



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands and Waterways
BRP WW 07 Major Project Certification
BRP WW 08 Minor Project Certification
BRP WW 09 Amendment of Certification for Dredging
401 Water Quality Certification for Dredging and Dredge Material Disposal
Instructions and Supporting Materials

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Introduction

MassDEP *Permit Applications*, as well as *Instructions & Support Materials*, are available for download from the MassDEP Web site at <https://www.mass.gov/dep> two file formats: Microsoft Word™ and Adobe Acrobat PDF™. Either format allows documents to be printed.

Instructions & Support Materials files in Microsoft Word™ format contain a series of documents that provide guidance on how to prepare a permit application. Although we recommend that you print out the entire package, you may choose to print specific documents by selecting the appropriate page numbers for printing.

Permit Applications in Microsoft Word™ format must be downloaded separately. Users with Microsoft Word™ 97 or later may complete these forms electronically.

Permitting packages in Adobe Acrobat PDF™ format combine *Permit Applications* and *Instructions & Support Materials* in a single document. Adobe Acrobat PDF™ files may only be viewed and printed without alteration. *Permit Applications* in this format may not be completed electronically.



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1. What is the purpose of these certifications?

A 401 Water Quality Certification is required under the federal Clean Water Act for certain activities in wetlands and waters. This law gives states the authority to review projects that must obtain federal licenses or permits and that result in a discharge to state waters. The purpose of state 401 review is to ensure that a project will comply with state water quality standards and other appropriate requirements of state law.

Statutory authority for this certification is stated in the federal Clean Water Act, 33 USC 1341, and the Massachusetts Clean Water Act, MGL Chapter 21, sections 26-53. Regulatory authority for this certification is found in 314 CMR 9.00. Water quality standards referenced in the certification are found in 314 CMR 4.00.

2. Who must apply?

All persons who propose any activity that results in a discharge of dredged material, dredging, or dredged material disposal greater than 100 cubic yards to waters subject to regulation by the U.S. Army Corps of Engineers, Federal Energy Regulatory Commission or other federal agency, must obtain a 401 Water Quality Certification for Dredging Activities.

Examples of activities requiring certification include dredging of land under water. If no federal permit is needed for an activity, then no 401 certification is required from MassDEP. For information on the applicability of Section 404 of the Clean Water Act, or Section 9 or 10 of the Rivers and Harbors Act, the applicant is advised to consult the Corps of Engineers at 1-800-362-4367.

All persons who propose discharges or fill activities in wetlands or waters should complete the **401 Water Quality Certification for Fill and Excavation Projects in Waters and Wetlands** application form, which is a separate form from this application.

There are three categories of water quality certification: major project (BRP WW 07), minor project (BRP WW 08) certifications and Amendment of Certification for Dredging (BRP WW 09). *BRP WW 07 was formerly BRP WP 39, BRP WW 08 was formerly BRP WP 40, and BRP WW 09 was formerly BRP WP 54.*

Major Dredge Project Certification (BRP WW 07):

Major project certification includes the dredging of 5,000 cubic yards (c.y.) or greater.

Minor Dredge Project Certification (BRP WW 08):

Minor project certification includes: projects not listed in the major project certification category; and those projects involving dredging less than 5,000 c.y. but more than 100 c.y.

Amendment of Certification for Dredging (BRP WW 09):

If a water quality certification has been issued for a dredging project and the project is subsequently revised, the certification is not valid. An amended certification may be requested for project modifications, such as changes in the dredging area, dredged material volume, or construction methods for dredging or disposal. In addition, a change in one or more of the special conditions of certification may be allowed through an amended certification. See the BRP WW 09 application form at the end of this package.



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3. What other requirements should be considered when applying for these certifications?

Applicants proposing dredging activities in Outstanding Resource Waters (as designated in 314 CMR 4.00) are required to publish notice in the Environmental Monitor, pursuant to MEPA regulations, 301 CMR 11.00.

Projects requiring 401 Water Quality Certification generally also are subject to the WPA (MGL c. 131, sec. 40) and its regulations (310 CMR 10.00). In addition, some projects may require MEPA review. Please carefully examine 301 CMR 11.00, the MEPA Regulations, to determine if your project exceeds the MEPA review thresholds, or for more information contact: MEPA Unit, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Boston, MA 02114, 617-727-5830). **MassDEP cannot complete technical review of the permit application until the MEPA process has been concluded.** Copies of MEPA filings and certificates (with reference to any applicable Transmittal numbers) should be sent to the 401 Dredging Program in Boston.

State Agencies may not issue state permits until 60 days after a Final Environmental Impact Report, if required, has been noticed in the *Environmental Monitor* (301 CMR 11.20(1)).

Note: These additional requirements are intended to serve as a guide to the applicant. It does not necessarily include all additional requirements.

4. What are the application fees for these certifications?

Current fees are available on the MassDEP Website:
<https://www.mass.gov/guides/massdep-permitting-assistance>

5. What is the Primary Permit Location? What is the Reserve Copy Location?

Primary Permit Location:

For all projects involving more than 100 c.y. of dredging or disposal of dredged material in waters (BRP WW 07, 08 and 09):

**Department of Environmental Protection
401 Dredging Program
1 Winter Street
Boston, MA 02108
Tel. (617) 292-5893**

There are no reserve copy locations.

6. Where can I get a copy of the timelines?

The timelines are available on the MassDEP Website:
<https://www.mass.gov/guides/massdep-permitting-assistance>

7. What is the annual compliance fee?

There is no annual compliance assurance fee for water quality certifications.



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8. How long are these certifications in effect?

Water quality certifications for dredging are in effect for the completion of the proposed project, unless there is a term for maintenance dredging or time limitation stated in the certification.

9. How can I avoid the most common mistakes made in applying for these certifications?

- a. For dredging projects, indicate the depth and show the location of all sediment samples, indicate if samples were composited before analysis, and provide a copy of the analytical report from the laboratory.
- b. Be sure any vegetated wetland boundaries are clearly indicated on plans for projects in vegetated wetlands.
- c. Be sure construction methods and sequence of activities in wetlands and waters are clearly described.
- d. Be sure all applicable supplemental documents are provided with your application, including project plans and MEPA certificates.
- e. Submit fee and *one copy* of the MassDEP Transmittal Form to: Department of Environmental Protection, P.O. Box 4062, Boston, MA 02211.

10. What are the regulations that apply to these certifications and where can I get copies?

These regulations include, but are not limited to:

- a. 401 Water Quality Certification Regulations, 314 CMR 9.00
- b. Surface Water Quality Standards, 314 CMR 4.00
- c. Wetlands Protection Act Regulations, 310 CMR 10.00.
- d. Timely Action Schedule and Fee Provisions, 310 CMR 4.00
- e. Rules for Adjudicatory Hearings, 310 CMR 1.00
- f. Massachusetts Environmental Policy Act Regulations, 301 CMR 11.00.

These may be purchased at:

State Bookstore (in State House)
Room 116
Boston, MA 02133
617-727-2834

State Bookstore
436 Dwight Street, Room 102
Springfield, MA 01102
413-784-1376



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BRP WW 08 Minor Project Certification
Guidance

Application Instructions for BRP WW 07 and BRP WW 08 only.

Item A-1:

There are three categories of water quality certification: major project (BRP WW 07), minor project (BRP WW 08) certifications, and Amendment of Certification for Dredging (BRP WW 09).

Major Project Certification (BRP WW 07)

Major project certification includes the dredging of 5,000 cubic yards (c.y.) or greater.

Minor Project Certification (BRP WW 08)

Minor project certification includes: projects not listed in the major project certification category; and those projects involving dredging less than 5,000 c.y. but more than 100 c.y.

Item B-3:

For an Application to be complete, proof must be provided that the requirements for public notice have been met, including public notice in the Environmental Monitor for projects in Outstanding Resource Waters (as designated in 314 CMR 4.00).

Item B-4:

- a. The boundary of land under water for coastal waters is defined at 310 CMR 10.25 (2) and at 310 CMR 10.56 (2) for inland waters, unless the U.S. Army Corps of Engineers has field-verified a federal determination as to the boundary.
- b. Other Resources.

Bordering vegetated wetland boundary delineation should be conducted in accordance with 310 CMR 10.55 (2), unless the U.S. Army Corps of Engineers has already field-verified a federal delineation of these wetlands.

Isolated vegetated wetland boundary delineation should be conducted in accordance with federal methods. (See MassDEP Delineation Handbook for Delineating BVWs under the Mass. WPA for guidance.)

Salt marsh boundary delineation should be conducted in accordance with 310 CMR 10.32, unless the U.S. Army Corps of Engineers has already field-verified a federal delineation of these wetlands.

Item C-3:

The scope of alternatives to be considered shall be commensurate with the scale and purpose of the proposed activity, the impacts of the proposed activity, and the classification, designation and existing uses of the affected wetlands and waters in the Surface Water Quality Standards at 314 CMR 4.00.

Applicants must submit information with this application demonstrating that (a) no less damaging practicable alternative for the activity is reasonably available or feasible and (b) to the maximum extent feasible the discharge and the activity are designed and can be conducted to minimize adverse impacts on water and wetlands and to mitigate adverse impacts. Examples of minimization of impacts include: minimizing siltation, turbidity, and dispersal of contaminants by use of silt curtains and/or other appropriate equipment such as "environmental" clamshell or hydraulic dredge; timing of dredging to avoid seasonal impacts to fish and shellfish during spawning or migration periods; and avoidance of dredging in intertidal habitat, shellfish or eel grass beds.



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Item D

Physical and Chemical Analysis of Sediment Samples:

Sample Collection and Handling

Samples should be collected to adequately represent the sediment to be dredged. In an area with no known particular local sources of contaminants and no known history of release of oil and hazardous materials, the sampling plan may be based on a grid system. In no case should fewer than two samples be collected. Generally, core samples to the depth of dredging are required to be obtained and analyzed. The full core should be composited for analysis of physical and chemical constituents.

Where local sources of contamination exist, such as combined sewer overflows, storm drain outlets, boat repair docks, fuel docks, etc., or where information exists regarding historic release or spill of oil and hazardous materials, project areas which may have been affected by these sources of contaminants must be specifically targeted in the sampling plan.

In general, the sediment should be analyzed for grain size and all of the chemical constituents listed in Item D. However, in situations where representative samples contain 10% or less material passing the No. 200 sieve (by weight) AND the applicant can provide information to MassDEP demonstrating that there are no local industrial, sewage or other discharges present which could contaminate the sediments, then the applicant does not need to analyze sediment for the chemical constituents in Item D. MassDEP reserves the right to require chemical testing after an initial review of the application.

A plan showing the sampling locations and a description of any compositing or sub sampling conducted must be submitted along with the analytical results.

Sediment Analysis:

Sediment slated for upland placement should be analyzed for Extractable Petroleum Hydrocarbons using the method developed by MassDEP, rather than Total Petroleum Hydrocarbons by EPA Method 418.1. Acceptable methods of analysis for other sediment constituents and expected detection limits are indicated in the "Guidance for Performing Tests on Dredged Material to be Disposed of in Open Waters" by U.S. Environmental Protection Agency - Region I and the U.S. Army Corps of Engineers New England Division (1989).

A copy of the report of sample analysis from the performing laboratory should be provided including quality assurance/quality control information and methods of analysis used.

It is recommended that a proposed sampling plan be submitted to MassDEP's Division of Wetlands and Waterways, Boston Office, for approval prior to implementation.

Item E

Disposal and Dewatering Site:

Applicants proposing to beneficially use sediment at a lined landfill as daily cover or grading material are advised that, MassDEP policy exempts qualifying sediments from the need to obtain specific approval from MassDEP's Division of Solid Waste Management. Qualifying sediments must not exceed specified chemical concentrations as listed in Table 1 in Interim Policy # COMM-94-007 (<https://www.mass.gov/guides/interim-policy-comm-94-007-dredged-sediment-reuse-or-disposal>). Such sediments must be characterized by at least 1 core sample for each 1,000 cubic yards proposed to be dredged.



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Attachment A

ATTACHMENT A

Instructions for Public Notice

For an application to be considered complete, proof must be provided that the requirements for public notice have been met, including public notice in the *Environmental Monitor* for dredging projects in Outstanding Resource Waters. The *Environmental Monitor* is published twice per month by the Executive Office of Environmental Affairs, MEPA Unit. Filing deadlines are the 15th and last day of the month, unless the day falls on a Saturday, Sunday or Holiday in which case the next business day is used. (See Item 3 in the *How to Apply* guide for the MEPA Unit address and telephone number.)

The Public Notice must contain the information required at 314 CMR 9.05 (3)(a) through (g).

Public notice must be published within 10 days of submitting a 401 application. In addition, a copy of the public notice should be sent to the conservation commission and MassDEP at the time of publication. Proof (e.g., a dated copy of the newspaper notice) that public notice has been published is a requirement of certification.

If the conservation commission is amenable to joint notice, applicants can append the following language to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, section 40, conservation commission hearing notice, such as:

"An application for 401 water quality certification is pending before the Department of Environmental Protection for [project name, brief description of activity]. Additional information may be obtained from [applicant/ contact person name], [address] and [telephone]. Written comments should be addressed to: [MassDEP, Boston Office] within twenty-one days of this notice. Any group of ten persons, any aggrieved person, or any governmental body or private organization with a mandate to protect the environment who submits written comments may appeal the Department's Certification. Failure to submit written comments before the end of the public comment period may result in the waiver of any right to an adjudicatory hearing."

The following language is suggested for projects not regulated under the Massachusetts Wetlands Protection Act, or when either the applicant or the conservation commission prefers separate public notice, or for a notice in the *Environmental Monitor* for dredging projects in Outstanding Resource Waters:

*Massachusetts Department of Environmental Protection
401 Dredging Program
1 Winter Street
Boston, MA 02108
617-292-5893*



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Attachment A

Public Notice

Pursuant to 33 U.S.C. 1341 and M.G.L. c. 21 §43, notice is given of a 401 water quality certification application for [project name, brief description of activity] by [applicant's name and address] on [location] in [city/town] for a [project purpose]. Additional information may be obtained from [applicant/ contact person name], [address] and [telephone]. Written comments should be sent to: [MassDEP - DWW, Boston office] within twenty-one days of this notice. Any group of ten persons, any aggrieved person, or any governmental body or private organization with a mandate to protect the environment who submits written comments may appeal the Department's Certification. Failure to submit written comments before the end of the public comment period may result in the waiver of any right to an adjudicatory hearing.

Joint notice may be provided when an application is submitted for projects regulated by the Waterways Regulations under M.G.L. c.91 and 310 CMR 9.00. Contact Regional Waterways staff for a comprehensive list of individuals/entities that are required to be notified under Chapter 91.

*Department of Environmental Protection
Wetlands and Waterways Program
1 Winter Street
Boston, MA 02108*

Joint 401 WQC for dredging and Chapter 91 Public Notice: [Date of Publication]

Pursuant to 33 U.S.C. 1341 and M.G.L. c. 21 §43, notice is given of a 401 Water Quality Certification (WQC) dredging application for [project name, brief description of activity] by BRP WP 07, 08, 09. Gui Rev. 7/01 and M.G.L. Chapter 91, 310 CMR 9.00 Dredge Permit application for [applicant's name and address] on [location] in [city/town] for a [project purpose], the proposed project has been determined to be water-dependent pursuant to 310 CMR 9.12(2)(a). Additional information about this project may be obtained from [applicant/ contact person name], [address] and [telephone].

*Written comments on the 401 WQC must be sent within twenty-one (21) days of this notice to:
[MassDEP – DWW, Boston office]*

*Written comments on the Chapter 91 Dredge Permit must be sent within fifteen (15) days of this notice to:
[MassDEP – WWP, Boston office].*

Any group of ten persons, any aggrieved person, or any governmental body or private organization with a mandate to protect the environment who submits written comments may appeal the Department's Certification and Dredge Permit. Failure to submit written comments before the end of the public comment period may result in the waiver of any right to an adjudicatory hearing.



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Application Completeness Checklist

- The MassDEP Transmittal Form is completed: <https://www.mass.gov/service-details/transmittal-form-number-for-massdep-permit-application-payment>
- The Application Form for 401 Water Quality Certification for Dredging and Dredged Material Disposal has been completed.
- A copy of the Wetlands Notice of Intent has been completed, unless the project is exempt.
- A copy of the report of analysis of dredged material from the performing laboratory has been provided, for dredging projects.
- If applying for an Amendment of Certification of Dredging (BRP WW 09), the Application for an Amended Water Quality Certification for Dredging Projects has been filled out.
- Proof has been submitted that the requirement at 310 CMR 9.05(3) to publish notice in the Environmental Monitor for dredging projects in Outstanding Resource Waters has been met (copy of the Environmental Monitor notice).
- Proof has been submitted that the public notice requirement at 314 CMR 9.05 (3)(a) through (g) identified in Attachment A has been met (copy of the dated newspaper notice).

To submit the application package:

- Checklist items have been completed.
- Send a copy of the application along with one copy of the MassDEP Transmittal Form to:

Department of Environmental Protection
401 Dredging Program
1 Winter Street
Boston, MA 02108

- Send fee of:

\$490 for BRP WW 07;
\$95 for BRP WW 08;
One of the following for BRP WW 09 –

WW09A - Increase in volume up to 50%, no change in area - \$90
WW09B - Change in dredge or disposal construction methods or plans - \$190
WW09C - Change in one or more certification condition(s) - \$280

In the form of a check or money order made payable to Commonwealth of Massachusetts, along with one copy of the MassDEP Transmittal Form to:

Department of Environmental Protection
P.O. Box 4062
Boston, MA 02211