



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs
BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

The Department's method for processing WW26 Combined Application depends on various factors, such as which authorizations are being applied for, the location of the project, the scope of work (dredge and/or fill), and the quality of the dredge spoil. Upon receipt of an application staff will conduct a preliminary review and make a determination as to how and by whom the project will be processed.

Where can I find information on how to submit the application?

The different programs have different requirements for an application, and for each component of a project you should refer to the instructions for the specific application type when you are working on that portion of the application form (Chapter 91 / Dredge / Fill). If you have questions about the process or information/documents required for the Chapter 91 component, please contact DEP.Waterways@mass.gov. If you have questions about the 401 WQC component, please contact David.W.Wong@mass.gov.

Should I publish the 401 WQC public notice?

The regulatory requirements for information included, and timing/method of publication/ mailing of the public notices for the Chapter 91 Program and the 401 WQC Program differ. Any project which includes a Chapter 91 component requires that the application first be submitted, reviewed by staff, and the public notice prepared by Chapter 91 staff and provided to the applicant for publication. If you are planning to publish a public notice for the 401 WQC component of a project prior to the review of an application by Chapter 91 staff, please be advised that does not satisfy the Chapter 91 public notice requirement, and a subsequent public notice will be necessary. Please contact David Wong with the 401 WQC Program at David.W.Wong@mass.gov if you would like information on whether a joint public notice for multiple components can be prepared for your project.

Will I receive one combined authorization, or will I receive separate authorizations for the different application components?

As mentioned above, the Department's method for processing Combined Application depends on various factors. Those same factors will also determine the format for the output document that will authorize the project. It is possible that you may receive separate authorizations for the different components of an application. If you would like additional information on the format and timing of the authorizations, please contact the Project Reviewer(s) directly.

Who is the Project Reviewer?

Projects are assigned based on location, quality of dredge spoil, and scope of work. Even if a project is located within a certain region, it is possible that the application may be processed by staff in the Boston Office rather than one of the Regional Offices. If you do not know the name of your Project Reviewer(s) and would like to contact them, please reach out to David Wong with the 401 WQC Program at David.W.Wong@mass.gov who will provide direct contact information.

Determine whether the project is Water-Dependent

Water-dependent uses require direct access to or location in tidal or inland waters, and therefore cannot be located away from said waters. See 310 CMR 9.02 Definitions, and 9.12 Determination of Water Dependency. If the proposed or existing use is not listed, the project is considered to be **nonwater-dependent (NWD)**. If there are water-dependent and NWD uses, the entire project is considered NWD. NWD uses may only be authorized through a NWD Application (<https://www.mass.gov/lists/chapter-91-forms-massdep>). Any questions may be directed to dep.waterways@mass.gov.

Initial submittal of an application may be completed by a consultant or other representative and does not require input from the applicant/owner. After a preliminary review of the application by staff an Initial Application and Proof of Signature form will be emailed to be signed by all applicants and property owners and uploaded to the online record. Processing of the application will not begin until the fully executed Proof of Signature form, minimum required documents, and the application fee have been submitted.

- 1) Review the instructions.
- 2) Prepare the information and plans as required by the application and instructions.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26

Chapter 91/401 WQC License/Permit Application

Instructions and Supporting Materials

- 3) Complete the online application.
- 4) After the preliminary review of the online Application “Proof of Signature” document will be emailed to the application submitter, which will include signature pages for all Applicants (Permittees) and Property Owners required to execute the form. Once the form is fully executed, upload the complete executed “Proof of Signature” to the online application.
- 5) Staff will initiate the Administrative Review and prepare a Public Notice and checklist of necessary information which will be sent to the Application Submitter.

If you intend to save a copy of the draft application to review and share with any other parties prior to submittal, do not complete the certification page and submit the application. At Step 5 (Review and Certification), a copy of the summary page may be saved by selecting “Print” and “Print to pdf”. Ensure that you select “save and resume later” to save the information that has been submitted.

Required Documents/Information to Submit a Water-Dependent Application (or Amendment) (Additional information and documents will be required but may not be necessary at the time of the initial submittal, depending on the proposed project type).

- Completed Online Application Form (signature document sent after preliminary review)
- Description of the proposed project sufficient for review by the Department (certain forms or details will be requested through the online application depending on the scope of work)
- MEPA Certificate (if the project exceeds the thresholds at 301 CMR 11.03)
- Wetlands Protection Act Filing: a copy of the Notice of Intent and associated plans that were filed with the Conservation Commission; if an Order of Conditions has already been issued, please provide that authorization, along with a copy of the plans referenced therein. If the project received a negative determination of applicability and is not subject to the WPA please upload the determination and a copy of the plans that were submitted for review.
- Chapter 91 plans in accordance with Appendix A and/or Appendix B (depending on the project)
- List of applicable environmental regulatory programs (310 CMR 9.33 – see link below)
- Application Fee

Application Documents

[List of Environmental Regulatory Programs](#)
[Planning Notification Form](#)
[Zoning Certification Form](#)

The three forms above are to be submitted using the templates at these links. The planning and zoning forms are not required to be included with the initial application.

It is strongly recommended that the following steps be taken, and information prepared prior to initiating the application process:

Determine if there are any unauthorized fill areas or structures at the project site. If there are any unauthorized fill areas or structures those should be included with the scope of work in the application.

This link can be used to look up a project site and overlay the Chapter 91 jurisdictional data on an aerial view http://maps.massgis.state.ma.us/map_ol/oliver.php

See the following Data Layers: Images, Coastal and Marine Features: Tidelands Jurisdiction Data Chapter 91: Historic High Water and Chapter 91 Jurisdiction lines.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Identify prior authorizations for the project site

A valid Chapter 91 license is required to have been properly recorded against the chain of title for the affected property at the Registry of Deeds. Records are often available at the Registry website, but any valid Chapter 91 license should be able to be located through a title search. You may also use the resources below, but please note that these records may not be complete, and the absence of a record should not be relied on as confirmation that there is not a license.

Request a spreadsheet with Chapter 91 records from the Waterways Program Programmatic email account (dep.waterways@mass.gov) and review records using information such as property address, adjacent property records, prior property owners, etc.

Conduct a search of the Massachusetts Legislative Acts and Resolves website (<https://www.mass.gov/service-details/massachusetts-acts-and-resolves>)

Projects Involving Dredging

If the project involves dredging it will need to be identified as either maintenance or improvement dredging. Maintenance dredging is only applicable if the proposed dredging will be within the same footprint and same depth as a prior Chapter 91 authorization. You will be asked for the authorization number in the application. If there is no prior Chapter 91 authorization it is improvement dredging.

Categorically Restricted Projects

Categorical Restrictions on Fill and Structures are listed at 310 CMR 9.32. It is advisable to review these standards and contact the Waterways Program and request a pre-application meeting if it is unclear whether the project complies with these standards.

Environmental Protection Standards

All projects must comply with applicable environmental regulatory programs of the Commonwealth per 310 CMR 9.33. Please use the checklist on the “List of Environmental Regulatory Programs” to identify all that apply. This document is required to be completed and uploaded to the online application record.

A complete list of information, documents and other items required for a complete application will be provided by the Department after the project has been reviewed. The regulations at 310 CMR 9.11(3) identify the administrative completeness requirements.

Is the project located within a Designated Port Area? http://maps.massgis.state.ma.us/map_ol/moris.php use “DPA” as a search term in the data layer field

Is the project located within an Area of Critical Environmental Concern?
http://maps.massgis.state.ma.us/map_ol/oliver.php use “ACEC” as a search term in the data layer field

Is the project located within a Planning Area subject to a State-approved Municipal Harbor Plan?
<https://www.mass.gov/service-details/czm-port-and-harbor-planning-program-municipal-harbor-plans>

Property Owners

All property owners are required to be entered into the online system in the Contacts section individually. Any property where work will occur within Chapter 91 jurisdiction is an owner. If there are multiple property owners, please use the dropdown menu to identify one (1) “Property Owner” and all others as “Additional Property Owner”. Each property owner will be required to sign the application “Proof of Signature” after the preliminary review by the Department.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Abutters

Locate abutter information on the Town Assessors maps (using the Chapter 91 definition for abutters: *Abutter means the owner of land which shares, along the water's edge, a common boundary or corner with a project site, as well as the owner of land which lies within 50 feet across a water body from such site. Ownership shall be determined according to the records of the local tax assessor's office.*) Most project sites have two abutters, except for large-scale dredge projects which may occur adjacent to multiple properties. If there are more than 5 abutters it is OK to add a note to the Abutters field "See Attached List" and to upload a document with a list of all abutters and the property addresses.

How to properly register and/or identify the application parties and contributors in the ePLACE system:

"Permittee" is the individual, or individual authorized by a company/organization submitting the application and the authorization will be issued to them (or their Company/Agency) (previously referred to as the "Applicant" in Chapter 91 forms).

If you are a consultant, engineer, attorney, or other representative who is preparing the application on behalf of the Permittee you are an "Application Contact". Do not enter your name or contact information in the fields for the Permittee.

- If a Permittee is a company or agency, please first enter the name of the individual who is the authorized representative of the company in the Permittee field (e.g., President, Manager, Director, etc. – do not enter the name of the consultant or attorney in this field). Then, under Application Contacts, select "Permittee Company and enter the company name and details.
- If the Permittee has an EEA ePLACE account and they will be contributing to the Application process, click "Look Up" button, search and select the appropriate Permittee.
- If the Permittee does not have an EEA ePLACE account and will not be contributing to the Application process, click "Add New" button and enter the Permittee information on their behalf.
- If there are multiple Permittees, please enter information for one primary Permittee and any additional Permittees in the "Application Contact" field.

An application will not be processed without valid contact information for the Permittee that includes their mailing address and phone number or email address.

An "Application Contact" is an individual or organization who is a party to the application (in addition to the Permittee), or who is contributing to the application. For example, a Property Owner, Additional Permittee, a consultant, an authorized representative etc.

If a Contact who will be submitting information in the online application process has not yet created an account, click on "save and resume later" button, advise the Contact to create an account in the EEA ePLACE Portal, and then resume the application and "Look Up" that person.

Reporting Recording Information

Recording information for authorizations with a record in the ePLACE online system is to be uploaded to the online record. Instructions for providing recording information for an issued license are at this link:

[ePlace Waterways Recording Information Amendment](#)



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Dredging 401 Water Quality Information

Major Project Certification and Minor Project Certification are included in Dredging-associated activities. Detailed information about the completeness checklist can be found from the instructions for Forms BRP WW07/08/09: <https://www.mass.gov/doc/instructions-brp-ww-07-08-09-water-quality-certifications-dredging-projects-0/download>

Major Project Certification

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

Minor Project Certification

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., if the project area is not within Outstanding Resource Waters (ORW).

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).

- 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.

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.

Physical and Chemical Analysis of Sediment Samples:

Sample Collection and Handling



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

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 the online form. 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 these chemical constituents. 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 in the Documents section in ePLACE.

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.

Fill/Excavation 401 Water Quality Information

Major Project Certification and Minor Project Certification are included in Fill/Excavation-associated activities. Detailed information about the completeness checklist can be found from the instructions for Forms BRP WW10/11:

<https://www.mass.gov/doc/instructions-brp-ww-10-11-major-minor-fill-and-excavation-projects/download>

Major Fill/Excavation Project Certification:



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Major Fill/Excavation Project Certification includes projects with:

1. a cumulative loss of more than 5,000 square feet of bordering and isolated vegetated wetland and land under water, except for routine maintenance projects meeting the criteria of 314 CMR 9.04(5) and agricultural limited projects meeting the criteria of 314 CMR 9.04(1); or
2. a loss of any amount of vegetated wetland or land under water involving outstanding resource waters, rare species in an isolated vegetated wetland, salt marsh, an individual 404 permit, or activities where MassDEP invokes discretionary authority pursuant to 314 CMR 9.04(11) to require an application for an individual water quality certification.

Minor Fill/Excavation Project Certification:

Minor project certification includes projects with:

1. a cumulative loss of up to 5,000 square feet of bordering and isolated vegetated wetland and land under water involving real estate subdivisions required to file applications for individual water quality certifications under the provisions of 314 CMR 9.04(3), activities exempt under MGL Chapter 131, section 40, under the provisions of 314 CMR 9.04(4), or any activity subject to the provisions of 314 CMR 9.04(13); or
2. a cumulative loss of more than 5,000 square feet of vegetated wetland or land under water involving routine maintenance meeting the criteria of 314 CMR 9.04(5); or
3. any cumulative loss of vegetated wetland or land under water involving an agricultural limited product meeting the criteria of 314 CMR 9.04(10).

Projects Excluded from 401 Review:

The following project categories will be certified by MassDEP provided the specified conditions of 314 CMR 9.03 are met. No Water Quality Certification application need be filed for such projects unless the impacts to resource areas, or the project size increases from the description filed with the Notice of Intent, or there are any inaccuracies therein, in which case the applicant must notify MassDEP and request a determination that the criteria of 314 CMR 9.03 have been met before the activity begins.

- Projects not listed above as requiring a major or minor project certification, provided that such projects: have obtained a Final Order of Conditions permitting work which results in the loss of no more than 5,000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water; meet the other conditions contained in 314 CMR 9.03(1).
- Beach nourishment activities with a Final Order of Conditions under the Wetlands Protection Act.
- Dredging and dredged material disposal projects not listed above as requiring a major or minor project certification, provided that a Final Order of Conditions has been issued.
- Agriculture or aquaculture exempt under the Wetlands Protection Act, in accordance with the provisions 314 CMR 9.03 (4).
- Projects in isolated vegetated wetlands not subject to the Wetlands Protection Act which will result in the loss of up to 5,000 square feet cumulatively of bordering and isolated vegetated wetlands and land under water, provided that there is no discharge of dredged or fill material in any habitat for rare and endangered species or to any Outstanding Resource Water.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

- 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, provided that the requirements of 314 CMR 9.04 (6) are met.

The following items are sections of the online application, and available to provide some regulatory guidance (please see additional instructions here: <https://www.mass.gov/how-to/ww-10-11-major-minor-fill-and-excavation-projects>).

Primary Project Location

Self explanatory.

Other Primary Location Info

Parcel ID (e.g., Assessors Map# and Lot#; Transmission Line ID if linear utility project.)

Project Type

For any real estate subdivision is checked, the following information must be submitted with the application in the Documents section:

- a. location of roads, driveways, sidewalks, drainage, utilities, lot lines for all lots as defined in the Subdivision definition at 314 CMR 9.02, and locations of all bordering and isolated vegetated wetlands and land under water on the entire subdivision;
- b. ownership of parcels adjacent to the project site;
- c. delineation of the limit of work ("building envelope") for all lots, roads, driveways, sidewalks, drainage, utilities, buildings, septic systems, wells, and accessory structures;
- d. calculation of the total cumulative square feet of bordering and isolated vegetated wetlands and land under water proposed to be altered for the entire subdivision;
- e. description of the impacts to wetlands and waters of the entire single and complete project; and
- f. description of the alternatives considered to avoid, minimize or mitigate impacts.

Subdivisions with recorded deed restrictions which provide notice to subsequent purchasers limiting the amount of fill for the entire subdivision to 5,000 square feet cumulatively, provided the discharge is not to an Outstanding Resource Water, do not require an individual 401 certification. A copy of the deed should be sent to the Regional office along with the Order of Conditions.

Proposed Areal Extent Info

Proposed Areal Extent of "Discharges of Dredged or Fill Material", including "redeposit of dredged or excavated material" to "Waters of the United States within the Commonwealth".

Report the areal extent, as expressed in square feet, of all proposed "discharges of dredged or fill material", including "redeposit of dredged or excavated material", both temporary and permanent, to each category of "Waters of the United States within the Commonwealth".

Calculate the loss in square feet of each resource area type. Include bordering vegetated wetlands, isolated vegetated wetlands, land under water (including coastal waters) and salt marsh to be filled, flooded, drained, excavated, backfilled, or graded. For clarification concerning these jurisdictional boundaries, please consult the U.S. Army Corps of Engineers at 1-800-362- 4367.

Wetland Delineation



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

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, unless the U.S. Army Corps of Engineers has already field-verified a federal delineation of these wetlands. (See MassDEP Delineation Handbook for Delineating BVWs Under the Mass. WPA for guidance.)

The non-tidal 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 already field-verified a federal determination as to the boundary.

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

Compliance With 314 CMR 9.00

See instructions for Public Notice further below.

Alternatives Analysis

All 401 activities are subject to an alternatives analysis as part of MassDEP's certification review process. No discharge will be permitted if there is a practicable alternative which would have less adverse impact on the aquatic ecosystem. For non water-dependent projects, practicable alternatives which do not involve a discharge of fill material are presumed to be available, unless clearly demonstrated otherwise. Practicable alternatives are presumed to have less adverse impact on the aquatic ecosystem.

Applicants must submit information with this application demonstrating that (a) no practicable alternative for the activity which does not involve the loss of wetlands is available and (b) appropriate and practicable steps have been taken to minimize potential adverse impacts including a minimum of 1:1 restoration or replication of wetlands. (See 310 CMR 10.55 (b) for minimum performance standards for replication). Minimizing impacts may mean, for example, limiting the base width of a driveway to 12 feet for access to a single-family home, or installing a bridge or other spanning structure for access to an industrial park or subdivision. For projects proposing the loss of more than one acre of wetlands, MassDEP may consider an offsite alternatives analysis prepared through an Environmental Impact Report or a 404 permit by the Corps.

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.

As a guide in preparing the response to this question, please consider the following: Is the project an expansion of existing work or is it new construction? Explain why the project must be located in or adjacent to wetlands. How could the project be redesigned to fit the site without affecting wetlands? How could the project be reduced and meet the project purpose? Have other sites been considered through MEPA or an individual Army Corps permit review? In recent years, have you sold or leased any lands located adjacent to the project site? Are there logistical (location, access, transportation, etc.) reasons that limit the alternatives considered? Are there technical limitations for the alternatives considered? Are there other reasons certain alternatives are not practicable? How do the costs compare for the alternatives considered?

Outstanding Resource Waters

In certain waters and wetlands that are designated in the Massachusetts Surface Water Quality Standards (314 CMR 4.00) as Outstanding Resource Waters (ORWs), no discharge of fill material is permitted except for certain eligible activities. These activities are listed at 314 CMR



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

9.06 (3)(a) through (i).

For access to dwelling units in ORWs, alternatives analysis shall include: a span or other bridging technique for any number of dwelling units which will result in the loss of more than 5,000 sq. ft. or for ten or more units which will result in the loss of less than 5,000 sq. ft. For 4 to 9 units, which will result in the loss of less than 5,000 sq. ft., a span may be required to be considered in the alternatives analysis. For 3 or fewer units, which will result in the loss of less than 5,000 sq. ft., a span is presumed to not be practicable. These presumptions may be overcome, based on site conditions, the impact on the resource, and cost considerations. Applicants should reference relevant materials submitted with this application or the Notice of Intent to justify the scope of alternatives presented.

Under 314 CMR 9.06 (4), no discharge is permitted to certain waters and wetlands specifically identified in the Massachusetts Surface Water Quality Standards at 314 CMR 4.06(1)(d) as Outstanding Resource Waters (ORWs, e.g. vernal pools and wetlands/waters within 400 feet of a water supply reservoir) unless a variance is obtained pursuant to 314 CMR 9.08.

Notice must be published in the Environmental Monitor for projects proposed in ORWs. Proof of publication must be submitted as part of a complete Application (copy of the Environmental Monitor notice).

Additional Information

Include the MassDEP Notice of Intent file number, if available.

Please enclose a copy of the complete Notice of Intent submitted to the local Conservation Commission, including plans, if the project is subject to the Massachusetts Wetland Protection Act (WPA), Chapter 131, section 40, and its regulations, 310 CMR 10.00. To avoid processing delays, if plans are revised during the local review process, an additional copy of the revised plans should be submitted concurrently to MassDEP in support of this application for water quality certification. Please provide the following information if it is not already shown on the Notice of Intent or supporting documents and plans:

1. plans showing boundary and location of all bordering and isolated vegetated wetlands, land under water and coastal wetlands;
2. information that describes the existing site conditions;
3. information that describes the post-construction conditions of the site;
4. information that describes the proposed activity;
5. names of all waterbodies;
6. direction and flow of rivers and streams;
7. name of river basin or embayment;
8. mitigation measures proposed to protect waters and wetlands;
9. location and area of any wetland replication areas proposed;
10. location of certified vernal pools;
11. location of any isolated vegetated wetland identified as habitat for rare and endangered species by the Division of Fisheries and Wildlife Natural Heritage Program; and
12. storm water management plan and drainage calculations.

If any component of the project is subject to 401 certification but not subject to the WPA and its regulations (310 CMR 10.00), please describe why and provide the following information in the Documents section:

1. plans showing boundary and location of all bordering and isolated vegetated wetlands, land under water and coastal wetlands;
2. information that describes the existing site conditions;
3. information that describes the post construction conditions of the site;
4. information that describes the proposed activity;
5. names of all waterbodies;



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

6. direction and flow of rivers and streams;
7. name of river basin or embayment;
8. mitigation measures proposed to protect waters and wetlands;
9. location and area of any wetland replication areas proposed;
10. location of certified vernal pools;
11. location of any isolated vegetated wetland identified as habitat for rare and endangered species by the Division of Fisheries and Wildlife Natural Heritage Program; and
12. storm water management plan and drainage calculations.

Public Notice Information for Dredging 401 Water Quality Certifications:

Should I publish the 401 WQC public notice?

The regulatory requirements for information included, and timing/method of publication/ mailing of the public notices for the Chapter 91 Program and the 401 WQC Program differ. Any project which includes a Chapter 91 component requires that the application first be submitted, reviewed by staff, and the public notice prepared by Chapter 91 staff and provided to the applicant for publication. If you are planning to publish a public notice for the 401 WQC component of a project prior to review of an application by Chapter 91 staff, please be advised that does not satisfy the Chapter 91 public notice requirement, and a subsequent public notice will be necessary. Please contact David Wong with the 401 WQC Program at David.W.Wong@mass.gov if you would like information on whether a joint public notice for multiple components can be prepared for your project.

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
100 Cambridge Street



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs
BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Suite 900
Boston, MA 02114
617-874-7155

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]. The property owner's name is [] and address is []. 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.

Department of Environmental Protection
Wetlands and Waterways Program
100 Cambridge Street
Suite 900
Boston, MA 02114

Public Notice Information for Fill/Excavation 401 Water Quality Certifications:

Should I publish the 401 WQC public notice?

The regulatory requirements for information included, and timing/method of publication/mailing of the public notices for the Chapter 91 Program and the 401 WQC Program differ. Any project which includes a Chapter 91 component requires that the application first be submitted, reviewed by staff, and the public notice prepared by Chapter 91 staff and provided to the applicant for publication. If you are planning to publish a public notice for the 401 WQC component of a project prior to review of an application by Chapter 91 staff, please be advised that does not satisfy the Chapter 91 public notice requirement, and a subsequent public notice will be necessary. Please contact David Wong with the 401 WQC Program at David.W.Wong@mass.gov if you would like information on whether a joint public notice for multiple components can be prepared for your project.

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 fill or excavation projects in ORWs. 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. Publication is 7 to 10 days following the filing deadline. (See Question 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] by [applicant's name and address, property owner name and address if different from applicant] on [location] in [city/town] for a [project purpose, e.g., subdivision]. Additional



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

information may be obtained from [applicant/ contact person name], [address], [telephone]. Written comments should be addressed to: [MassDEP Regional Office], [Division of Wetlands and Waterways], [address] 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, when either the applicant or the conservation commission prefers separate public notice, or for a notice in the Environmental Monitor for fill or excavation projects in Outstanding Resource Waters:

*Massachusetts Department of Environmental Protection Division of Wetlands and Waterways
[regional office] [address] [telephone]*

Public Notice

Pursuant to 33 U.S.C. 1341 and M.G.L. c. 21 §§ 26 - 53, notice is given of a 401 Water Quality Certification application for [project name, brief description of activity] by [applicant's name and address, property owner name and address if different from applicant] on [location] in [city/town] for a [project purpose, e.g., subdivision]. Additional information may be obtained from [applicant/ contact person name], [address], [telephone]. Written comments should be sent to [MassDEP Regional Office], [Division of Wetlands and Waterways], [address] 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.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs
BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Appendix A: License Plan Checklist

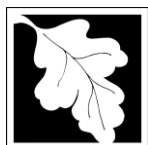
General View

- ☐ PE or RLS, as deemed appropriate by the Department, stamped and signed, in ink, each sheet within 8 1/2 inch by 11 inch border
- ☐ Format and dimensions conform to "Sample Plan" (attached)
- ☐ Minimum letter size is 1/8 of an inch if freehand lettering, 1/10 of an inch if letter guides are used
- ☐ Sheet number with total number in set on each sheet
- ☐ Title sheet contains the following in lower left: Plans accompanying Petition of [Applicant's name, structures and/or fill or change in use, waterway and municipality]
- ☐ North arrow
- ☐ Scale is suitable to clearly show proposed structures and enough of shoreline, existing structures and roadways to define its exact location
- ☐ Scale is stated & shown by graphic bar scale on each sheet
- ☐ Initial plans may be printed on bond; final plans due before License issuance must be on 3mil Mylar.

Structures and Fill

- ☐ All Structures and Fill shown in full BLACK lines, clearly labeling which portions are existing, which are Proposed and indicating Existing Waterways Licenses
- ☐ *Cross Section Views* show MHW* and MLW* and structure finish elevations
- ☐ *Dredge or Fill*, actual cubic yardage must be stated and typical cross sections shown
- ☐ All Structures and Fill shown in full BLACK lines, clearly labeling which portions are existing, which are Proposed and indicating Existing Waterways Licenses
- ☐ *Cross Section Views* show MHW* and MLW* and structure finish elevations
- ☐ *Dredge or Fill*, actual cubic yardage must be stated and typical cross sections shown
- ☐ Actual dimensions of structures(s) and or fill and the distance which they extend beyond MHW* or OHW*
- ☐ Change in Use of any structures on site must be stated

* See 310 CMR 9.02, Waterways Regulations definitions of High Water Mark, Historic High Water Mark, Historic Low Water Mark, and Low Water Mark. *Note:* DEP may, at its discretion, accept appropriately scaled preliminary plans in lieu of the plans described above. In general, DEP will accept preliminary plans only for non-water dependent projects and projects covered by MEPA to address site design components such as visual access, landscaping & site coverage. *Anyone wishing to submit preliminary plans must obtain prior approval of the DEP Waterways Program before submitting them with their application.*



BRP WW 26 Chapter 91/401 WQC License/Permit Application

Instructions and Supporting Materials

Appendix A: License Plan Checklist (cont.)

Boundaries

- ☐ Property lines, full black lines, _____, along with abutters' names and addresses
- ☐ Mean High Water (MHW)* or Ordinary High Water (OHW)*, full black line _____
- ☐ Mean Low Water (MLW)*, black dotted line, (.....)
- ☐ Historic MHW* or OHW* (— — — —)
- ☐ Historic MLW* (... ..)
- ☐ State Harbor Lines, black dot-dash line (- . - . -) with indication of Chapter & Act establishing them (Ch. , Acts of)
- ☐ Reference datum is National Geodetic Vertical Datum (NGVD) or (NAVD).
- ☐ Floodplain Boundaries according to most recent FEMA maps
- ☐ Proposed & Existing Easements described in metes & bounds

Water-Dependent Structures

- ☐ Distance from adjacent piers, ramps or floats (minimum distance of 25' from property line, where feasible)
- ☐ Distance from nearest opposite shoreline
- ☐ Distance from outside edge of any Navigable Channel
- ☐ Access stairs at MHW for lateral public passage, or 5 feet of clearance under structure at MHW.

Non Water-Dependent Structures

- ☐ Depict extent of "Water-dependent Use Zone".

See Waterways Regulations at 310 CMR 9.51-9.53 for additional standards for non water-dependent use projects.

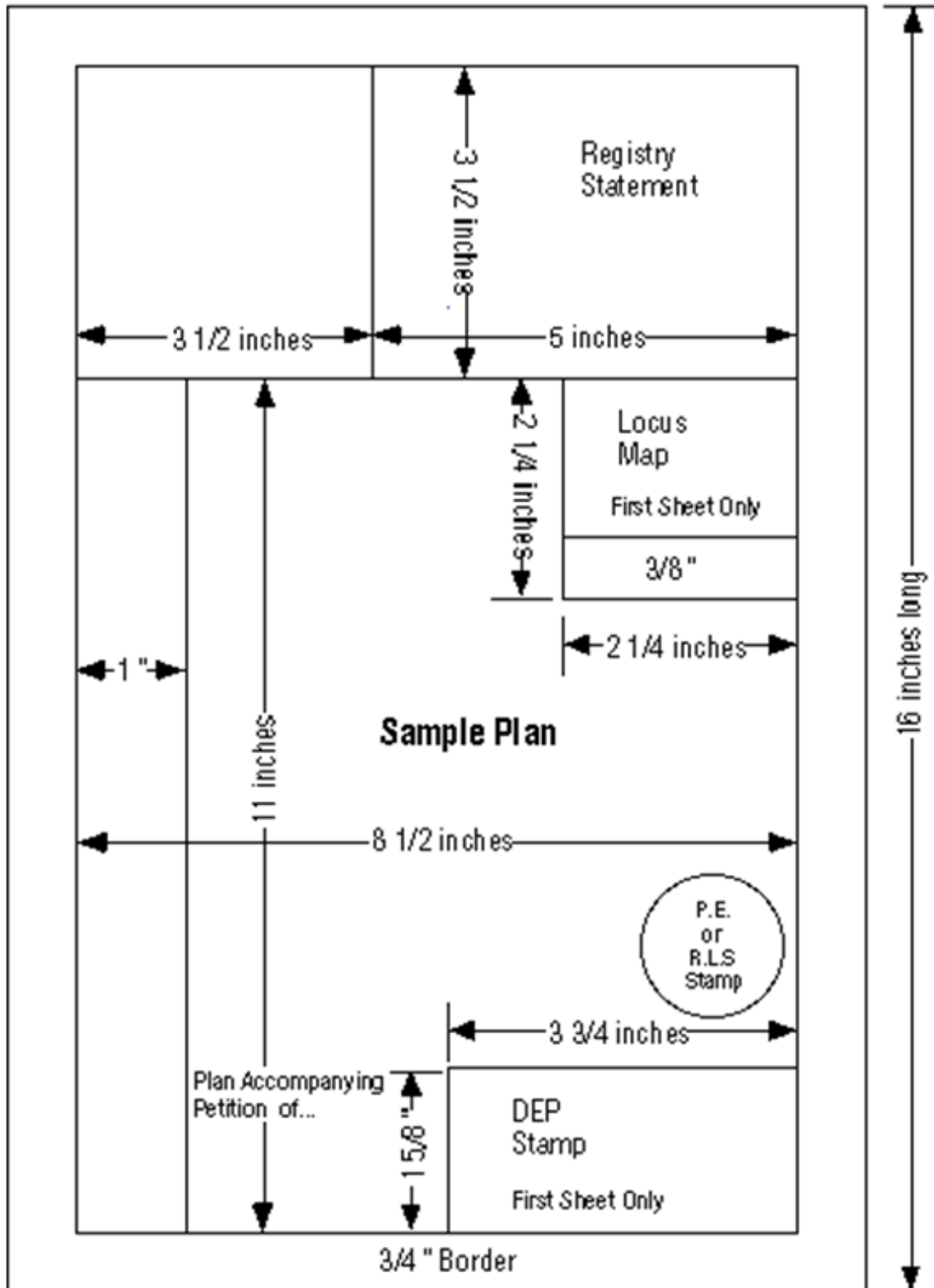
Note: Final Mylar project site plans will be required upon notice from the Department, prior to issuance of the Chapter 91 Waterways License.



BRP WW 26 Chapter 91/401 WQC License/Permit Application

Instructions and Supporting Materials

Appendix A Plan Template





Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Waterways/Wetlands Programs

BRP WW 26 Chapter 91/401 WQC License/Permit Application
Instructions and Supporting Materials

Plan view.

The plan view of the proposed activity should show the following:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Existing shorelines. | <input type="checkbox"/> Ebb and flood in tidal waters and direction of flow in rivers. |
| <input type="checkbox"/> North arrow. | <input type="checkbox"/> Graphic and numerical scale. |
| <input type="checkbox"/> Mean high and low water lines if the proposed activity is located in tidal areas. | <input type="checkbox"/> High Water Mark for inland waters. |
| <input type="checkbox"/> Water depths around the project that are measured with respect to MHTL for activities located in tidal waters and represented on the plans as elevations below MHW. | <input type="checkbox"/> Principal dimensions of the structure or work and extent of encroachment beyond the applicable high-water line. |
| <input type="checkbox"/> Seaward distance from an existing permanent fixed structure or object. | <input type="checkbox"/> Harbor lines, if established and known. |
| <input type="checkbox"/> Distance between proposed activity and navigation channel, where applicable. | <input type="checkbox"/> Location of any vegetated wetlands or wetland resource areas. |
| <input type="checkbox"/> Location of structures, if any, in navigable waters immediately adjacent to the proposed activity. | <input type="checkbox"/> Proximity to any designated Areas of Critical Environmental Concern. |

Elevation and/or Section View.

The elevation and/or section view of the proposed project should show the following:

- | | |
|------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| <input type="checkbox"/> Same water elevations as the plan view. | <input type="checkbox"/> Depth at waterward face of proposed work. Show dredging grade. |
| <input type="checkbox"/> Graph and numerical scale. | <input type="checkbox"/> Cross-section of excavation including approximate side slopes. |
| <input type="checkbox"/> High Water Mark for inland waters. | <input type="checkbox"/> Mean High Tide Line for coastal waters. |

