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Certification Deviation Procedures

Introduction

These procedures are put into place to preclude the need for Order amendments for minor changes in the Project routing or location. Minor changes or modifications in project activities are often required by the Permittee following start of construction. These deviations may potentially increase or decrease impacts to waters of the state. In such cases, a Certification Deviation, as defined in Section XII.I. of the Order, may be requested by the Permittee as set forth below:

Process Steps

Who may apply: The Permittee or the Permittee's duly authorized representative or agent (hereinafter, "Permittee") for this Order.

How to apply: By letter or email to the 401 staff designated as the contact for this Order.

Certification Deviation Request: The Permittee will request verification from the Regional Water Boards(s) that the project change qualifies as a Certification Deviation, as opposed to requiring an amendment to the Order. The request should:

1. Describe the Project change or modification:
 - a. Proposed activity description and purpose;
 - b. Why the proposed activity is considered minor in terms of impacts to waters of the state;
 - c. How the Project activity is currently addressed in the Order; and,
 - d. Why a Certification Deviation is necessary for the Project.
2. Describe location (latitude/longitude coordinates), the date(s) it will occur, as well as associated impact information (i.e., temporary or permanent, federal or non-federal jurisdiction, water body name/type, estimated impact area, etc.) and minimization measures to be implemented.
3. Provide copies of any supplemental plan(s) submitted to the U.S. Army Corps of Engineers, Los Angeles District, as required by Regional General Permit (RGP) 99.
4. Provide all updated environmental survey information for the new impact area.
5. Provide a map that includes the activity boundaries and plans for accessing the flood control facilities proposed for maintenance
6. Provide photos of the site.
7. Provide verification of any temporary impact restoration needed according to the Order conditions.
8. Provide any other information required by the Regional Water Board(s) to determine whether the Project change or modification necessitates additional environmental review. (Cal. Code Regs., tit. 14, §§ 15061, 15162-15164.)

Action by Regional Water Board on Request: The Regional Water Board(s) will make a determination on the Certification Deviation request within 10 working days from receipt of a complete request and notify the Permittee via email of the staff determination. Determination of whether a Certification Deviation request is complete is at the discretion of the Regional Water Board(s).

Post-Discharge Certification Deviation Reporting:

1. Within 30 calendar days of completing the approved Certification Deviation activity, the Permittee will provide a post-discharge activity report that includes the following information:
 - a. Activity description and purpose;
 - b. Activity location, start date, and completion date;
 - c. Erosion control and pollution prevention measures applied;
 - d. The net change in impact area by water body type(s) in acres, linear feet and cubic yards;
 - e. Temporary impact restoration plan, if applicable; and,
 - f. Map of activity location and boundaries; post-construction photos.

Action by Water Board on Post-Discharge Activity Report: The Regional Water Board(s) will review the post-discharge Certification Deviation Report within 15 working days from receipt of a complete report. The Regional Water Board(s) will determine, in consultation with the Permittee and other regulatory agencies, if applicable, whether additional mitigation will be required. If additional mitigation is required, The Regional Water Board(s) will inform the Permittee within the 15-day review period. Determination of whether a post-discharge activity report is complete is at the discretion of The Regional Water Board(s).

Annual Summary Deviation Report:

1. Until a Notice of Completion of Discharges Letter or Notice of Project Complete Letter is issued, include in the Annual Project Report (see Construction Notification and Reporting attachment) a compilation of all Certification Deviation activities through the reporting period with the following information:
 - a. Site name(s).
 - b. Date(s) of Certification Deviation approval.
 - c. Location(s) of authorized activities.
 - d. Impact area(s) by water body type prior to activity in acres, linear feet and cubic yards, as originally authorized in the Order.
 - e. Actual impact area(s) by water body type in, acres, linear feet and cubic yards, due to Certification Deviation activity(ies).
 - f. The net change in impact area by water body type(s) in acres, linear feet and cubic yards;
 - g. Restoration to be provided.

Action by Regional Water Board on Annual Certification Deviation Report: Following issuance of a Notice of Completion of Discharges Letter or Notice of Project Complete Letter, the Regional Water Boards will amend the Order to reflect all approved Certification Deviations and the amended Order will serve as a record of actual Project activities.