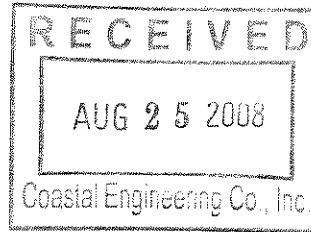




COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor



IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

August 18, 2008

Tom Leach
Harbor Master
732 Main Street
Harwich, MA 02645

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

At: The channel of Herring River, Allen Harbor, Wychmere Harbor, Saquatucket Harbor
HARWICH/NANTUCKET SOUND

401 WQC Transmittal No: W001321
Wetlands File No: SE32-1913
ACoE Application No: NAE-2008-14

Dear Mr. Leach:

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

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

Background: The Town of Harwich has conducted maintenance dredging of the referenced channels (inner and outer) under various Waterway Permits, Water Quality Certifications, Order of Conditions and

404 Permits. Although the current process of maintenance dredging and sand management is “workable”, the Town of Harwich wishes to streamline the process to be more flexible and less burdensome in administrating the work.

The access channel areas have been historically dredged to various depths ranging from a depth of -6.0 ft MLW in Allen Harbor, Herring River, and Wychmere Harbor to -8.0 ft MLW in Saquatucket Harbor since as early as 1926 when Allen Harbor was originally dredged and opened as a harbor.

Historical Dredging Permitting:

1. **Allen Harbor** (inner & outer channels)

Order of Conditions: Emergency Order dated 5/28/1986
Amended Order of Conditions: SE 32-1000, dated 2/15/1996
OOC Extension Permit: SE 32-1435, dated 10/1/2002
Amended Order of Conditions: SE 32-1435, dated 10/6/2004
OOC Extension Permit: SE 32-1435, dated 9/7/2005, **expires 11/01/2010**

DPW Division of Waterways Contract No: 141, dated 1926
DPW Division of Waterways Contract No: 178, dated 1928
DPW Division of Waterways Contract No: 205, dated 1930
DPW Division of Waterways Contract No: 262, dated 1931
DPW Division of Waterways Contract No: 301, dated 1931
DPW Division of Waterways Contract No: 346, dated 1933
DPW Division of Waterways Contract No: 438, dated 1935
DPW Division of Waterways Contract No: 528, dated 1938
DPW Division of Waterways Contract No: 559, dated 1938
DPW Division of Waterways Contract No: 1097, dated 1949
DPW Division of Waterways Contract No: 1221, dated 1952
DPW Division of Waterways Contract No: 1229, dated 1952
DPW Division of Waterways Contract No: 1407, dated 1954
DPW Division of Waterways Contract No: 1502, dated 1955
DPW Division of Waterways Contract No: 1820, dated 1957
DPW Division of Waterways Contract No: 2264, dated 1961
DPW Division of Waterways Contract No: 2453, dated 1964
DPW Division of Waterways Contract No: 2563, dated 1966
DPW Division of Waterways Contract No: 2657, dated 1969
DPW Division of Waterways Contract No: 2902, dated 1978
DPW Division of Waterways Contract No: 3177, dated 1986
DPW Division of Waterways Contract No: 3283, dated 1994

DEM Waterways Permit No: 258, dated 1994

DEP Waterways Permit No: 348, dated 7/22/1998
DEP Waterways Permit No: 10140, dated 10/19/2004, **expires 10/19/2014**

Water Quality Certification, Transmittal No: 74841, dated 4/5/1994; Amendment dated 7/10/1995
Water Quality Certification, Transmittal No: 44076, Amendment dated 7/10/1995

Water Quality Certification, Transmittal No: 74841, 44076 & 139877

1st Amendment dated 03/19/1996

2nd Amendment dated 09/20/2001

Water Quality Certification, Transmittal No: W086268

4th Amendment dated 10/23/2006

expires 9/20/2011

CZM Approval, dated 4/22/1987

ACOE Permit No: 1993-01040, dated 1993

ACOE Permit No: CENAE-CO-R-199801256, dated 1998

ACOE Permit No: CENAE-CO-R-199801485, dated 1998

ACOE Permit No: CENAE-R-199902454, dated 10/16/2001

ACOE Permit No: NAE-2005-3134, dated 10/24/2006, **expires 1/20/2010**

2. Wychmere Harbor (inner & outer channels)

Order of Conditions: SE 32-694, dated 1989

Amended Order of Conditions: SE 32-1000, dated 02/15/1996

Order of Conditions: SE 32-1523, dated 03/21/2001

OOE Extension Permit: SE32-1523, dated 02/17/2004

OOE 2nd Extension Permit: SE 32-1523, dated 02/7/2007, **expires 3/21/2012**

DPW Division of Waterways Contract No: 2264, dated March 1961

DPW Division of Waterways Contract No: 528, dated May 1938

DEM Waterways Permit No: 258, dated 1994

DEP Waterways Permit No: 10140, dated 10/19/2004

Water Quality Certification, dated 06/29/1989

Water Quality Certification, Transmittal No: 74841, dated 04/05/1994

Water Quality Certification, Transmittal No: 74841, 44076 & 139877

1st Amendment dated 03/19/1996

2nd Amendment dated 09/20/2001

Water Quality Certification, Transmittal No: W086268

4th Amendment dated 10/23/2006

expires 9/20/2011

ACOE Permit: NEDOD-R-25-83-162, dated 3/3/1983

ACOE Permit: CENED-OD-R-23-89-1454, dated 6/5/1989

ACOE Permit: CENED-OD-R-23-90-577, dated 5/11/1990

ACOE Permit: 1994-00065, dated 1994

ACOE Permit: CENAE-CO-R-200002573, dated 2/23/2001

ACOE Permit: NAE-2006-1107, dated 5/19/2006, **expires 1/20/2010**

3. Saquatucket Harbor/Andrews River (inner & outer channels)

Order of Conditions: SE 32-598, dated 1/21/1988

Order of Conditions: SE 32-1337, dated 7/17/1998

Order of Conditions: SE 32-1588, dated 5/1/2002
Order of Conditions: SE 32-1895, dated 7/5/2007, **expires 7/5/2010**

DEP Waterways Permit No: 186, dated 10/6/1989
DEP Waterways Permit No: 198, dated 5/18/1990
DEP Waterways Permit No: 262, dated 9/19/1994
DEP Waterways Permit No: 354, dated 7/22/1998 **expires 7/22/2008**

Water Quality Certification, Transmittal No: 132651, dated 4/4/1990
1st Amendment dated 4/23/1997
2nd Amendment dated 3/14/2002
expires 1/15/2008

Army Corps of Engineers: Andrews River Federal Navigation Project
ACOE Emergency Authorization NAE 2006-2710, dated 4/27/2007 **expires 1/20/2010**

4. Herring River (inner & outer channels)

DPW Division of Waterways Contract No: 1935, dated May 1935
DPW Division of Waterways Contract No: 528, dated May 1938
DPW Division of Waterways Contract No: 926, dated August 1946
DPW Division of Waterways Contract No: 1301, dated April 1953
DPW Division of Waterways Contract No: 1860, dated January 1958
DPW Division of Waterways Contract No: 2765, dated April 1973

Historical Dredged Material Beneficial Reuse Site Permits:

1. Grey Neck Road Beach

OOE Extension Permit: SE 32-1435, dated 10/1/2002
Amended Order of Conditions: SE 32-1435, dated 10/6/2004
OOE Extension Permit: SE 32-1435, dated 9/7/2005, **expires 11/01/2010 (from Allen Harbor)**

DEP Waterways License No: 10140, dated 10/19/2004, **expires 10/19/2014**

ACOE Permit: CENAE-R-199902454, dated 10/16/2001
ACOE Permit: NAE-2005-3134, dated 10/24/2006, **expires 1/20/2010 (from Allen Harbor)**

Water Quality Certification, Transmittal No: W086268, dated 10/23/06, **expires 9/20/2011**

2. Earle Road Beach

OOE Extension Permit: SE 32-1435, dated 10/1/2002
Amended Order of Conditions: SE 32-1435, dated 10/6/2004
OOE Extension Permit: SE 32-1435, dated 9/7/2005, **expires 11/01/2010 (from Allen Harbor)**

DEP License No. 10140 issued 10/19/2004, **expires 10/19/2014**

ACOE Permit: CENAE-R-199902454, dated 10/16/2001

ACOE Permit: NAE-2005-3134, dated 10/24/2006, **expires 1/20/2010 (from Allen Harbor)**

Water Quality Certification, Transmittal No: W086268 dated 10/23/2006, **expires 9/20/2011**

3. Patricia Lane Beach

OOE Extension Permit: SE 32-1435, dated 10/1/2002

Amended Order of Conditions: SE 32-1435, dated 10/6/2004

OOE Extension Permit: SE 32-1435, dated 9/7/2005, **expires 11/01/2010 (from Allen Harbor)**

ACOE Permit: CENAE-R-199902454, dated 10/16/2001

ACOE Permit: NAE-2005-3134, dated 10/24/2006, **expires 1/20/2010 (from Allen Harbor)**

4. Brook Road Beach

Water Quality Certification, Transmittal No: 44076, Amendment dated 7/10/1995

5. Wahwahtaysee Road Beach

OOE Extension Permit: SE 32-1435, dated 10/1/2002

Amended Order of Conditions: SE 32-1435, dated 10/6/2004

OOE Extension Permit: SE 32-1435, dated 9/7/2005, **expires 11/01/2010 (from Allen Harbor)**

DEP Waterways Permit No: 10140, dated 10/19/2004, **expires 10/19/2014**

Water Quality Certification, Transmittal No: 74841, 44076 & 139877

1st Amendment dated 3/19/1996

2nd Amendment dated 9/20/2001

ACOE Permit No: 1994-00065, dated 7/21/1994

6. Wyndemere Bluffs

DEP Waterways Permit No: 10140, dated 10/19/2004, **expires 10/19/2014**

Water Quality Certification, Transmittal No: 74841, 44076 & 139877,

1st Amendment dated 3/19/1996

2nd Amendment dated 9/20/2001

ACOE Permit No: 199400065, dated 7/21/1994

ACOE Permit: NAE-2005-3134, dated 10/24/2006, **expires 1/20/2010 (from Allen Harbor)**

7. Saquatucket Bluffs

DEP Waterways Permit No: 10140, dated 10/19/2004, **expires 10/19/2014**

Water Quality Certification, Transmittal No: 74841, dated 4/5/1994
Water Quality Certification, Transmittal No: 74841, 44076 & 139877,
1st Amendment dated 3/19/1996
2nd Amendment dated 9/20/2001

8. Neel Road Beach

Order of Conditions: SE 32-1337, dated 7/17/1998
Order of Conditions: SE 32-1588, dated 5/1/2002, **expired 5/1/2005**

Water Quality Certification, Transmittal No: 74841, dated 4/5/1994
Water Quality Certification, Transmittal No: 74841, 44076 & 139877,
1st Amendment dated 3/19/1996

9. Red River Beach

Order of Conditions: SE 32-1523, dated 3/21/2001
OOC Extension Permit: SE32-1523, dated 2/17/2004

ACOE Permit No: CENAE-CO-R-200002573, dated 2/23/2001

Order of Conditions: SE 32-1523, dated 3/21/2001
OOC Extension Permit: SE32-1523, dated 2/17/2004
OOC 2nd Extension Permit: SE 32-1523, dated 2/7/2007, **expires 3/21/2012**

10. Bay Road Beach (Round Cove)

Order of Conditions: SE 32-677, dated 1/11/1989
Order of Conditions: SE 32-1344, dated 7/29/1998
Order of Conditions: SE 32-1790, dated 9/21/2005
Amended Order of Conditions: SE 32-1790, dated 11/27/2006, **expires 9/21/2008**

DEP Waterways License No: 2030, dated 11/21/1989
DEP Waterways Permit No: 10842, dated 11/29/05

CZM Consistency Certification, dated 11/7/1989

Water Quality Certification, dated 6/30/1989

Water Quality Certification Transmittal No: W067930, dated 11/21/2005

ACOE Permit: NEDOD-R-25-83-162, dated 3/3/1983
ACOE Permit: 23-89-628, dated 12/28/1989
ACOE Permit: CENAE-CO-R-199801622, dated 10/23/1998
ACOE Permit No: NAE 2005-3116, dated 11/29/2005

11. Other Town Beaches

Water Quality Certification, Transmittal No: 44076, Amendment dated 7/10/1995

12. Near Shore Disposal East of Saquatucket Harbor Channel

DEP Waterways Permit No: 186, dated 10/6/1989

DEP Waterways Permit No: 198, dated 5/18/1990

DEP Waterways Permit No: 354, dated 7/22/1998

Water Quality Certification, Transmittal No: 132651, dated 4/4/1990

1st Amendment dated 4/23/1997

2nd Amendment dated 3/14/2002

13. Private Property at the end of Mill Road at the entrance to Saquatucket Harbor

DEP Permit No: 262, dated 9/19/1994

14. Private Property East of Neel Road

DEP Permit No: 262, dated 9/19/1994

Proposed project: The project entails consolidating all the maintenance dredging of Herring River navigation channel, Allen Harbor navigation channel, Wychmere Harbor navigation channel, and Saquatucket Harbor navigation channel into a single Water Quality Certification. The sediment will be removed hydraulically using the Barnstable County Dredger and deposit the dredged material directly on the public and private beaches above MHW as beach nourishment material. In accordance with 314 CMR 9.07(6), "Right of public access shall be provided for beach nourishment projects on private beaches where public funds are utilized for the activities."

The site is located within the Priority Habits of Rare Species, Estimated Habitats of Rare Wildlife, and Certified Vernal Pool in accordance with the Massachusetts Natural Heritage Atlas, 12th Edition. In a letter dated September 27, 2007, the Natural Heritage & Endangered Species Program (NHESP) set forth conditions that the Town of Harwich must adhere to order to avoid adverse effects on the Resource Area Habitats of State-listed wildlife species, and to avoid a prohibited "take" of state-listed species. It is anticipated that the same conditions will be set forth by the NHESP to the private beach nourishment activity.

A Notice of Intent will be filed with the Conservation Commission for each of the public and private beach nourishment activity.

Sediment dewatering: Although majority of the sediment is sandy in nature, there will be significant amount of water (i.e. sediment slurry) being placed at the beach nourishment locations as the result of

hydraulic dredging. Condition No. 12 and 13 require the applicant to deploy Best Management Practices (BMPs) to minimize turbidity.

Sediment sampling data: Samples were collected from the navigation channels for gradation analysis. Results of the gradation analysis indicated that less than ten percent of the sediment by weight passing the No. 200 U.S. Standard Series Testing Sieve, and are consistent with the results of past sampling. In accordance with 314 CMR 9.07(2)(a), chemical analysis will not be required if the due diligence review demonstrates that this area is unlikely to contain anthropogenic concentrations of oil or hazardous material. Condition No. 8 requires the applicant to provide the findings of the due diligence review to the Department.

Beneficial Reuse of sediments: Dredged material will be beneficially reuse as beach nourishment material at the approved designated public and private beaches.

Public Notice: The Department received no comment during the 21-day public comment period for this application, which began December 19, 2007.

Section 61 Findings: Pursuant to M.G.L. Chapter 30, Sections 61 to 62H including (M.E.P.A.) this project was reviewed as EOE No. 14246 and the Secretary's Certificate, issued on July 25, 2008 that an Environmental Impact Report (EIR) will not be required.

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

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.
3. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.
4. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department, 7sheet, prepared by Coastal Engineering Company, Inc. signed and stamped by Roy Okurowski, dated July 24, 2007, revised on April 3, 2008. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature of the scope change, approval by the Department may be required.

5. The Department shall be notified, attention Ken Chin 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.
6. The Certification remains in effect for the same duration of the federal permit that required it.
7. All existing active 401 Water Quality Certifications for maintenance dredging and beach nourishment will be superseded by this Certification.
8. Future maintenance dredging may be conducted as necessary for the duration of this Certification, provided that:
 - a. the initial project and any subsequent dredging has been conducted satisfactorily with no violations of the terms and conditions of this Certification,
 - b. sediment placement on beach occurs within the boundaries of the project described herein,
 - c. documenting the grain-size distribution of the sediment to be dredged is compatible with the grain-size distribution of the **approved designated** receiving beach(es) in accordance with the document entitled Beach Nourishment, Mass DEP's Guide to Best Management Practices for Projects in Massachusetts, March 2007,
 - d. a due-diligent evaluation to determine that no known spills of oil or other toxic substances have occurred which could have contaminated the sediment in the dredge area.
 - e. the volume of **each** future maintenance dredging does not exceed 200,000 cubic yards.
 - f. notify the Department prior to commencement of maintenance dredging.
 - g. valid Order of Conditions issued by the Town of Harwich Conservation Commission for each public and private beach nourishment location
9. At the end of each dredging season, a dredging and beach nourishment activities summary report shall be prepared and submitted to the Wetlands and Waterways Program. At a minimum, the summary shall include, but not limited to, dredge volume and locations, beach nourishment locations, compatibility of grain-size distribution of the sediment to be dredged with the grain-size distribution of the receiving beach based on current gradation analysis, findings of an updated due diligence evaluation, and valid Order of Conditions.
10. Within 30 days of the completion of the initial dredging, a bathymetric survey of the channel, depicting post-dredge conditions, shall be sent to the Department.
11. All conditions set forth by the MA Division of Fisheries & Wildlife, Natural Heritage & Endangered Species Program (NHESP) shall be adhered to for each applicable beach.
12. Best Management Practices (BMPs) shall be deployed to minimize turbidity. At a minimum, silt curtain shall be used to surround the dredging barge and if applicable, dredging shall be carried out using a closed, environmental bucket.
13. BMPs shall be deploy to minimize turbidity to Nantucket Sound as a result of dredged material dewatering after the dredged material is pumped and placed at the designated beach nourishment locations.

14. Daily inspection of the dredging activity and beach nourishment pertaining to public beaches shall be conducted. If any material other than compatible beach nourishment material is observed, the applicant shall direct the dredging contractor to cease dredging operation and conduct an investigation regarding the nature of the to the suspected material. If the suspected material is determined to be incompatible as beach nourishment material, the applicant shall remove the suspect material and disposed of appropriately after consultation with the Department.
15. In accordance with 314 CMR 9.07(6), right of public access shall be provided for beach nourishment on private beaches where public funds are utilized for the activities.
16. Disposal of any volume of dredged material at any location in tidal waters is subject to approval by this Department and the Massachusetts Coastal Zone Management office.
17. In order to protect spawning, larval and juvenile development of winter flounder, no dredging shall occur between January 15th and May 30th at the inner channel of Herring River, Allen Harbor, Wychmere Harbor and Saquatucket Harbor. In addition, no dredging shall occur between March 15th and June 15th within the Herring River to protect herring migration and spawning.
18. The applicant, or their contractor, shall make every feasible effort to complete the project within the permitted timeframe. Should the applicant, or their contractor, fail to complete the project and wish to request an amendment to the Certification for incursion into the no-dredge period, the written request shall be received by the Department by January 2nd. The following information shall be included in the request:
 - a. project location and transmittal number,
 - b. the date on which dredging started,
 - c. the number of days and hours per day the dredge operated,
 - d. expected daily average production rate and the actual daily average production rate,
 - e. an explanation of why the project failed to remain on schedule,
 - f. an account of efforts made to get the project back on schedule,
 - g. a plan depicting the areas that remain to be dredged,
 - h. the number of cubic yards that remain to be dredged,
 - i. an accurate estimate of the number of days required to complete the project,
 - j. an evaluation of the impact of continued dredging on the species of concern,
 - k. a description of any efforts that will be made to minimize the impacts of the project on the species of concern, and a realistic assessment of any societal/financial effects of a denial of permission to continue dredging.

The Department will share the information with other resource agencies and a decision to grant or deny the amendment shall be made by January 15th. Requests for amendment received after January 2nd will be considered at the Department's discretion.

19. Four weeks prior to commencement of the dredging activity, the applicant shall submit a notification procedure outlining the reporting process to the Department for incidents relating to the dredging activities impacting the surrounding resource area and habitats such as, but not limited to, observed dead or distressed fish, or other marine organisms, observed oily sheen on surface water, sediment spill, observed turbidity plume beyond the deployed BMPs. If any time during implementation of the project a fish kill or significant water quality problem occurs in the vicinity of the project, all site

related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures employed to the satisfaction of the Department.

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

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

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

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

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

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

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

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

- a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;

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

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

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

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

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

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

Sincerely,



Glenn Haas

Director

Division of Watershed Management

enclosure: Departmental Action Fee Transmittal Form

cc:

Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, DMF, 838 South Rodney French Blvd., New Bedford, MA 02744
David Hill, Liz Kouloheras, DEP SERO
Harwich Conservation Commission, 732 Main St., Harwich, MA 02645
Don Munroe, Coastal Engineering Company, Inc., 260 Cranberry Highway, Orleans MA 02653

KC/W001321