



California Regional Water Quality Control Board Santa Ana Region



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Arnold Schwarzenegger
Governor

October 4, 2006

Mark Durham
U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

GENERAL CERTIFICATION FOR ACTIVITIES SUBJECT TO THE U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT, REGIONAL GENERAL PERMIT NO. 54

Dear Mr. Durham:

On March 27, 2006, we received an application from the City of Newport Beach for Certification for activities authorized under the U.S. Army Corps of Engineers' (Corps) Regional General Permit No. 54 (RGP 54). In summary, according to the Corps' public notice, RGP 54 will authorize work for:

- 1) the repair, minor modification, and replacement of private, non-commercial docks, floats, and piers;
- 2) the repair and minor modification of private non-commercial bulkheads;
- 3) minor annual maintenance dredging to a depth not to exceed -8 feet mean lower low water (MLLW)¹ of up to 20,000 cubic yards total within the project area (See Attachment 1) but not more than 1,000 cubic yards per individual project, under and adjacent to previously authorized private, public, and commercial docks, floats, and piers; and
- 4) discharge of dredged material at adjacent beach sites, within 1,000-feet of the dredge site, for beach nourishment; at offshore disposal sites LA-2 and LA-3; or at an approved inland disposal site.

RGP 54 applies to the above described work in Newport Bay with the exception of the following:

- 1) Dredging or disposal of sediment in the Rhine Channel, Newport Island, and Promontory Bay².

¹ The depth of dredging may be authorized up to -11 MLLW if the historic design depth was in excess of -7 MLLW.

² The Corps and the Federal Environmental Protection Agency propose to allow dredging and disposal operations in these areas under RGP 54 if additional sediment testing is conducted.

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- 2) Beach nourishment using sediments from the Rhine Channel, Turning Basin, and the whole of the area of Newport Bay surrounding Lido Isle (area A1). Area A1, or portions thereof, may be included after further sediment analysis is completed.
- 3) Projects where eelgrass is found 15-feet or less in any direction from the footprint of the dredged or dredge disposal site.

The City of Newport Beach has determined that activities authorized under RGP 54 are categorically exempt from the California Environmental Quality Act in accordance with Class 4, Guidelines Section 15304(g). Consequently, this Certification cannot apply to activities that may cause a potentially significant impact. Therefore, this General Certification applies to a subset of activities authorized by the U.S. Army Corps of Engineers' RGP 54 and does not necessarily certify all activities authorized therein. Condition 5, below, describes categories of activities that will not be covered by this Certification, although RGP 54 would otherwise authorize them. Proponents of activities that are not covered by this Certification are required to submit applications for individual Certifications or waste discharge requirements.

If Regional Board staff determines that a particular project involves special circumstances warranting exclusion from coverage under this General Certification, Regional Board staff will notify the Corps and the discharger or their agent in writing within 30-days of receiving notification, as described in Condition 8 below. We will request that the project proponent submit an application for individual Certification or for waste discharge requirements, whichever is most applicable.

Discharges authorized by this General Certification will also be regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf. This General Certification does not authorize the discharge of all wastes that may be associated with the described activities. Separate waste discharge requirements may also be necessary for dewatering discharges and discharges of storm water or other types of waste.

This 401 Certification is contingent upon the execution of the following conditions:

1. Materials shall not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the discharger shall recover the material to the maximum extent practical.

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2. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters to be increased by values greater than the following objectives³ at a distance of 100 feet from the activity:
 - a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
 - b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
 - c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.
3. In marine environments, the discharger shall survey for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread. If *Caulerpa taxifolia* is found prior to or during implementation of the project, the applicant shall not begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board shall be notified within 48-hours of the location and date of the discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Game (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Robert Hoffman at (562) 980-4043 (bob.hoffman@noaa.gov)) within 24-hours of discovery. Further information regarding a *Caulerpa taxifolia* sighting can be obtained at www.sccat.net. Should no *Caulerpa* be observed during the project, the applicant shall notify the Regional Board of this fact when all construction has been completed. Please contact Wanda Cross at (951) 782-4468 concerning issues related to *Caulerpa taxifolia*.
4. Where activities may result in the disturbance of contaminated sediments in known toxic "hot spots", as defined in California Water Code Section 13391.5(e), the discharger shall implement BMPs to contain suspended or excavated sediments within the immediate work area to the maximum extent practical using best available technology and best conventional technology.
5. This General Certification shall not apply to the following projects:
 - a. Projects requiring coverage under State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ.
 - b. Projects involving the construction of any new storm drain outfall.
 - c. Projects that may result in the loss of wetlands or the impairment of their beneficial uses.
 - d. Projects where eelgrass is located within 15-feet of the dredge or dredge disposal site perimeter or operating equipment propellers.
 - e. Discharges of contaminated sediment to waters of the State, or land where the material or its contaminants may enter waters of the State, and

³ Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent amendments.

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- the contaminants are present in excess of NOAA Threshold Effects Levels (TELS).
6. The City of Newport Beach shall forward copies of all sediment testing and dredge activity monitoring reports, required of them pursuant to RGP 54, to the Regional Board concurrent with submission of such reports to the Corps of Engineers.
 7. This Certification expires on October 4, 2011. Any project begun or in progress on October 4, 2011 shall complete all discharges of dredge or fill by October 19, 2011.
 8. Not later than 30 days prior to commencing work on the proposed activity, the applicant must submit to the Regional Board a "Notification" containing, at a minimum, the information listed below. If a "Notification" is required as part of the U.S. Army Corps of Engineers' (Corps) permit, a copy of the "Notification" to the Corps can be transmitted instead, provided the information listed below is included. To avoid project delays, the applicant should submit the "Notification" as early as possible. If the applicant is not contacted by the Regional Board within 30 days after mailing the "Notification" via parcel post or electronic mail, the applicant may assume that the project meets the conditions of certification and may proceed with the project. The Executive Officer may disqualify a project from coverage under this Certification if the water quality impacts of the project are not fully addressed by this Certification. In the event of disqualification, the discharger and the City will be notified in writing within 30 days of receipt of notification. The minimum content of a notification includes:
 - a. A statement that the notification is submitted pursuant to this General Certification for activities subject to RGP 54 and that the applicant agrees to abide by all of the conditions contained herein.
 - b. The name, address, and telephone number of:
 - i. The applicant and
 - ii. The applicant's agent (if an agent is submitting the notification).
 - c. Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including:
 - i. Federal agency.
 - ii. Type.
 - iii. File number(s) assigned by the federal agency(ies), if available.
 - d. Complete identification of any State-issued licenses/permits being sought for or applying to the proposed activity, including those issued by the Department of Fish & Game and the California Coastal Commission.
 - e. A complete project description including:
 - i. The purpose and final goal of the entire activity.
 - ii. Address (including city and county), cross-streets, or other appropriate location description, and the longitude and latitude of the project site.

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- iii. Name(s) of any receiving water body(ies) that may receive a discharge.
 - iv. The total estimated quantity of waters and the types of discharge material(s) that may temporarily or permanently impact the waters of the State. Fill discharges shall be reported in acres. Fill discharges for channels, shorelines (including bulkheads and seawalls), and other linear habitat shall also be reported in linear feet. Dredge discharges shall be reported in cubic yards.
 - v. Disposition of dredge materials, including longitude and latitude of the disposal site(s).
 - vi. The results of any applicable sediment testing completed, including testing conducted by others (e.g. the City of Newport Beach), and as required by RGP 54.
- f. A check in the amount specified in 23 CCR section 3833(b)(3), made payable to the Santa Ana Regional Water Quality Control Board.
 - g. The "Notification" must be signed by the applicant or the applicant's agent (if an agent is submitting the "Notification"). The "Notification" must include a statement that the submitted information is complete and accurate.

Pursuant to 23 CCR §3860, the following shall be included as standard conditions of all water quality certifications:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

This letter constitutes a Clean Water Act Section 401 Water Quality Standards Certification. I hereby issue an order certifying that any discharge from the above referenced projects will comply with the applicable provisions of Sections 301 (Effluent



Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. As stated above, discharges authorized by this certification are also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification".

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,

for Gerard J. Thibeault
Executive Officer

- cc: U. S. EPA, Supervisor of the Wetlands Regulatory Office – Tim Vendlinski (WTR-8)
- U. S. Fish and Wildlife Service
- State Water Resources Control Board, OCC – Jorge Leon
- State Water Resources Control Board, DWQ-Water Quality Certification Unit – Oscar Balaguer, Chief
- California Department of Fish and Game, South Coast Region – Larry Eng
- City of Newport Beach, Harbor Resources – Chris Miller

Attachment 1: Regional General Permit 54 Boundary Map

