



Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

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Secretary

Bonnie Heiple  
Commissioner

August 29, 2024

Massachusetts Department of Transportation  
Highway Division  
10 Park Plaza, Suite 4160  
Boston, MA 02116  
ATTN: Melissa Lenker

RE: **AMENDED** 401 WATER QUALITY CERTIFICATION  
BRP WW 10, Major Fill Project  
BRP WW 07, Major Dredge Project  
Bridge Replacements: I- 495 over Merrimack River and Route 110/113; Industrial Ave over I-495  
Haverhill and Methuen, MA

401 WQC Filing Number: 24-WW10-0014-APP (Fill)/24-WW07-0006-APP (Dredge)  
USACE Application No. NAE-2023-01077  
MassDOT File Number: 609466  
U.S. Coast Guard File Number: NV1142

Dear Ms. Lenker:

On July 29, 2024, the Massachusetts Department of Environmental Protection (MassDEP) issued a Water Quality Certification (WQC) to the Massachusetts Department of Transportation (MassDOT) for replacement of the northbound and southbound bridges carrying Interstate 495 (I-495) over the Merrimack River and Merrimack Street (Route 113/Route 110); and replacement of two bridges carrying Industrial Avenue (Route 125 Connector) over I-495 (the Project). The Project also includes headwall reconstruction and relocation, stormwater infrastructure improvements, and wetland and stream replication and restoration. The WQC contained 58 conditions and addressed impacts to Bordering Vegetated Wetlands (BVWs), Isolated Vegetated Wetlands (IVWs), and Land Under Water (LUW). On August 28, 2024, MassDOT submitted a request to amend Conditions 38 and 46 of the WQC.

The requested revisions to Condition 38 relate to dredged material stockpile management; specifically, the requirement to bottom line stockpiles on paved surfaces, place them at least 10 feet away from temporary construction roads, and inspect and correct deficiencies during and after storm events. MassDEP is amenable to removing the requirement to bottom line stockpiles so long as they are on paved surfaces and properly secured, and also removing the requirement to place stockpiles at least 10

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.

TTY# MassRelay Service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

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feet from temporary construction roads so long as a DEP-approved barrier is provided. Inspection of stockpiles shall still occur daily, but MassDEP understands the safety concerns associated with inspection and correcting deficiencies during storm events, especially severe weather. As such, inspections will be required within 24 hours of a storm event that produces 0.5 inches or more of rain within a 24-hour period. Deficiencies shall be corrected in accordance with the timelines specified in the approved Construction Period Pollution Prevention and Erosion and Sedimentation Control Plan (CP/PP). The conditions of this amended WQC will serve as a replacement to Condition 38.

MassDEP declines to revise Condition 46 by replacing the requirement to use the Paint Filter Test with visual observation as the means to ensure dredged material shall have no free liquid during transport as MassDEP does not believe that visual observation is an accurate or analogous methodology.

In accordance with the provisions of MGL c. 21, s. 26-53 and Section 401 of the Federal Clean Water Act as amended (33 U.S.C. s. 1251 et seq.), MassDEP has reviewed this project change request and has determined that there is reasonable assurance that the project change will not violate applicable water quality standards. MassDEP hereby approves of the above-mentioned project changes and amends the WQC dated July 29, 2024, by referencing the following documents and subject to the following Special Conditions:

**Reference Documents:**

- 1) 401 Water Quality Certification. Bridge Replacements: I- 495 over Merrimack River and Route 110/113; Industrial Ave over I-495. BRP WW 10, Major Fill Project/BRP WW 07, Major Dredge Project. 401 WQC Filing Number: 24-WW10-0014-APP (Fill)/24-WW07-0006-APP (Dredge). Dated July 29, 2024.
- 2) 401 Water Quality Certification Amendment Request. Bridge Replacement: Bridge Replacement, H-12-040=M-17-030, I-495 (NB & SB) over Merrimack River and M-17-031, I-495 (NB & SB) over Route 110 and H-12-056, Industrial Avenue (EB & WB) over I-495. MassDOT Project #609466. MassDEP 24-WW10-0014-APP (Fill)/24-WW07-0006-APP (Dredge). Dated August 28, 2024.

**Revised Special Condition**

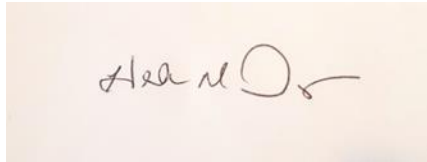
38. Best Management Practices (BMPs) shall be employed by the contractor to protect resource areas located adjacent to the proposed staging/temporary dredged material stockpiling and dewatering areas. Sediment stockpiles shall be constructed in accordance with the MassDEP approved project plans, stabilized, bottom-lined if not placed on paved surfaces and securely covered with wind tear resistance tarpaulin, polyethylene sheeting or similar impermeable material at all times, and properly labeled. Stockpile covers shall be securely weighed down. Stockpiles shall also be secured to restrict access by the public and shall be set back at least 10 feet from temporary construction access roads or other areas and activities which could disturb the stockpiles and associated erosion controls; if the 10-foot setback cannot be met, then a DEP-approved barrier shall be provided. Inspection of the sediment containment and dewatering

location and associated erosion controls shall be conducted daily and within 24 hours of a storm that produces 0.5 inches or more of rain within a 24-hour period. Any observed deficiency shall be corrected in accordance with the timelines specified in the approved CP/PP.

**All other WQC Special Condition remain in effect as applicable.**

Should you have any questions relative to this permit, please contact me at [heidi.davis@mass.gov](mailto:heidi.davis@mass.gov) or Ryan Hale at [ryan.hale@mass.gov](mailto:ryan.hale@mass.gov).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Heidi Davis", on a light-colored background.

Heidi M. Davis  
Highway Unit Supervisor

Ecc: MassDEP NERO – Jill Provencal  
USACE – Dan Vasconcelos  
USCG – Jeffrey D. Stieb  
MassDOT – Melissa Lenker  
MassDOT – Kylie Abouzeid  
MassDOT – Stephanie Regan  
MassDOT – Sandhya Potana  
MassDOT – Robert Antico  
VHB – Tom Donald  
VHB – Daniel Cannata  
VHB – Matthew Bobkowski  
Haverhill Conservation Commission – Robert E. Moore, Jr., [conservation@cityofhaverhill.com](mailto:conservation@cityofhaverhill.com)  
Methuen Conservation Commission – Joseph T. Giarrusso, Conservation Officer via Amy Priante-Walkowicz, Head Clerk, [AWalkowicz@ci.methuen.ma.us](mailto:AWalkowicz@ci.methuen.ma.us)

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

This amended certification does not relieve the applicant of the obligation to comply with other appropriate state or federal statutes or regulations.

#### NOTICE OF APPEAL RIGHTS

##### A) Appeal Rights and Time Limits

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by MassDEP 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 MassDEP, 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 Certificate, and addressed to:

Case Administrator  
Department of Environmental Protection  
100 Cambridge Street, Suite 900  
Boston, MA 02108

A copy of the request shall at the same time be sent by certified mail or hand delivery to the Department of Environmental Protection at:

Department of Environmental Protection  
Commissioner's Office  
100 Cambridge Street, Suite 900  
Boston, MA 02108

**B) Contents of Hearing Request**

A Notice of Claim for Adjudicatory Hearing shall comply with MassDEP'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;
- 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 MassDEP'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.

C) Filing Fee and Address

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  
PO 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. MassDEP 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.