements of 314 CMR 9.03.
4. **NWP 27 -- Aquatic Habitat Restoration, Enhancement and Establishment and NWP A -- Activities to Improve Passage of Fish and Other Aquatic Organisms:** Activities that comply with the provisions of 314 CMR 9.03(8) are certified under this WQC. Note that only Ecological Restoration projects that meet the eligibility criteria pursuant to 310 CMR 10.13, comply with requirements of 310 CMR 10.11 and 10.12, and receive a Restoration Order of Conditions (OOC) pursuant to 310 CMR 10.14 are certified under this WQC. Projects that involve dredging or dredged material disposal as described in 314 CMR 9.04(12) require an individual WQC application. Ecological Restoration Limited projects that receive an OOC under the provisions of 310 CMR 10.24(8) or 10.53(4) are not certified under this WQC and require an individual WQC application.
5. **NWP 40 – Agricultural Activities, and NWP 48 – Commercial Shellfish Mariculture Activities:** Agriculture and aquaculture activities described in 314 CMR 9.03(4) (*i.e.*, normal maintenance or improvement of land in agricultural or aquacultural use) do not require an individual WQC pursuant to 314 CMR 9.04(4) because, in accordance with 314 CMR 9.03(4), the provisions of 314 CMR 9.04 do not apply. However, activities described in 314 CMR 9.04(10) (*i.e.*, agricultural limited projects per 310 CMR 10.53(5), which include but are not limited to projects for the support of existing agricultural production such as the construction or expansion of new ponds or reservoirs) and other agriculture and aquaculture activities that do not meet the respective definitions in 310 CMR 10.04 of normal maintenance or improvement of land in agricultural or aquacultural use must apply for an individual WQC provided the activities result in the discharge of dredged or fill material, or the dredging of 100 cubic yards or more.
6. **Activities Exempt from M.G.L. c. 131, § 40 (WPA):** In accordance with 314 CMR 9.04(4), these activities are not certified by this WQC unless otherwise described in these conditions, and proponents of such activities must apply for an individual WQC pursuant to 314 CMR 9.00. Included in this category of exempt projects is utility maintenance, including any associated construction mats.

### III. NWP-Specific Conditions

The activities authorized by this WQC are subject to the following NWP-Specific Conditions:

1. **NWP 5 Scientific Measurement Devices, NWP 6 Survey Activities**: Activities certified by this General NWP Certification shall be temporary in nature and necessary for planning and design purposes such as the installation of monitoring wells, exploratory borings, sediment sampling, and surveying. Pursuant to 314 CMR 9.03(6) and 314 CMR 9.09(1)(d), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters.
2. **NWP 10 Mooring Buoys**: Pursuant to 310 CMR 9.07(2) of the Waterways (Chapter 91) Regulations, mooring activities must be authorized by a valid Annual Permit for Moorings, Floats and Rafts (Section 10A permit) issued by the municipal harbormaster or other municipal official. Pursuant to 310 CMR 9.07(2) and 314 CMR 9.09(1)(d), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters.
3. **Activities Addressing an Emergency Situation, Including But Not Limited To Those Authorized Under NWPs 3, 31, and 37**: Activities addressing emergency situations that meet the requirements of 314 CMR 9.12 are certified under the General NWP Certification. 314 CMR 9.12 supersedes 314 CMR 9.03 and 314 CMR 9.04 such that there are no activity type, location, or impact thresholds that prevent the abatement of an emergency following compliance with 314 CMR 9.12. Pursuant to 310 CMR 10.06, 314 CMR 9.09(1)(d) and 9.12, this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters and maintain water quality.

### IV. General Conditions

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

1. Each activity described in 314 CMR 9.03 must comply with the respective requirements in 314 CMR 9.03 for that activity. Pursuant to 310 CMR 10.00, 314 CMR 9.03, 9.06(2), and 9.09(1)(d), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters and maintain water quality.
2. This General NWP Certification shall be valid until such time as the Department of the Army NWPs expire or are modified, suspended, revoked, or reissued. Pursuant to 33 U.S.C. 1341 of the federal Clean Water Act, this condition is necessary to comply with federal law. In the event that MassDEP promulgates a revision to 314

CMR 9.00 that modifies the criteria referenced herein, MassDEP will seek agreement with the USACE pursuant to 40 C.F.R. § 121.10 to modify this General NWP Certification to align with the revised regulation.

3. The Department reserves the right to amend, modify, suspend, revoke, or reissue this WQC if the NWPs are amended, modified, suspended, revoked, or reissued. 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. Pursuant to 314 CMR 9.06(2), 9.09(1)(d) and 314 CMR 4.00, this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters and that activities will not violate surface water quality standards.
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. Pursuant to 314 CMR 9.09(1)(d), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters and to comply with state law.
5. MassDEP reserves the right to inspect any project or activity conducted, permitted, or otherwise authorized by this WQC and their impacts on Waters of the Commonwealth, as defined at 314 CMR 4.02, at any time to monitor compliance with the Massachusetts Surface Water Quality Standards, 314 CMR 4.00, the regulations at 314 CMR 9.00, and this WQC. Pursuant to 314 CMR 4.00, 314 CMR 9.09(1)(d), and 9.11, this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to comply with state law.
6. The permittee is responsible for compliance with the terms and conditions of this WQC. 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. 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 9.09(1)(d) and 9.11, this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to comply with state law.

7. Stormwater discharges to Waters of the Commonwealth, including wetlands during the construction period must comply with the requirements of 314 CMR 9.06(6) and must not cause a violation of the Massachusetts Surface Water Quality Standards, 314 CMR 4.00. If applicable, the permittee shall file a Stormwater Pollution Prevention Plan (SWPPP) required by the EPA National Pollution Discharge Elimination System (NPDES) Construction General Permit (CGP)<sup>1</sup> and provide MassDEP a copy of the filed SWPPP. Pursuant to 314 CMR 4.00, 314 CMR 9.06(6) and 9.09(1)(d), this condition is necessary to minimize turbidity and sediment caused by construction activities and to ensure that water quality is not degraded, and that biology of the waters are not negatively impacted by potential discharges.
8. 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. Pursuant to 314 CMR 9.06 and 9.09(1)(d), this condition is necessary to minimize turbidity and sediment caused by construction activities and to ensure that water quality is not degraded, and that biology of the waters are not negatively impacted by potential discharges.
9. Refueling, washing, or other maintenance of vehicles and construction equipment, and storage of hazardous materials shall not take place within Surface Waters including wetlands. Pursuant to 314 CMR 9.06 and 9.09(1)(d), this condition is necessary to minimize turbidity and sediment caused by construction activities and to ensure that water quality is not degraded, and that biology of the waters is not negatively impacted by potential discharges.
10. Any fill used in Surface Waters, including wetlands shall comply with all relevant provisions of the WPA, the Wetlands Protection Regulations, 310 CMR 10.00, M.G.L. c. 21E, 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. Pursuant to M.G.L. c. 21E, M.G.L. c. 131, § 40, 310 CMR 10.00, 314 CMR 9.06(2) and 9.09(1)(d), and 310 CMR 40.0000, this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to ensure compliance with state law.

---

<sup>1</sup> - The CGP is applicable to construction activities that disturb one acre or more, or if they disturb less than one acre but the land is a part of a larger common plan of development that disturbs one or more acres of land total.

11. 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. Pursuant to 33 U.S.C. 1341, 314 CMR 9.06(2) and 9.09(1)(d) and (e), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to ensure compliance with state and federal law.
12. 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. Pursuant to 314 CMR 9.06 and 9.09(1)(d), this condition is necessary to minimize turbidity and sediment caused by construction activities and to ensure that water quality is not degraded, and that biology of the waters are not negatively impacted by potential discharges.
13. This WQC does not relax, vary, or waive requirements under the Surface Water Discharge/NPDES Municipal Separate Storm Sewer System (MS4) General Permit and the 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. Pursuant to 33 U.S.C. 1342, M.G.L. c. 21, §§ 26-53, 314 CMR 9.06(2) and 9.09(1)(d), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to ensure compliance with state and federal law.
14. This WQC does not relieve the permittee of the obligation to comply with all other applicable state and federal law. Any changes made to the permittee's project or activity must be reevaluated for eligibility under this WQC. Pursuant to 310 CMR 9.06(2) and 9.09(1)(d), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to ensure compliance with state and federal law.
15. The permittee shall comply with General Conditions 1-32 of the NWP's and the Regional Conditions (which include any State-specific Conditions). Pursuant to 310 CMR 9.06(2), this condition is necessary to ensure that practicable steps have been taken which will avoid and minimize impacts to wetlands and waters, to maintain water quality, and to ensure compliance with federal law.

### **Notification of Appeal Rights**

The following persons shall have a right to request an adjudicatory hearing concerning this certification:

1. Any person aggrieved by the decision who has submitted written comments during the public comment period;

2. 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
3. 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 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 activities proposed for coverage 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 Department Fee Transmittal Form, within 21 days from the date of issuance of this WQC and addressed to:

Case Administrator  
Department of Environmental Protection  
100 Cambridge Street, Suite 900  
Boston, MA 02114.

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  
100 Cambridge Street, Suite 900  
Boston, MA 02114.

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 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; and
- 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, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification.

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 Lisa Rhodes at [Lisa.Rhodes@mass.gov](mailto:Lisa.Rhodes@mass.gov).

Sincerely,



Tim Jones, Director  
Division of Wetlands and Waterways

Appendix – 314 CMR 9.03 and 9.04

Cc Sean Duffey, MA Office of Coastal Zone Management ([sean.duffey@mass.gov](mailto:sean.duffey@mass.gov))  
CC EPA, Nate Marganson ([margason.nathan@epa.gov](mailto:margason.nathan@epa.gov))

## Appendix

### Sections 9.03 and 9.04

#### **Excerpted from 314 CMR 9.00: 401 Water Quality Certification for Discharge of Dredged or Fill Material, Dredging, and Dredged Material Disposal in Waters of the United States Within the Commonwealth**

#### **9.03: Activities Not Requiring an Application**

The Department certifies the activities identified in 314 CMR 9.03(1) through (8) and therefore they do not require an individual 401 Water Quality Certification application provided the specified conditions are met. For activities meeting these specified conditions, the Final Order of Conditions or final Restoration Order of Conditions issued pursuant to 310 CMR 10.00: Wetlands Protection, as applicable, serves as the Water Quality Certification for the project.

(1) Less than 5000 Sq. Ft. with an Order of Conditions. Activities conducted in compliance with the Wetlands Protection Act and receiving a Final Order of Conditions which meets all applicable performance standards under 310 CMR 10.00: Wetlands Protection provided that:

- (a) the Final Order of Conditions permits work that results in the loss of up to 5,000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water. Both bordering and isolated vegetated wetlands must be delineated on the plans contained in the Notice of Intent and described on a form prescribed by the Department; and
- (b) the Final Order of Conditions includes conditions requiring at least 1:1 replacement of bordering vegetated wetlands under 310 CMR 10.55(4)(b);
- (c) if applicable, the activity conforms to the stream crossing provisions of 310 CMR 10.24(10) and 10.53(8); and
- (d) the proposed work is not subject to 314 CMR 9.04.

(2) Beach Nourishment. Beach nourishment activities with a Final Order of Conditions issued under M.G.L. c. 131, § 40.

(3) Dredging Less than 100 C.Y. Dredging and dredged material disposal of less than 100 cubic yards, provided that a Final Order of Conditions has been issued and the proposed work is not subject to 314 CMR 9.04 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.

(4) Agriculture or Aquaculture Exempt under M.G.L. c. 131, § 40 (the Wetlands Protection Act). Normal maintenance and improvement of land in agricultural or aquacultural use that is exempt from the Wetlands Protection Act, as defined and performed in accordance with 310 CMR 10.04: Definitions: Agriculture including the alternatives analysis, as applicable, performed by the USDA Natural Resources Conservation Service (formerly Soil Conservation Service) or 310 CMR 10.04: Definitions: Agriculture. The provisions of 314 CMR 9.04 do not apply.

(5) Less than 5000 Sq. Ft. of Isolated Vegetated Wetlands. Any activity in an area not subject to jurisdiction of the Wetlands Protection Act which is subject to 33 U.S.C. 1251 (i.e., isolated vegetated wetlands) which will result in the loss of up to 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water, provided there is no discharge of dredged or fill material to any Rare Species Habitat or to any Outstanding Resource Water.

(6) Planning and Design Activities. Activities that are temporary in nature, have negligible impacts, and are necessary for planning and design purposes such as the installation of monitoring wells, exploratory borings, sediment sampling, and surveying. The applicant shall notify the Department and conservation commission at least ten days prior to commencing the activity. Notification is not required if a valid, unexpired Final Negative Determination of Applicability has been issued for the work as described 310 CMR 10.05(3)(b). Notification shall include a description of the activity, the location of the proposed activity and measures to be taken to avoid or minimize impacts. The site shall be substantially restored to its condition prior to the activity.

The Department will notify the persons to whom an Order of Conditions is issued not later than ten business days of its receipt by the Department that based on the information available to the Department the criteria of 314 CMR 9.03 have not been met. If the impacts to resource areas, as defined in the Massachusetts Wetland Protection Act and the Federal Clean Water Act, or the project size increases from the description filed with the Notice of Intent, or there are any inaccuracies therein, the applicant must notify the Department in writing and request a determination that the criteria of 314 CMR 9.03 have been met before the activity begins.

(7) Test Projects. A Test Project authorized by and conducted in accordance with a final Order of Conditions provided that the project: does not require an individual Section 404 permit from the U.S. Army Corps of Engineers; is not located in Outstanding Resource Waters; and does not exceed any of the impact thresholds set forth in 314 CMR 9.03(1), (3), and (5).

The Department will notify the persons to whom an Order of Conditions is issued not later than ten business days of its receipt by the Department if, based on the information available to the Department, the project is not exempt from the requirement to submit an

individual 401 Water Quality Certification application pursuant to 314 CMR 9.03(7). If the applicant discovers that the project or its impacts on Resource Areas and waters of the United States within the Commonwealth differ from the project and impacts presented in the Notice of Intent, the applicant shall notify the Department in writing within 72 hours of such discovery and request a written determination from the Department as to whether the project is exempt from the requirement to submit an individual 401 Water Quality Certification pursuant to 314 CMR 9.03(7). In that event, the applicant shall not commence the project until s/he obtains a written determination from the Department that the project is exempt from the requirement to obtain an individual 401 Water Quality Certification pursuant to 314 CMR 9.03(7) or an individual 401 Water Quality Certification authorizing the project.

(8) Ecological Restoration Project. Discharge of dredged or fill material in association with an Ecological Restoration Project provided that the discharge of dredged or fill material is in compliance with a valid final Restoration Order of Conditions issued pursuant to 310 CMR 10.11: Actions Required Before Submitting a Notice of Intent for an Ecological Restoration Project through 310 CMR 10.14: Restoration Order of Conditions followed by a Certificate of Compliance, unless the project involves dredging or dredged material disposal as described in 314 CMR 9.04(12). Ecological Restoration Projects that include the activities described in 314 CMR 9.04(12) require a 401 Water Quality Certification application pursuant to 314 CMR 9.04.

#### **9.04: Activities Requiring an Application**

The activities identified in 314 CMR 9.04(1) through (13) require a 401 Water Quality Certification application and are subject to the Criteria for Evaluation of Applications for the Discharge of Dredged or Fill Material in 314 CMR 9.06 and/or 9.07:

(1) More than 5000 Sq. Ft. Any activity in an area subject to 310 CMR 10.00: Wetlands Protection which is also subject to 33 U.S.C. 1251, et seq. and will result in the loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water, except for an Ecological Restoration Project not requiring a Water Quality Certification application pursuant to 314 CMR 9.03(8).

(2) Outstanding Resource Waters. Dredging in, or any activity resulting in any discharge of dredged or fill material to any Outstanding Resource Water.

(3) Real Estate Subdivision - Any discharge of dredged or fill material associated with the creation of a real estate subdivision, unless there is a valid, unexpired Final Order of Conditions, followed by 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. Real estate subdivisions include divisions where approval is required and where approval is not required under the Subdivision Control Law, M.G.L. c. 41, §§ 81K through 81GG. Discharges of dredged or fill material to create the real estate subdivision

include but are not limited to discharges resulting from the construction of roads, drainage, sidewalks, sewer systems, buildings, septic systems, wells, and accessory structures.

(4) Activities Exempt under M.G.L. c. 131, § 40. Any activity not subject to M.G.L. c. 131, § 40 and which is subject to 33 U.S.C. 1251 and will result in any discharge of dredged or fill material to bordering vegetated wetlands or land under water.

(5) Routine Maintenance. Routine maintenance of existing channels, such as mosquito control projects or road drainage maintenance, that will result in the annual loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetland and land under water will be evaluated under the criteria of 314 CMR 9.06. A single application may be submitted and a single certification may be issued for repeated routine maintenance activities on an annual or multi-year basis not to exceed five years.

(6) More than 5000 Sq. Ft. of Isolated Vegetated Wetlands. Any activity in an area not subject to jurisdiction of M.G.L. c. 131, § 40 but which is subject to 33 U.S.C. 1251 (i.e., isolated vegetated wetlands) and which will result in the loss of more than 5000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water.

(7) Rare Species Habitat in Isolated Vegetated Wetlands. Any activity resulting in the discharge of dredged or fill material to an isolated vegetated wetland that has been identified as Rare Species Habitat.

(8) Salt Marsh. Any activity resulting in the discharge of dredged or fill material in any salt marsh, except for an Ecological Restoration Project not requiring a Water Quality Certification application pursuant to 314 CMR 9.03(8).

(9) Individual 404 Permit. Any activity subject to an individual Section 404 permit by the Corps of Engineers, except for an Ecological Restoration Project not requiring a Water Quality Certification application pursuant to 314 CMR 9.03(8).

(10) Agricultural Limited Project. Agricultural work, not exempt under M.G.L. c. 131, § 40, referenced in and performed in accordance with 310 CMR 10.53(5). Provided the activity does not result in any discharge of dredged or fill material to an Outstanding Resource Water, such work will be presumed to meet the criteria of 314 CMR 9.06 where a comparable alternatives analysis is performed or approved by the USDA Natural Resources Conservation Service and included in the Notice of Intent.

(11) Discretionary Authority. Any activity where the Department invokes discretionary authority to require an application based on cumulative effects of multiphased 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 an Order of Conditions.

(12) Dredging 100 Cubic Yards or More. Any dredging or dredged material re-use or disposal of 100 cubic yards or greater.

(13) Any activity not listed in 314 CMR 9.03 or 9.04 is an activity requiring an application subject to the requirements of 314 CMR 9.05 and 9.06 through 9.13 as applicable.