

ENVIRONMENTAL PERMITTING in MASSACHUSETTS

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Publication Date: Fall, 2003

A publication of the Massachusetts Office of Coastal Zone Management (CZM) pursuant to National Oceanic and Atmospheric Administration Award No. NA170Z2338. This publication is funded (in part) by a grant/cooperative agreement from the National Oceanic and Atmospheric Administration (NOAA). The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its sub-agencies.

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INTRODUCTION

Because the Massachusetts environmental permitting process protects diverse resources and includes both ancient and modern statutes, it can seem extraordinarily complex. This guide is intended to offer clear, brief descriptions of the major Massachusetts environmental permits to help the reader work with environmental consultants and state, federal, and local officials to chart a reasonably straight path through the permitting process.

The first section of the guide provides an overview of environmental regulations and permits. The primary focus is on Massachusetts statutes and regulations, but information about local and federal statutes that tie into the Massachusetts permitting process is also included. Narrative describing the various permitting considerations applicable to project siting, construction, operations, and maintenance is provided. Within each of these narratives, the names of the various regulations, permits, and programs are **bolded** and hyperlinked. The number in parentheses following the bold text corresponds to a description of the permit program in the second section of the guide.

The second section of the guide contains technical descriptions of each of the statutes, regulations and programs referenced in the first section. The descriptions are numbered and are shown in the order in which they appear in the first section of the guide. Each of these descriptions includes the name of the statute, its authorities and jurisdiction, its applicability to project proposals, a summary of the regulation, a summary of the review process, applicable forms and fees, and a web address and contact telephone number for further information.

To obtain answers to questions about the permitting process in advance, a pre-application meeting can be scheduled with state and federal regulators. The Massachusetts Environmental Policy Act (MEPA) Unit, the Department of Environmental Protection (MassDEP), Massachusetts Office of Coastal Zone Management (CZM), and U.S. Army Corps of Engineers (Corps) can all host pre-application meetings that include all the other relevant regulators. Contact information for each of these agencies is included in the second section of this guide.

SECTION 1 - OVERVIEW OF ENVIRONMENTAL REGULATIONS AND PERMITS

This section of the guide is a narrative review of the Massachusetts environmental permitting process and covers project siting, project construction, operations, and maintenance.

Project Siting

Perhaps the most complex part of the permitting process is project siting. To protect a variety of environmental and economic resources the state has, over time, implemented a number of statutory and regulatory schemes. Identifying all of the restrictions that might be applicable to a particular location and designing a project that takes these restrictions into account is the first step in project development. Although the regulatory programs described below *will not* be applicable to all projects, understanding potential restrictions at the onset will allow the project plan and design to take the restrictions into account, limiting subsequent permitting problems.

The state's Department of Conservation and Recreation (DCR, which is made up of the former Department of Environmental Management and Metropolitan District Commission) administers the **Areas of Critical Environmental Concern (ACEC) (1)** program. ACECs are complexes of natural resources that have been judged to be of statewide significance, and therefore any project proposed in an ACEC is subject to a heightened regulatory review. New docks and piers and improvement dredging are particularly difficult to permit in ACECs.

The state had a **Coastal Wetlands Restriction (2)** program under which activities in selected wetlands were curtailed. The restrictions were recorded with the property at the Registry of Deeds. Though new wetland areas are no longer being added to the program, the original restrictions are still recorded and are in effect.

Construction in a **floodplain (3)** may make it necessary to get flood insurance in order to obtain construction financing. Use of state funds to construct infrastructure, such as roads, and construction of coastal engineering structures is discouraged on **barrier beaches (4)**. Locating a facility near a barrier beach may invoke some prohibitions, which would affect both project design and the availability of state-funded services.

The presence of state or federally listed threatened and **endangered species (5, 6)** at or near a proposed project site will make obtaining the necessary environmental permits difficult or impossible. The state's Natural Heritage Program staff can help to identify any mapped habitat for endangered species.

The presence of **underwater archeological resources (7)** and **historic properties (8)** must be considered when siting a project.

Fisheries are of great importance to the Commonwealth. The presence of shellfish beds, spawning runs of anadromous fish, and federally designated essential fish habitat may trigger mitigation requirements and time-of-year restrictions on construction. **State fisheries regulations (9)** and **federal fisheries regulations (10)** must be considered. The state's **Ocean**

Sanctuaries Act (11), administered by DCR, also places limits on some projects in state-designated Ocean Sanctuaries.

In urbanized ports, non-water dependent uses generally are not permitted in **Designated Port Areas (DPAs) (12)** and there are limits on projects that are not considered maritime industrial uses. Some cities and towns have chosen to develop state-approved **Municipal Harbor Plans (13)**. These plans may include siting and design criteria for proposed projects or may prohibit in-water construction or mooring placement.

In Massachusetts, municipalities have the authority to enact local **zoning by-laws (14)** that affect permissible uses and construction. Increasingly, towns have passed by-laws that include environmental and growth management restrictions. It is important to contact the Town or City Clerk about these provisions.

Project Construction

Once a site is selected and any environmental design restrictions are considered, the permitting process for project construction can begin.

Project construction certifications and permits include:

- Secretarial Certificate issued by the Massachusetts Environmental Policy Act (MEPA) Unit.
- Order of Conditions issued by the local Conservation Commission.
- 401 Water Quality Certification issued by the Department of Environmental Protection (MassDEP).
- Chapter 91 license issued by MassDEP.
- Federal consistency concurrence issued by the Massachusetts Office of Coastal Zone Management (CZM).
- Section 10/404 permit issued by the U.S. Army Corps of Engineers (Corps).

In addition, local permissions, other state statutory considerations, and federal permits must be taken into consideration. The information that follows is presented roughly in the order in which the permits are issued.

A proposal to construct a project that requires a state environmental permit or that will be constructed with state funds must be reviewed under the **Massachusetts Environmental Policy Act (15)**. This review gives state permitting agencies and the public an opportunity to comment on a proposal while it is still in the planning stages so that environmental concerns and permitting problems can be brought to the applicant's attention and remedied before significant

investment is made into a proposal that may require considerable alteration to meet permitting requirements. Anyone proposing a state permitted or state funded project that has potential impacts above certain thresholds would have to file an Environmental Notification Form (ENF) with the MEPA Unit. If significant environmental problems are identified at the ENF stage, or if the project impacts are such that it is automatically required, the MEPA Unit may determine that an Environmental Impact Report (EIR) is necessary. In addition, certain projects, generally those with significant environmental impacts, may be reviewed under the federal **National Environmental Policy Act (NEPA) (16)**. Analysis of alternatives and impacts are conducted through the preparation of an Environmental Impact Statement (EIS). MEPA and the lead federal permitting agency make every effort to combine the reviews into a single process.

Concurrent with or right after the MEPA review, a Notice of Intent (NOI) should be filed with the town or city's Conservation Commission, which administers the **Massachusetts Wetlands Protection Act (17)**. Land under the water, coastal banks, dunes, and land subject to coastal storm flowage are all considered wetlands under the Act, and any construction on a wetland must meet its performance standards. The Conservation Commission will issue an Order of Conditions, which specifies construction methods that will avoid or minimize and mitigate damage to wetland areas. Either the applicant or people that object to the Orders can appeal local Orders to MassDEP. MassDEP will consider the issues raised by the appeal and issue a Superceding Order of Conditions.

In recent years the Wetlands Protection Act has been revised to include the **Rivers Protection Act (17)**. In most towns, an area 200 feet wide on each side of a river is specially protected to limit impacts to resources such as water supplies, storm damage and flood control, and fisheries. In densely developed areas, the protected river corridor is 25 feet wide. The Act is administered by the local Conservation Commission along with its Wetlands Protection Act responsibilities.

Projects of minimal impact to wetlands are assumed to be consistent with state surface water quality standards if a final Order of Conditions has been issued for the project. However, if a construction project requires dredging more than 100 cubic yards of material, or will result in the loss of more than 5,000 square feet of wetlands, alter any salt marsh, or will discharge dredged material or fill to an Outstanding Resource Water (which includes public water supplies, ACECs, and certified vernal pools) a **401 Water Quality Certification for dredging (18)** is required from MassDEP. This Certification represents the state's assurance that dredging will not adversely affect water quality. Conditions of the Certification may include requirements to use silt curtains, "environmental buckets" for certain sediment types, dewatering methodologies, and time-of-year restrictions to protect fish spawning.

Several other state statutes that may affect projects are implemented locally. The Building Inspector administers state and local building codes and can be a good source of information about local permitting requirements. The municipality's Building Inspector will issue a building permit to comply with the **Massachusetts State Building Code (19)** and the

Board of Health will ensure that sewage disposal is accomplished in accordance with the **State Environmental Code (Title 5) (20)**.

To place structures in the water and on adjacent land, and to allow dredging to take place, a license must be obtained under the **Public Waterfront Act (Chapter 91) (21)**. The Chapter 91 or Waterways program regulates activities on filled and flowed tidelands of the Commonwealth. To comply, an engineer will have to prepare stamped drawings of the project layout, which will eventually be filed at the Registry of Deeds along with the deed to the property. Because tidelands are "public trust" lands, (i.e., they are owned in common by the citizens of the state), public benefits must be offered in exchange for private use of this land. The license itself will include conditions that ensure that public benefits, such as public walkways, are constructed.

The last state requirement is the **Federal Consistency Review (22)** by CZM. Any project that requires a federal permit must be consistent with state coastal policies, as administered by CZM. CZM has worked with both the Corps and the U.S. Environmental Protection Agency (EPA) to develop general permits for projects of minimal environmental impact. If a project is eligible for one of these general permits, it does not generally have to undergo a separate CZM federal consistency review.

On the federal level, Section 10/404 and 103 permits from **U.S. Army Corps of Engineers (23)** may be required. Section 10 of the Rivers and Harbors Act governs placement of structures in navigable waters and covers issues such as location of federal navigation channels, access of adjacent users to their waterfront, and safe navigation. Section 404 of the federal Clean Water Act ensures that any fill placed in the waters of the U.S. (wetlands are also considered waters of the U.S.) will not harm the quality of the water or the plants and animals in it. Federal resource agencies will consider impacts to wetlands, eelgrass, shellfish, sediment transport, and water quality when conditioning this permit. A Section 103 permit is required to dispose of dredged material in the ocean. Again, the issues of concern are water quality and the impact of dumped sediment on animal and plant life. All of these permits have been incorporated into the Massachusetts Programmatic General Permit (PGP) and, for projects of little or no environmental impact, the permitting process is minimal.

If a project will alter more than five acres of land, a National Pollution Discharge Elimination System (NPDES) **Construction Stormwater General Permit (24)** is required. This permit is similar to the PGP in that it contains a number of construction provisions, however, as it is a general permit, the application is simply a one page notification to EPA.

State and federal regulatory agencies have made a significant effort in recent years to develop permits that have similar review thresholds and resource definitions. This effort has resulted in a more streamlined review process. For example, federal agencies now usually require minimal review of impacts that have already been conditioned and mitigated by the state permitting process.

Operations

Facility operations may use resources or generate a variety of pollutants that are regulated by state and federal law. The idea behind operation permits, and the regulations governing them, is to minimize the impacts of resource depletion or pollutant discharges to the environment.

Many facilities use large amounts of water in their operation. To preserve water tables and minimum stream flows, Massachusetts implements the **Water Management Act (25)** and the **Interbasin Transfer Act (26)**. New water withdrawals of 100,000 gallons per day and/or projects that withdraw “significant” amounts of water from one river basin and discharge it to another basin or to the ocean must obtain a permit from MassDEP and the Massachusetts Water Resources Commission.

Discharges of wastewater to municipal treatment plant systems and discharges of industrial wastewater and stormwater are regulated under a federal Clean Water Act, **National Pollution Discharge Elimination System (NPDES) (27)** permit and MGL Ch 21. In Massachusetts, EPA issues the permit after the state certifies that the proposed discharge is consistent with Massachusetts surface water quality standards through the **401 Water Quality Certification** program (28).

Operations may use or generate **hazardous materials (29)**, such as waste oil, solvents, and paints. The property owner or manager is responsible for proper storage and disposal of these hazardous materials. Different materials require different storage containers. The appropriate containers can be obtained from a licensed hauler or an industrial supply company. Disposal must be by a licensed hauler. Although the property owner or manager does not have to have a permit to dispose of this material (the hauler has the permits), he or she is required to identify the wastes that are to be transported so that the hauler can file proper freight manifests with MassDEP.

Local Boards of Health administer regulations governing the storage, removal, and transport of **solid waste (30)**. Because of the shortage of safe disposal facilities, the state strongly encourages recycling as a means of solid waste disposal.

If an operation has the potential to generate “significant” air pollution, the requirements of the **federal and state Clean Air Acts (31)** must be met. “Significant” air pollution generally means one or more tons of pollutants generated in a year.

Maintenance

Many permits and programs discussed above include requirements for proper maintenance of a facility. To avoid compliance actions, a manager should understand and implement these regular maintenance functions. The following section includes several examples of these provisions but is not an exhaustive list.

Both an **Order of Conditions (17)** and **Chapter 91 license (21)** may have conditions that either require or allow certain kinds future activities. The Order may, for example, include restrictions on equipment that can be dragged or driven across marshes. It probably requires regular maintenance on any stormwater control structures on the property. The town's conservation officer may want to visit the property to ensure that these conditions have been carried out.

A Chapter 91 license is usually written to allow a property owner to construct and maintain the project as originally proposed. This means that structures such as bulkheads and piers in the original footprint can be replaced without getting a new license. If expansion of this type of structure is proposed, however, a new license may be required. Dredging is also permitted under the Chapter 91 license. Maintenance of the existing dredged footprint may be allowed for five to ten years under a single permit. Improvement dredging will require a new Chapter 91 license.

Federal permits from the Corps (**23**) may include conditions requiring, for example, monitoring the success of planting, shellfish bed seeding, or beach nourishment projects. EPA's NPDES permits (**27**) will almost certainly require testing and reporting on the quality of the permitted discharge.

SECTION 2 - STATUTES, REGULATIONS, AND PROGRAMS

This section contains technical descriptions of the statutes, regulations, and programs, including statutory and regulatory citations, the area or activities under jurisdiction, applicability to project proposals, a brief summary, a description of the application and review process, and contacts for further information. The statutes are listed in the order in which they are found in Section 1.

For the text of the statutes and regulations cited, visit:

- Massachusetts statutes: <http://www.state.ma.us/legis/laws/mgl>.
- Massachusetts regulations: <http://www.lawlib.state.ma.us/cmr.html>.
- Federal statutes: <http://www4.law.cornell.edu/uscode>.
- Federal regulations: <http://www.gpoaccess.gov/cfr/index.html>.

1. AREAS OF CRITICAL ENVIRONMENTAL CONCERN

Authorities: M.G.L. c. 21A, § 2(7): Areas of Critical Environmental Concern; 301 CMR 12.00: Areas of Critical Environmental Concern.

Jurisdiction: Designated coastal and inland Areas of Critical Environmental Concern (ACEC).

Applicability: Massachusetts Environmental Policy Act (MEPA) (15) review thresholds are reduced in ACECs, therefore most project proposals must go through the MEPA review process. Certain activities regulated under the Department of Environmental Protection (MassDEP) Wetlands (16) and Waterways Programs (20), such as dredging or new pier construction may be prohibited. Check with ACEC staff to confirm the applicability of ACEC regulations to the proposed project.

Regulatory Summary: The purpose of the ACEC Program is to preserve, restore, and enhance environmental resources and resource areas of statewide significance. To accomplish this, the Program: (1) identifies and designates critical resources and resource areas; (2) increases the level of resource protection in designated ACECs; and (3) engages municipalities, state agencies, non-governmental organizations, and individuals in planning and carrying out resource management planning in ACECs. Generally, municipalities and citizen organizations nominate proposed ACECs.

Once designated by the Massachusetts Secretary of Environmental Affairs, resource protection is enhanced by the reduction of MEPA (15) thresholds for projects proposed in ACECs, thus ensuring a closer regulatory scrutiny by state agencies. The MassDEP Wetlands (16) and Chapter 91 Waterways Programs (20) also include provisions in their regulatory reviews that protect the resources of ACECs. Certain activities, such as improvement dredging and new pier construction, are prohibited until the specific activity is incorporated into a Resource Management Plan approved by participating municipalities and the Secretary of Environmental Affairs.

Review Process: The following reviews are required for a project proposed in an ACEC:

- MEPA (15) - Projects proposed in ACECs are given closer scrutiny under MEPA if they need certain state permits, use state funding, or involve state agency actions. The project review thresholds (size or type) that require filing of an Environmental Notification Form (ENF) are reduced for proposals in ACECs (301 CMR 11.03: Review Thresholds). Once an ENF is filed, the review process proceeds as described in the MEPA regulations (301 CMR 11.05: ENF Preparation and Filing).
- Waterways (Chapter 91) (21) - Chapter 91 regulations do not allow new fill in ACECs and place limits on new structures (310 CMR 9.32). Improvement dredging is permissible only for fishery and wildlife enhancement. Dredged material disposal is prohibited except for beach nourishment, dune construction or stabilization, or enhancement of fishery or wildlife resources (310 CMR 40.00).

- Wetlands (17) - The performance standard is raised to “no adverse effects” except for maintenance dredging for navigational purposes of “Land Under the Ocean” (310 CMR 10.24).

Forms: The following forms are required for each regulatory program:

- MEPA - Environmental Notification Form and Environmental Impact Report: Form and Content of EIR: <http://www.mass.gov/envir/mepa/thirdlevelpages/downloads.htm>.
- Waterways - Chapter 91 Waterways License at <http://www.mass.gov/dep/water/approvals/wwforms.htm#c91>.
- Wetlands - Notice of Intent at <http://www.mass.gov/dep/water/resources/noi.htm>.

Fees: No additional fees for projects proposed in ACECs.

Web Site: <http://www.mass.gov/dcr/programs/acec>.

Contact: DCR ACEC Coordinator (617) 626-1394 or (413) 586-8706.

2. COASTAL WETLANDS RESTRICTIONS

Authorities: M.G.L. c. 130, § 105: Protection of Coastal Wetlands; 310 CMR 12.00: Adopting Coastal Wetlands Orders.

Jurisdiction: Coastal wetlands for which Orders pursuant to 310 CMR 12.00 have been adopted in the Commonwealth of Massachusetts.

Applicability: Alteration of any registered wetlands is prohibited.

Regulatory Summary: The purpose of the Coastal Wetlands Restriction Act is to preserve public health, safety and welfare, private property, wildlife, and marine fisheries by the adoption, after suitable public comment, of Orders imposing restrictions on coastal wetlands. Regulated activities in restricted wetlands include dredging, filling, removing, otherwise altering, or polluting coastal wetlands. Coastal wetlands restriction orders are recorded at the Registry of Deeds. While this program is not currently active, a number of Orders have been recorded and are still in effect.

Review Process: Proposed alterations to registered wetlands are reviewed by local Conservation Commissions through the Notice of Intent (NOI), as described under the Wetlands Protection Act (16). A list of towns with registered wetlands can be obtained at <http://www.mass.gov/dep/water/resources/commlist.htm>.

Forms: WPA Form 3, Notice of Intent at <http://www.mass.gov/dep/water/resources/noi.htm>.

Fees: Based on the category of the proposed activity and resources affected (310 CMR 10.03).

Web Site: <http://www.mass.gov/dep/water/resources/commlist.htm>.

Contact: Department of Environmental Protection Wetlands Restrictions (617) 292-5695.

3. FLOODPLAINS

Authority: Executive Order No. 149: FEMA and Flood Plain Use.

Jurisdiction: Floodplains in the Commonwealth of Massachusetts.

Applicability: Construction by state agencies must avoid floodplains. State-administered grant and loan programs must avoid supporting construction in flood plains, to the extent possible.

Regulatory Summary: Designates the Massachusetts Department of Conservation and Recreation (DCR, formerly the Department of Environmental Management)) as the state coordinating agency to implement the National Flood Insurance Program. Requires all state agencies, to the extent possible, to avoid construction, provision of loans or grants, conveying, or permitting projects in floodplains. Provides for Massachusetts participation in the National Flood Insurance Program.

Review Process: Contact the Federal Emergency Management Agency (FEMA) to determine if a proposed project is in a floodplain. Projects proposed in floodplains are reviewed in conjunction with Massachusetts Environmental Policy Act (**15**), Massachusetts Wetlands Protection Act (**17**), and Massachusetts Office of Coastal Zone Management (**22**) reviews. Technical assistance is also available from the DCR Flood Hazard Management Program.

Forms: No additional forms for floodplain review.

Fees: No additional fees for floodplain review.

Web Site: FEMA's [Map Service Center](#)

DCR Flood Hazard Management Program at <http://www.mass.gov/dcr/stewardship/mitigate/>.

Contact: FEMA (800) 358-9616; DCR Flood Hazard Management Program (617) 626-1250.

4. BARRIER BEACHES

Authority: Executive Order No. 181.

Jurisdiction: Barrier beaches in the Commonwealth of Massachusetts.

Applicability: Projects using state funds must avoid construction in hazard-prone areas and in velocity zones.

Regulatory Summary: To protect the state's barrier beach system, Executive Order (E.O.) No. 181 directs state and federal land acquisition programs to give priority status to properties on barrier beaches; prohibits use of state and federal funding for growth and development in hazard-prone areas; requires the preparation of barrier beach management plans for state-owned beaches; prohibits development in velocity zones or on primary dunes; limits the use of coastal engineering structures on barrier beaches; and encourages use of appropriate dredged material for nourishment of barrier beaches. The Massachusetts Office of Coastal Zone Management (CZM) is charged with coordinating state agency management policy for barrier beach areas.

Review Process: Contact the closest CZM regional office to determine if the proposed location is on a barrier beach. Projects proposed on barrier beaches are reviewed in conjunction with the Massachusetts Environmental Policy Act (**15**), Massachusetts Wetlands Protection Act (**17**), Endangered Species (**5**), and CZM (**22**) reviews.

Forms: No additional forms for barrier beach review.

Fees: No additional fees for barrier beach review.

Web Site: CZM at <http://www.mass.gov/czm/hazards/beach/barrierbeach.htm>.

Contact: To view barrier beach maps, contact CZM Regional Coordinators:

- CZM North Shore (978) 281-3972.
- CZM Boston Harbor (617) 626-1200.
- CZM South Shore (781) 546-6012.
- CZM Cape Cod & Islands (508) 362-1760.
- CZM South Coastal (508) 946-8990.

5. MASSACHUSETTS ENDANGERED SPECIES ACT

Authorities: M.G.L. c. 131A: Massachusetts Endangered Species Act; 321 CMR 8:00: List of Endangered and Threatened Species; 321 CMR 10:00: Massachusetts Endangered Species Regulations.

Jurisdiction: Plants and animals in the Commonwealth that are endangered, threatened, or species of concern, and their habitats.

Applicability: Alterations of significant endangered or threatened species habitat, as designated by the Natural Heritage and Endangered Species Program (NHESP), require a permit from the NHESP.

Regulatory Summary: The state's Endangered Species Act provides for listing of endangered or threatened species or species of concern, and of their habitat. Once listed, the Act prohibits the taking, possession, transport, export, processing, sale or purchase of such species and any other species listed under the federal Endangered Species Act. The Act prohibits any alteration of significant habitat of any protected species that may reduce the viability of the habitat. The Act is administered by NHESP within the Massachusetts Division of Fisheries, Wildlife and Environmental Law Enforcement (DFWELE). The NHESP publishes a map of estimated threatened and endangered species habitat, however, the resident species are not identified to prevent unauthorized takings. The Massachusetts program also coordinates with the federal Endangered Species Act (6), administered by the U.S. Fish and Wildlife Service (<http://endangered.fws.gov>).

Review Process: If a project is proposed in estimated rare or endangered species habitat, as delineated on the NHESP database, a Rare Species Information Request Form must be submitted to NHESP. The NHESP will determine the rare species present in the estimated habitat and recommend measures to protect them. The permit is issued within about four weeks from receipt of a complete Request.

Forms: Rare Species Information Request Form at <http://www.mass.gov/dfwele/dfw/nhesp/reqform.pdf>.

Fees: None.

Web Site: <http://www.mass.gov/dfwele/dfw/nhesp/heritage.htm>.

Contact: NHESP (508) 792-7270.

6. FEDERAL ENDANGERED SPECIES ACT

Authorities: 16 U.S.C. § 1531 *et seq.*: Endangered Species Act of 1973; 50 CFR 17.00: Endangered Species and Threatened Wildlife and Plants.

Jurisdiction: Plants and wildlife of the United States that are listed as endangered or threatened, and their habitats.

Applicability: Non-federal projects that “take” federally-defined endangered or threatened species must have an Incidental Take Permit. The permit is issued in the context of a Habitat Conservation Plan filed by the applicant.

Regulatory Summary: The federal Endangered Species Act conserves the ecosystems on which endangered and threatened species depend. Species are protected under the Act as either endangered or threatened. Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future. The National Marine Fisheries Service (NMFS), which is responsible for marine species, and the U.S. Fish and Wildlife Service (USFWS) jointly administer the law, which is responsible for terrestrial and freshwater species.

Review Process: With the assistance of USFWS personnel, a habitat conservation plan is prepared to detail the level of take and measures to minimize and mitigate the impact of the project to endangered or threatened species. An application for an Incidental Take Permit includes a completed application form, the habitat conservation plan, and a National Environmental Policy Act (NEPA) Environmental Assessment (EA) or Environmental Impact Statement (EIS). Review deadlines are not specified in the regulations and depend on the complexity of the issues involved. According to USFWS, typical processing time is approximately 100 days.

Forms: Not yet available electronically. Contact USFWS Regional Office at (413) 253-8200 for a copy of the application form.

Fees: \$25 processing fee.

Web Sites: <http://endangered.fws.gov/>; <http://northeast.fws.gov>.

Contact: USFWS Regional Office (413) 253-8200; NMFS Regional Office (978) 281-9102.

7. UNDERWATER ARCHEOLOGICAL RESOURCES

Authorities: M.G.L. c. 6, §§ 179 & 180: Board of Underwater Archeological Resources; 312 CMR 2.00: Massachusetts Underwater Archeological Resources.

Jurisdiction: Underwater archeological resources within the coastal and inland waters of Massachusetts.

Applicability: Proponents of projects in jurisdictional waters must contact the Board of Underwater Archeological Resources to find out if the proposed activity will disturb underwater archeological resources.

Regulatory Summary: The Massachusetts Board of Underwater Archeological Resources is responsible for managing underwater historical and archeological resources. The Board oversees the discovery, reporting, protection, and preservation of resources such as abandoned properties, artifacts, treasure trove, and sunken ships that have remained unclaimed for 100 years or more, or which are valued at \$5,000 or more. Anyone wishing to excavate an underwater archeological site must obtain a permit from the Board. The exact location of archeological sites is not made public, in order to protect the resources from unauthorized excavation.

Review Process: Contact the Board to determine if there are underwater archeological resources at the proposed project site.

Forms: None.

Fees: None.

Web Site: <http://www.mass.gov/czm/buar/index.htm>.

Contact: Board of Underwater Archeological Resources (617) 626-1141.

8. HISTORIC PROPERTIES

Authorities: M.G.L. c. 9, §§ 26-27D: Massachusetts Historic Commission; M.G.L. c. 40C: Historic District Act; 950 CMR 71.00: Protection of Properties Included on the State Register of Historic Places.

Jurisdiction: Properties located in Massachusetts that are on or eligible for listing on the National Register of Historic Places.

Applicability: Any project proposed in an historic district must avoid, minimize, and mitigate adverse impacts.

Regulatory Summary: The Massachusetts Historic Commission (MHC) administers The National Historic Preservation Act in this state. MHC inventories historic properties and places in Massachusetts, promotes historic preservation in a variety of ways, and implements state and federal preservation laws. The primary regulatory vehicle is Section 106 of the National Historic Preservation Act, which requires federal agencies to “take into account” the effects of federal projects on properties listed or eligible for listing on the National Register. The Section 106 consultation process is a negotiation designed to resolve conflicts between proposed uses and historic places. It does not guarantee the preservation of the property, but rather guards against inadvertent destruction of historic resources. A similar process protects properties included on the State Register of Historic Places, however under state law, project proponents have an affirmative responsibility to avoid, minimize, and mitigate any adverse impacts to historic resources. In addition to federal and state preservation programs, many communities have established local historic districts and local preservation by-laws.

Review Process: Applicants must file a Project Notification Form with MHC to obtain a written opinion regarding the impacts of the proposed project on historic resources. The application must include a project description, site description, and a photocopy of the relevant U.S. Geological Survey (USGS) topographic map (available at <http://www.topozone.com>). MHC will review the information and issue a determination, which can be used for both Massachusetts Environmental Policy Act (15) review requirements and the Section 106 consultation with federal resource agencies. Should MHC find that there are protected historic or archeological resources on the site, they will recommend appropriate avoidance and mitigation measures.

Forms: Project Notification Form at <http://www.mass.gov/sec/mhc/mhcform/formidx.htm>.

Fees: None.

Web Site: <http://www.mass.gov/sec/mhc>.

Contact: MHC (617) 727-8470.

9. STATE FISHERIES REGULATIONS

Authorities: M.G.L. c. 21, § 5, and c. 130, §§ 1-104: Marine Fisheries; 322 CMR 2.00 *et seq.*: Marine Fisheries Regulations.

Jurisdiction: Commercial and sport fin fisheries and shellfisheries within the Massachusetts territorial sea and in Nantucket Sound.

Applicability: Projects in waterways must minimize impacts to finfish and shellfish and their habitat.

Regulatory Summary: The Division of Marine Fisheries (DMF) licenses and oversees fin fisheries and shellfisheries in Massachusetts waters, both for resident species and those that spend a portion of their lifecycle in the state's tidal waters. Responsibilities include (1) administration of marine fisheries laws; (2) assessment and enhancement of the biological integrity of marine fish and fisheries important to the Commonwealth; and (3) cooperation with state, federal and international agencies to accomplish these goals. Regulatory activities are conducted in coordination with the National Marine Fisheries Service.

Review Process: The Department of Environmental Protection will contact DMF as part of its 401 Water Quality Certification (**18**) review. DMF will recommend time-of-year restrictions to protect spawning fish or will recommend mitigation for damage to shellfish beds or areas of Submerged Aquatic Vegetation (SAV). (SAV maps can be located at <http://www.mass.gov/mgis/eelgrass.htm>.) DMF's recommendations are incorporated into the 401 Water Quality Certification as conditions.

Forms: No additional forms for DMF review of 401 applications.

Fees: No additional fees for DMF review of 401 applications.

Web Site: <http://www.mass.gov/dfwele/dmf>.

Contact: DMF (617) 626-1520 and (508) 563-1779.

10. FEDERAL FISHERIES REGULATIONS

Authorities: 16 U.S.C. §1801 *et seq.*: Magnuson-Stevens Fishery Conservation and Management Act; 50 CFR 600.00: Essential Fish Habitat.

Jurisdiction: Habitat of marine, estuarine, and anadromous finfish, mollusks, and crustaceans.

Applicability: Projects affecting Essential Fish Habitat (EFH) that require a federal permit may be subject to an EFH Assessment.

Regulatory Summary: The 1996 amendments to the Magnuson-Stevens Act strengthened the ability of National Marine Fisheries Service (NMFS) and the Fisheries Councils to protect EFH, including the waters and substrates necessary for fish to spawn, breed, feed, or grow to maturity. Habitat for managed species must be identified and adverse effects to EFH minimized. NMFS and other federal agencies must coordinate with each other on efforts to preserve and enhance EFH. EFH has been identified for 59 species in New England.

Review Process: Generally, NMFS incorporates its EFH Assessment into existing interagency coordination processes established under the National Environmental Policy Act, the Endangered Species Act (**6**), the Clean Water Act (**18**), the Fish and Wildlife Coordination Act, and other applicable federal laws. Upon being notified of a project proposal, NMFS must develop EFH Conservation Recommendations for the project. These recommendations are reflected in the federal permit.

Forms: None.

Fees: None.

Web Site: <http://www.nero.nmfs.gov>.

Contact: NMFS, Habitat Conservation Division (978) 881-9102.

11. OCEAN SANCTUARIES ACT

Authorities: M.G.L. c. 132A, §§ 12A-16F, 18: Ocean Sanctuaries Act; 302 CMR 5.00: Ocean Sanctuaries.

Jurisdiction: There are five Ocean Sanctuaries in Massachusetts waters including the Cape Cod, Cape Cod Bay, Cape and Islands, North Shore, and South Essex Ocean Sanctuaries. These include most state waters with the major exception of an area east of Boston Harbor. The landward boundary of the sanctuaries is the mean low water mark and the seaward boundary is the limit of state waters, generally three miles offshore. The boundaries are statutory and are described at M.G.L. c. 132A, § 13. Jurisdiction is over any activity that would seriously alter or endanger the ecology or appearance of Ocean Sanctuaries or the Cape Cod National Seashore.

Applicability: Structures and activities that significantly alter the ecology of the Ocean Sanctuaries are prohibited except as they may be allowed under section 302 CMR 5.08 of the Ocean Sanctuaries regulations.

Regulatory Summary: The Department of Conservation and Recreation (DCR) administers the Ocean Sanctuaries Program. The Act prohibits activities that may significantly alter or endanger the ecology or appearance of the ocean, seabed, or subsoil of sanctuaries or the Cape Cod National Seashore. To accomplish this goal the Act prohibits (1) building structures on or under the seabed; (2) construction or operation of offshore or floating electrical generating stations; drilling or removal of sand, gravel (except for the purposes of beach nourishment), other minerals, gases, or oils; (3) dumping or discharge of commercial, municipal, domestic or industrial wastes; (4) commercial advertising; and (5) incineration of solid waste or refuse on vessels within sanctuary boundaries. These prohibitions may be waived if a finding of “public necessity and convenience” can be made for the proposed project or activity. Under the Ocean Sanctuaries Act, DCR does not issue any licenses or permits but acts through the regulatory process of other agencies, particularly the Chapter 91 Waterways Program (21).

Review Process: There is no separate Ocean Sanctuaries review process. Ocean Sanctuaries staff comment on Massachusetts Environmental Policy Act (MEPA) (15) filings and on MassDEP Chapter 91 (21) license applications during the respective public comment periods. Proposals that are below MEPA thresholds are presumed to comply with the Ocean Sanctuaries Act. A project that receives a Chapter 91 License is presumed to comply with the Ocean Sanctuaries Act.

Forms: No additional forms are required for an Ocean Sanctuaries review.

Fees: No additional fees are required for an Ocean Sanctuaries review.

Web Site: None.

Contact: DCR Ocean Sanctuaries Coordinator (617) 626-1371.

12. DESIGNATED PORT AREAS

Authorities: M.G.L. c. 91: Public Waterfront Act; 301 CMR 25.00: Designation of Port Areas; 310 CMR 9.00: Waterways Regulations.

Jurisdiction: State-designated areas of concentrated maritime industrial activities.

Applicability: Projects proposed in Designated Port Areas (DPAs) must be maritime industrial uses or supporting uses.

Regulatory Summary: The state has designated areas in developed ports for the purposes of promoting and protecting marine industrial activities and certain supporting uses. DPAs have been set aside in Gloucester Inner Harbor, Beverly Harbor, Salem Harbor, Lynn, Mystic River, East Boston, Chelsea Creek, South Boston, Weymouth Fore River, New Bedford-Fairhaven, and Mount Hope Bay.

Review Process: Project proposals are reviewed through the Department of Environmental Protection (MassDEP) Chapter 91 **(21)** and Massachusetts Office of Coastal Zone Management (CZM) Federal Consistency Review **(22)** processes.

Forms: No additional forms for DPA review aside from MassDEP's Chapter 91 application form.

Fees: No additional fees for DPA review aside from MassDEP's Chapter 91 license application fee.

Web Sites: <http://www.mass.gov/czm/phpp2.htm>;
<http://www.mass.gov/dep/water/resources/waterway.htm>.

Contacts:

CZM Regional Coordinators:

- CZM North Shore (978) 281-3972.
- CZM Boston Harbor (617) 626-1200.
- CZM South Shore (781) 546-6012.
- CZM Cape Cod & Islands (508) 362-1760.
- CZM South Coastal (508) 946-8990.

MassDEP Waterways Program (617) 292- 5696.

13. MUNICIPAL HARBOR PLANS

Authorities: M.G.L. c. 91: Public Waterfront Act; 301 CMR 23.00: Municipal Harbor Plans, 310 CMR 9.00: Waterways Regulations.

Jurisdiction: Filled and flowed tidelands of the Commonwealth.

Applicability: Projects in state-approved municipal harbor planning districts must comply with the provisions of municipal harbor plans.

Regulatory Summary: Municipal harbor plans establish a community's objectives, standards, and policies for guiding public and private utilization of land and water within Chapter 91 (21) jurisdiction. Plans provide for an implementation program, which specifies the legal and institutional arrangements, financial strategies, and other measures to be taken to achieve the objectives of the harbor plan. Harbor plans may, for example, establish siting and design criteria for projects within a harbor, or designate certain parts of a harbor as off-limits to in-water construction and mooring placement. Plans are developed under Massachusetts Office of Coastal Zone Management (CZM) regulations and implemented under Chapter 91 regulations.

Review Process: Projects in municipal harbor planning districts are reviewed through the Department of Environmental Protection (MassDEP) Chapter 91 (21) and CZM federal consistency reviews (21).

Forms: BRP WW01, BRP WW14, BRP WW15, BRP WW16, or BRP WW17
<http://www.mass.gov/dep/water/approvals/wwforms.htm>.

Fees: There are no additional fees for review of projects in municipal harbor planning districts aside from MassDEP's license application fee.

Web Sites: <http://www.mass.gov/czm/phpp2.htm>;
<http://www.mass.gov/dep/water/resources/waterway.htm>.

Contacts: CZM Regional Coordinators:

- CZM North Shore (978) 281-3972.
- CZM Boston Harbor (617) 626-1200.
- CZM South Shore (781) 546-6012.
- CZM Cape Cod & Islands (508) 362-1760.
- CZM South Coastal (508) 946-8990.

MassDEP Waterways Program (617) 292- 5696.

14. ZONING BY-LAWS

Authorities: M.G.L. c. 40A: Massachusetts Zoning Act.

Jurisdiction: Use of land, buildings, and structures by cities and towns in the Commonwealth of Massachusetts.

Applicability: Applicants must contact local officials (usually the Planning or Zoning Board) to ensure that the proposed project is consistent with local zoning by-laws.

Regulatory Summary: The Zoning Act sets up the structure by which cities and towns adopt zoning by-laws to regulate uses of land, buildings, and other structures for the purpose of protecting the health, safety, and general welfare of present and future inhabitants. Most often zoning is accomplished by designation of zoning districts in which specific types of uses and/or structures are encouraged or prohibited. To protect environmental resources, a number of municipalities have adopted wetlands and floodplain overlay districts and watershed and aquifer overlay districts.

Review Process: The process is locally determined. Zoning maps are available from MassGIS at <http://www.mass.gov/mgis/zn.htm> or from the municipality.

Forms: Locally determined.

Fees: Locally determined.

Contact: Town or City Clerk.

15. MASSACHUSETTS ENVIRONMENTAL POLICY ACT

Authorities: M.G.L. c. 30, §§ 61-62H: Massachusetts Environmental Policy Act; 301 CMR 11.00: MEPA Regulations.

Jurisdiction: Projects requiring a state environmental license or permit, or funding.

Applicability: Proposed projects are subject to Massachusetts Environmental Policy Act (MEPA) review if they equal or exceed the MEPA thresholds. Examples of threshold activities include:

- Alteration of 25 or more acres of land.
- Alteration of designated significant habitat, and/or taking of endangered or threatened species or species of special concern.
- Alteration of coastal dunes, barrier beaches, or coastal banks; alteration of 500 ft. of fish run or inland bank; alteration of 1,000 s.f. of salt marsh or outstanding resource waters; alteration of 5,000 s.f. of bordering or isolated vegetated wetlands; new or expanded fill or structure in a velocity zone or regulatory floodway; alteration of one-half acre of other wetlands.
- Projects proposed within an Area of Critical Environmental Concern (ACEC).

See 301 CMR 11.03: Review Thresholds for a complete discussion of these thresholds.

PLEASE NOTE: It is important to thoroughly review the complete list of MEPA thresholds for applicability to a particular proposal.

Regulatory Summary: The MEPA Unit, within the Executive Office of Environmental Affairs, administers this review. MEPA provides opportunities for public review of the potential environmental impacts of projects for which state agency action is required; and helps state agencies to satisfy their obligation to avoid damage to the environment, or if damage to the environment cannot be avoided, to minimize and mitigate the damage to the maximum extent practicable. State agency action includes activities that are undertaken, permitted, and/or funded by agencies of the Commonwealth, and the transfer of lands owned or controlled by the Commonwealth. Major categories of project impacts subject to review include land; rare species; wetlands, waterways and tidelands; water; wastewater; transportation; energy; air; solid and hazardous waste; historical and archeological resources; and state-designated ACECs.

The intent of the MEPA review is to inform project proponents and state agencies of potential adverse environmental impacts while a proposal is still in the planning stage. The proponent, through the preparation of one or more review documents, identifies required state agency actions and describes the means by which the proposal complies with applicable regulatory standards and requirements. All relevant state agencies are required to identify any aspects of the proposal that require additional description or analysis prior to completion of the agency action, most commonly issuance of an environmental permit.

Review Process: Proponents of projects that require state action and that meet or exceed MEPA review thresholds (301 CMR 11.03: Review Thresholds) must file an Environmental Notification Form (ENF) (301 CMR 11.05: ENF Preparation and Filing) and may be required to file an Environmental Impact Report (EIR) (301 CMR 11.07: EIR Preparation and Filing). Notice of the availability of review documents and the ENFs are published in the semi-monthly [*Environmental Monitor*](#). The total review period for an ENF is 30 days from the publication date of the *Monitor*, of which the first 20 days is available for public and agency comments. After the close of public comment and before the last day of the ENF review, the Massachusetts Secretary of Environmental Affairs issues a certificate stating whether or not an EIR is required and, if so, what the scope of the EIR will be. The scope is limited to the potential environmental damages of the proposal that are within the subject matter of required state permits. The EIR review period last for 37 days following the date of the *Environmental Monitor* in which notice of its availability is published, of which the first 30 days are available for public and agency comment. Within seven days after the close of comments, the Secretary issues a certificate stating whether or not the EIR adequately and properly complies with the Massachusetts Environmental Policy Act and its implementing regulations. No state permits can be issued until the Secretary certifies that the EIR complies with MEPA, that is, the environmental impacts have been fully described and all necessary plans to avoid, minimize, and mitigate adverse effects are in place.

The MEPA regulations also provide mechanisms to review proposals that are below MEPA thresholds but may have adverse environmental impacts (301 CMR 11.04: Fail-Safe Review), project changes and time lapses (301 CMR 11.10: Project Changes and Lapses of Time), and for waivers of certain provisions of the regulations (11.11: Waivers).

Forms: Environmental Notification Form at <http://www.mass.gov/envir/mepa/thirdlevelpages/downloads.htm>.

Fees: None.

Web Site: <http://www.mass.gov/envir/mepa>.

Contact: MEPA Office (617) 626-1020.

16. NATIONAL ENVIRONMENTAL POLICY ACT

Authorities: 42 U.S.C. §4321 *et seq.*: National Environmental Policy Act of 1969; 40 CFR 1500: Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act.

Jurisdiction: Projects or programs requiring a federal agency action.

Applicability: Federal agencies must evaluate the environmental effects, including alternatives, to the proposed action or program.

Regulatory Summary: NEPA established environmental protection as a national policy goal and directed all federal agencies to consider the environmental consequences of their projects and permitting actions. The NEPA review provides opportunities for integration of national environmental policy into project planning; public and agency review of potential environmental effects of federal actions (including issuance of federal permits) and programs; coordinated and inter-disciplinary program planning; and resolution of disputes among agencies. Most federal agencies have promulgated regulations governing the incorporation of NEPA's reviews into their programs.

Review Process: NEPA set up a system for formal evaluation of environmental impacts of the actions of federal agencies, the centerpiece of which is the Environmental Impact Statement (EIS). This document includes an analysis of alternatives to the proposed action, a discussion of impacts from the proposed action, and disclosure of any irretrievable commitment of resources. Typically, a federal agency with an action on a project will prepare an Environmental Assessment (EA). Following publication in the Federal Register and a comment period, the agency will either issue a Finding of No Significant Impact (FONSI) or will decide to prepare an EIS to more fully examine alternatives, impacts, and mitigation. One federal agency is usually designated as the "lead" agency, and this agency will prepare the EIS. Other federal and state agencies may play an official role in preparation by becoming "cooperating" agencies with the lead agency. At the completion of the EIS process, the lead agency issues a Record of Decision making environmental findings.

Forms: NEPA regulations at 40 CFR 1502.10: Recommended format. includes an outline for an EIS.

Fees: Project proponents are likely to be asked to contribute to the cost of preparation of the EIS.

Web Site: <http://www.whitehouse.gov/ceq/index.html>.

Contact: The lead federal agency is the point of contact for a NEPA review process.

17. MASSACHUSETTS WETLANDS PROTECTION ACT and RIVERS PROTECTION ACT

Authorities: M.G.L. c. 131, § 40: Massachusetts Wetlands Protection Act; 310 CMR 10.00: Wetlands Regulations.

Jurisdiction: Any wetland, including:

- Any bank, freshwater wetland, coastal wetland, beach, dune, tidal flat, marsh or swamp bordering on the ocean, any estuary, creek, river, stream, pond, lake, or certified vernal pool;
- Land under any of the water bodies listed;
- Land subject to tidal action, coastal storm flowage, or flooding; and
- Riverfront areas in the Commonwealth of Massachusetts.

In addition, a 100-foot buffer zone around any fresh water or coastal resource listed above is subject to jurisdiction.

Applicability: Any construction in or near a wetland resource, including intertidal and subtidal habitat, is subject to the provisions of the Wetlands Protection Act (WPA).

Regulatory Summary: Local Conservation Commissions and the Department of Environmental Protection (MassDEP), Wetlands Program administer the WPA (310 CMR 10:00: Wetlands Regulations). The purpose of the WPA is to protect Massachusetts wetlands resources and to ensure that the beneficial functions of these resources are maintained. The resources identified are protected because they fulfill the public interest to protect public and private water supply, protect fisheries, protect groundwater supply, provide flood control, protect land containing shellfish, prevent storm damage, protect wildlife habitat, and prevent pollution. These interests are protected by a “no net loss of wetlands” policy. Projects that affect wetlands are required to avoid impacts where possible, minimize unavoidable impacts, and mitigate for unavoidable impacts. Performance standards define the levels of environmental impacts that cannot be exceeded.

Projects proposed in wetlands resource areas or in the buffer zone around them must obtain a local Order of Conditions. Wetland resources include land under the ocean, coastal banks, coastal beaches and tidal flats, coastal dunes, barrier beaches, rocky intertidal, salt marshes, land under salt ponds, Designated Port Areas, land containing shellfish, and land on the banks of fish runs.

Review Process: Proponents of projects in wetlands or in the buffer zone around them must apply for an Order of Conditions from the municipal Conservation Commission. In addition to the requirements of the WPA, project proponents should check with Conservation Commission officials to determine if there are any local wetlands by-laws applicable to the project. Applicants must also obtain a list of abutters from the Assessors Office so that the abutters can be notified of the proposed project.

The application, called the Notice of Intent (NOI), which describes the type and boundaries of resource areas and the type of work proposed, is submitted by the applicant to the Conservation Commission along with supporting plans. A professional engineer generally must stamp plans. A copy of the NOI is also submitted to the regional office of MassDEP, which issues a project number for the proposed activity. A legal notice is published in a local newspaper. Upon completion of these steps, the Conservation Commission opens the public hearing of the proposal.

If the project is approved or approved with conditions, the Commission has up to 21 days to issue an Order of Conditions (OOC). Abutters, a group of 10 citizens, or the applicant have 10 days to appeal an approval to MassDEP. If the proposal is denied, the applicant can appeal the decision to MassDEP. If the project is appealed, MassDEP will issue a Superceding Order of Conditions (SOOC), either confirming or altering the original Order.

Forms: WPA Form 3 Notice of Intent at <http://www.mass.gov/dep/water/resources/noi.htm>.

Fees: Based on the category of the proposed activity and resources affected (310 CMR 10.03).

Web Site: <http://www.mass.gov/dep/water/index.htm>.

Contact: MassDEP Wetlands Program (617) 292-5695.

18. 401 WATER QUALITY CERTIFICATION FOR DREDGING

Authorities: 33 U.S.C. 1341 *et seq.*, § 401: Federal Water Pollution Control Act, M.G.L. c. 21, §§ 26-53: Massachusetts Clean Water Act; 314 CMR 4.00: Surface Water Quality Standards, 314 CMR 9.00: 401 Water Quality Certification.

Jurisdiction: Dredge and/or fill projects in waters and wetlands subject to state and federal jurisdiction if a federal permit is required for the project.

Applicability: Any activity that would result in a discharge of dredged material, dredging, or dredged material disposal greater than 100 cubic yards that is also subject to federal regulation must obtain a 401 Water Quality Certification.

Regulatory Summary: The Division of Wetlands and Waterways in the Department of Environmental Protection (MassDEP) administer the 401 Water Quality Certification Program. The 401 review ensures that a proposed dredge and/or fill project that can result in the discharge of pollutants complies with Massachusetts Surface Water Quality Standards, the Massachusetts Wetlands Protection Act, and otherwise avoids or minimizes individual and cumulative impacts to Massachusetts waters and wetlands. As the authority to administer the 401 Water Quality Certification is derived from the Federal Water Pollution Control Act, only projects that require a federal permit are subject to 401 review.

Review Process: Reviews are divided into Major Projects (5,000 cubic yards of dredging or more) and Minor Projects (less than 5,000 cubic yards of dredging). The 401 application must include a description and plans of the proposed dredging area, method of dredging, a description of the material to be dredged, and the proposed disposal site. If the proposed dredging is in an Outstanding Resource Water (314 CMR 4.00) the applicant must publish a public notice in the *Environmental Monitor*. Copies of the public notice must be sent to the local Conservation Commission and to MassDEP. Written comments on the application are accepted by MassDEP for 21 days. MassDEP may condition the Certification to ensure that state surface waters are not harmed by the project.

Forms: BRP WW 07, 08, 09 Water Quality Certifications, Dredging Projects at <http://www.mass.gov/dep/water/approvals/wwforms.htm#wqcert>.

Fees: Major Project Certification: \$250.

Minor Project Certification: \$ 50.

Web Site: <http://www.mass.gov/dep/water/resources/protwet.htm>.

Contact: MassDEP Water Quality Certification Program (617) 292-5695.

19. MASSACHUSETTS STATE BUILDING CODE

Authorities: M.G.L. c. 143, §§ 93-100: Inspection and Regulation of, and Licenses for, Buildings, Elevators and Cinematographs; 780 CMR: Massachusetts State Building Code.

Jurisdiction: Structural, life, and fire safety of buildings and structures in the Commonwealth of Massachusetts.

Applicability: New construction, renovation, or demolition of existing structures, and changes of use or occupancy of an existing building must conform to the provisions of the Massachusetts State Building Code.

Regulatory Summary: The purpose of the State Building Code is to protect public safety by ensuring that buildings that are intended for occupancy are structurally sound, are constructed of appropriate materials, have adequate egress for fire safety, promote energy conservation, and have adequate sanitary facilities. The building code is written by the State Board of Regulations and Standards, and is administered locally by board-certified building inspectors.

Review Process: Application for a building permit is made to the local building inspector. The application is, to some extent, locally determined, but certain minimum information, such as a site description, contractor information, a description of the proposed work, and a cost estimate must be included. The local building official will issue a building permit and will also inspect the construction to ensure compliance with the building code.

Forms: Locally determined.

Fees: Locally determined.

Web Site: [Board of Building Regulations and Standards](#) .

Contact: Local Building Department.

20. STATE ENVIRONMENTAL CODE (TITLE 5)

Authorities: M.G.L. c. 21A, § 13: State Environmental Code; 310 CMR 11: Title I: Administration and Application of the Environmental Code; 310 CMR 15.000: Title V: Subsurface Disposal of Sanitary Sewage; 314 CMR 5.00: Ground Water Discharge Permit Program and 6.00: Ground Water Quality Standards.

Jurisdiction: Sewage disposal in the Commonwealth of Massachusetts.

Applicability: Projects that generate sanitary waste must dispose of it to municipal sewer systems or in compliance with Title 5 of the State Environmental Code.

Regulatory Summary: The purpose of the State Environmental Code is to protect public health and environmental resources by regulating the discharge of sewage. Septic systems generating less than 10,000 gallons per day are regulated by local Boards of Health. Larger systems must be reviewed and approved by the Department of Environmental Protection. Most larger systems are required to have secondary treatment before discharging effluent to groundwater.

Review Process: Review of smaller systems locally determined.

Forms: Locally determined.

Fees: Locally determined.

Web Site: <http://www.mass.gov/dep/water/wastewater/septicsy.htm> .

Contact: Local Board of Health.

21. PUBLIC WATERFRONT ACT (CHAPTER 91)

Authorities: M.G.L. c. 91: Public Waterfront Act; 310 CMR 9.00: Waterways Regulations.

Jurisdiction: Dredging, placement of structures, change in use of existing structures, placement of fill, and alteration of existing structures in any of the following coastal areas (recognizing that MGL Ch. 91 applies more broadly than to coastal areas):

- Flowed tidelands - projects in, on, over, or under tidal areas between the mean high water (MHW) line and the limit of state territorial waters (generally 3 miles from shore).
- Filled tidelands outside Designated Port Areas (DPAs) - projects up to the first public way or 250 feet from MHW, whichever extends farther inland.
- Filled tidelands inside DPAs - projects between the present and historic MHW (i.e. all filled areas inside DPAs).

For moorings, floats, rafts, and other bottom-anchored structures, an annual Section 10A permit may be obtained from the local harbormaster in lieu of a Chapter 91 license.

Applicability: Any project proposed in, under, or over flowed or filled tidelands or great ponds requires a Chapter 91 license or permit. A Simplified Chapter 91 Waterways License is available to owners of small residential docks, piers, seawalls, and bulkheads. Water-Dependent Chapter 91 Waterways Licenses cover all new or unauthorized water-dependent use projects that are not eligible for the Simplified License. All new or unauthorized nonwater-dependent uses must obtain a Nonwater-Dependent Chapter 91 Waterways License. The term of a Simplified License is 10 years, all others are 30 years.

Work not involving fill or structures, such as dredging, may apply for a Chapter 91 Waterways Permit. The term of a Permit is 5-10 years.

Regulatory Summary: The Division of Wetlands and Waterways in the Department of Environmental Protection (MassDEP) administers the Chapter 91 Waterways Program. Chapter 91 is the Massachusetts public trust statute and, as such, protects the public's rights to fish, fowl, and navigate below the current or historic high water line, as well as in great ponds and navigable rivers and streams in Massachusetts, the so-called public trust lands. Waterways regulations promote the preservation of tidelands for water-dependent uses that require direct access to the water. In addition, the regulations seek to ensure that areas in jurisdiction are maintained for public use and enjoyment when privately developed.

Projects are reviewed to ensure that they: (1) do not unreasonably interfere with navigation, (2) are structurally sound, (3) provide a proper public purpose, (4) do not interfere with public rights or rights of adjacent property owners, (5) will not adversely affect natural resources, and (6) preserve DPAs for maritime industrial use.

Review Process: The applicant must provide MassDEP with the proposed project location, type of project, project plans, information about other applicable state permits, a certification that the

project does not violate municipal zoning, and notification of the municipal planning board. Projects are subject to a 30-day public comment period advertised in a newspaper of general circulation. Nonwater-dependent projects also require a public hearing. MassDEP licensing decisions are subject to a 21-day appeal period.

The Chapter 91 License must be recorded at the Registry of Deeds with the property's chain of title within 60 days of issuance or the license becomes invalid.

Forms: CH91 Waterways License, Simplified License, Permits, Amendments at <http://www.mass.gov/dep/water/approvals/wwforms.htm>.

Fees: Application fees range from \$50 - \$2,500 depending on the application type.

Occupation fees are \$1 or \$2 per square yard per year of the license term, depending on the application type.

Tidewater Displacement fee of \$2 or \$10 per cubic yard depending on application type.

Web Site: <http://www.mass.gov/dep/water/resources/waterway.htm> .

Contact: MassDEP Waterways Program (617) 292- 5696.

22. FEDERAL CONSISTENCY REVIEW

Authorities: 16 U.S.C. 1451 *et seq.*: Coastal Zone Management Act of 1972, as amended, 15 CFR 930; M.G.L. c. 21A, §§ 2, 4: Massachusetts Coastal Zone Management Act, 301 CMR 20.00: Coastal Zone Management Program, 301 CMR 21.00: Federal Consistency Review Procedures.

Jurisdiction: Any project undertaken by a federal agency, requiring a federal permit, requiring a federal offshore oil and gas lease, or receiving federal funding that is in or may affect the land or water resources or uses of the Massachusetts coastal zone. The Massachusetts coastal zone is the area bounded by the seaward limit of the state's territorial sea (generally 3 miles from shore) to 100 feet landward of specified major roads, railroads, or other visible right-of-way (generally the first major transportation corridor inland of the shoreline). Projects outside this area but which may affect it may be subject to jurisdiction.

Applicability: Any project proposal that is above certain thresholds (generally, the Massachusetts Environmental Policy Act (MEPA) (15) thresholds) and that requires a federal license or permit must be found to be consistent with Massachusetts Office of Coastal Zone Management's (CZM) coastal policies.

Regulatory Summary: CZM's federal consistency review ensures that any federal activities in or affecting Massachusetts coastal resources is consistent with state coastal policies. These policies, the so-called enforceable program policies, are based on existing Massachusetts statutes and regulations and offer policy guidance on management of water quality, marine habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management. The project-specific federal activity cannot take place until CZM concurs that the project is consistent with state coastal policies.

Review Process: After receiving the final MEPA Certificate for the proposed project, the applicant must submit a copy of the Certificate, a copy of the federal license or permit application, and a federal consistency certification that describes the project's compliance with CZM's policies to CZM. CZM will place a public notice in the *Environmental Monitor* and will accept written comments for 21 days after the day of publication. CZM may concur with an applicant's federal consistency certification any time after the close of public comment and after it has received all other applicable state license and permits. CZM has a maximum of 180 days to complete its review. If CZM objects to an applicant's federal consistency certification – that is, finds that the project proposed is not consistent with its policies -- the applicant can appeal that decision to the U.S. Secretary of Commerce.

Forms: No forms. Applicants must provide copies of the MEPA Certificate and the federal permit application, and a federal consistency certification.

Fees: None.

Web Site: <http://www.mass.gov/czm> .

Contact: CZM Project Review Coordinator (617) 626-1219.

23. U.S. ARMY CORPS OF ENGINEERS PERMITS

The following permits are considered together as they are administered together by the U.S. Army Corps of Engineers (Corps) Regulatory Branch through a single permit application.

- **RIVERS AND HARBORS ACT OF 1899 (SECTION 10)**

Authorities: 33 U.S.C. §§ 401-413: Rivers and Harbors Act of 1899; 33 CFR 323: Permits for Structures or Work Affecting Navigable Waters of the United States.

- **CLEAN WATER ACT (SECTION 404)**

Authorities: 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act; 33 FCR 322: Permits for Discharges of Dredged or Fill Material into the Waters of the United States.

- **MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT, (SECTION 103)**

Authorities: 33 U.S.C. §1401 *et seq.*: Marine Protection, Research and Sanctuaries Act; 33 CFR 324: Permits for Ocean Dumping of Dredged Material.

- **MASSACHUSETTS PROGRAMMATIC GENERAL PERMIT**

Authorities: 33 CFR 320-330: U.S. Army Corps of Engineers Regulations.

Jurisdiction: Construction or placement of structures, dredging, and dredged material disposal in the waters of the United States.

Applicability: Any project in or affecting the waters of the United States must comply with the conditions of the Massachusetts Programmatic General Permit (PGP) or, in the case of larger projects, the conditions of an Individual Permit.

Regulatory Summary: A Section 10 permit is required for all work, including structures, seaward of the annual high water line in navigable waters of the United States, defined as waters subject to the ebb and flow of the tide, as well as a few of the major rivers used to transport interstate or foreign commerce. A Section 404 permit is required for activities that involve the discharge of dredged or fill material into waters of the United States, including not only navigable waters, but also coastal waters, inland rivers, lakes, streams, and wetlands. A Section 103 permit is required to transport dredged material for the purpose of disposal in the ocean.

The Corps, New England District has issued a PGP for work in Massachusetts. The PGP provides for three levels of regulatory review:

- Category I - Activities of minimal environmental impact that do not require Corps regulatory review and are classified as non-reporting. While no written notification to the Corps is required for these “minor” projects, they must comply with the conditions contained in the PGP.

- Category II - Activities likely to be of minimal environmental impact but that have the potential to have adverse effects. A project-specific review and authorization from the Corps in writing are required. Copies of the Massachusetts Chapter 91 (21) application and plans, or the 401 Water Quality Certification (18) application and plans, are usually sufficient for Category II review.
- Category III - Activities that have potential to cause adverse environmental impacts. These projects must get an Individual Permit from the Corps, and therefore require project-specific review, are available for public review and comment, and may require preparation of an Environmental Impact Statement.

The chart below includes examples of the activities and categories of the PGP.

Activity	Category I	Category II	Category III
Fill in Navigable Waters	No authorization for new fill or previously unauthorized fill.	Up to 1 acre of fill in a waterway; up to 1 acre of temporary fill in a salt marsh.	Greater than 1 acre of fill in a waterway; or greater than 1 acre of temporary fill in a salt marsh.
Dredging	Maintenance dredging less than 1,000 cy with upland disposal.	Maintenance dredging greater than 1,000 cy, new dredging up to 25,000 cy.	Any maintenance dredging affecting a special aquatic site, or new dredging greater than 25,000 cy.
Pile-Supported Structures and Floats	Private, bottom-anchored floats up to 400 s.f. in size; private, pile-supported piers for navigational access to the waterway up to 400 s.f. in size with attached floats up to 200 s.f. (total).	Private piers and floats that do not meet the terms of Category I. Expansions to existing boating facilities.	Any structure, pier or float that extends, or with docked or moored vessels that extends within horizontal limits of a Corps Federal Navigational Project. Structures, including piers and floats with a new or previously unauthorized boating facility.

The complete PGP is available from <http://www.nae.usace.army.mil>.

Review Process: With the PGP, applications for projects meeting the PGP criteria must include a brief project description, a vicinity map, a site plan, and a plan view of the proposed structure. Federal and state resource agencies meet every three weeks to review PGP applications. A PGP is usually issued, with or without special conditions, ten days after the review closes.

For Individual Permits, applications must include site location, a description of the project and its purpose, and related maps and plans. Within 15 days of receiving the required application material, the Corps issues a Public Notice seeking comments from abutters, regulatory agencies, and the public. Comments are accepted for up to 30 days. The Corps evaluates comments received, compliance with section 404(b)(1) of the federal Clean Water Act, public interest criteria and issues a permit. If denied, the applicant is informed of the reason(s).

Neither a PGP nor an Individual Permit is valid until the applicant has obtained a Department of Environmental Protection (MassDEP) 401 Water Quality Certification (**18**). Individual permits are not valid until the Massachusetts Office of Coastal Zone Management (CZM) (**22**) concurs that the project is consistent with state coastal policies.

Forms: PGP - None; Individual - ENG Form 4345 at <http://www.nae.usace.army.mil>.

Fees: PGP - None; Individual - Commercial Activity \$100.

Web Site: <http://www.nae.usace.army.mil> .

Contact: U.S. Army Corps of Engineers, New England District, Regulatory Branch (978) 318-8338 and (800) 362-4367.

24. CONSTRUCTION STORMWATER GENERAL PERMIT

Authorities: 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act; 40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System.

Jurisdiction: Discharges to the navigable waters of the United States.

Applicability: Operators of large and small construction activities must obtain coverage under an National Pollutant Discharge Elimination System (NPDES) construction stormwater permit. A large construction activity is generally one that will disturb five or more acres of land. A small construction activity will disturb one or more but less than five acres of land.

Regulatory Summary: Under the NPDES provisions of the Clean Water Act, the U.S. Environmental Protection Agency (EPA) regulates water quality, sediment, and pollutant discharge of stormwater runoff from construction sites. Currently, only large construction activities are permitted. Stormwater from small construction sites will be regulated in the year 2003 under Phase II of NPDES.

Review Process: Construction projects that propose the alteration of five acres or more of land must obtain coverage under the NPDES Stormwater Construction General Permit. The project proponent must submit a one page registration form known as a Notice of Intent to EPA and must develop and implement a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP details construction activities, erosion control measures, and inspection schedules to be implemented during construction to ensure that the construction activities do not have an adverse impact on wetlands and waterways.

Forms: General Information Form 1 – Consolidated Permits Program at http://www.epa.gov/npdes/pubs/form_1.pdf.

Fees: None.

Web Site: <http://cfpub.epa.gov/npdes> .

Contact: U.S. EPA Region I, NPDES Stormwater Coordinator (617) 918-1615.

25. WATER MANAGEMENT ACT

Authorities: M.G.L. c. 21G: Water Management Act; 310 CMR 36.00: Massachusetts Water Resources Management Program.

Jurisdiction: Ground and surface waters of the Commonwealth of Massachusetts.

Applicability: Water withdrawals of over 100,000 gallons per day or 9,000,000 gallons over a three-month period.

Regulatory Summary: The intent of the Water Management Act (WMA) is to protect water resources by limiting withdrawals to a “safe yield.” The unit of management is the basin and sub-basins of rivers. Safe yield is defined by environmental quantity and quality impacts on water resources near a proposed new withdrawal, as determined by the Department of Environmental Protection (MassDEP) and the Massachusetts Water Resources Commission. Within this context, water withdrawals that will not unduly stress the host river basin are permitted for five years, renewable to 20 years. Large water users had the ability to register their existing water use during the years 1981-1985, establishing a renewable right to that baseline withdrawal. Since the initial registration period, large withdrawers or registered withdrawers seeking to increase their water consumption have been required to obtain a Water Management Act Permit from MassDEP.

Review Process: A water withdrawal application, including all withdrawal points and total volume from all withdrawal points, is filed with the MassDEP Water Management Program and with the local water resources management official. Within 10 days of filing, an Environmental Notification Form (ENF) must be filed with the Massachusetts Environmental Policy Act (MEPA) Unit. A public notice and comment period is required. A key component of the application process is the water conservation plan prepared by the applicant for approval by MassDEP. MassDEP considers matters such as safe yield, impacts on other withdrawals, the proposed use of the water, and existing approved water resources management plans.

Forms: <http://www.mass.gov/dep/water/approvals/wmgforms.htm> .

Fees: Application fee is \$1,900. Annual compliance fee is \$100.

Web Site: <http://www.mass.gov/dep/water/resources/watercon.htm> .

Contact: MassDEP Water Management Program (617) 292-5706.

26. INTERBASIN TRANSFER ACT

Authorities: M.G.L. c. 21, §§ 8B-D: Interbasin Transfer Act; 313 CMR 4.00: Interbasin Transfer Regulations.

Jurisdiction: Massachusetts river basins.

Applicability: Transfer of any significant amount of water, including wastewater, outside a Massachusetts river basin.

Regulatory Summary: This statute is intended to manage the transfer of significant amounts of water between watersheds for the purpose of protecting reasonable streamflows within the donor and receiving river basins. The Massachusetts Water Resources Commission (WRC) evaluates proposed out-of-basin water transfers.

Review Process: Proposed transfers may be determined to be insignificant if they: (1) are under 1,000,000 gallons per day; (2) do not harm special resource values such as endangered species or Areas of Critical Environmental Concern (ACEC); (3) withdraw less than 5% of the instantaneous flow at a point in the stream determined by the WRC; and (4) do not diminish the 95% exceedence flow or wastewater dilution needs as determined by the 7 Q 10 flow. The WRC evaluation is based solely on environmental impacts of the proposed transfer. The WRC has 90 days to respond to a Request for Determination of Insignificance.

Interbasin transfers that cannot meet these tests of insignificance must be authorized by the WRC, which must hold two public hearings as part of its review. The WRC has 60 days from receipt of an Interbasin Transfer Act application to hold the hearings and 60 days after the close of hearings to make a decision. Before allowing a transfer, the WRC must determine that all practical water conservation measures have been taken and all viable local water sources have been developed in the receiving basin, and that reasonable instream flows will be maintained in the donor basin. Proponents should consider interbasin diversions to be a last resort after all other inbasin options have been exhausted.

Forms: <http://www.mass.gov/dcr/waterSupply/intbasin/download.htm>.

Fees: None.

Web Site: <http://www.mass.gov/dcr/waterSupply/intbasin/>.

Contact: DCR Office of Water Resources (617) 626-1366.

27. NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM

Authorities: 33 U.S.C. §1251 *et seq.*: Federal Water Pollution Control Act; 40 CFR 122: EPA Administered Permit Programs: National Pollution Discharge Elimination System; M.G.L. Ch. 21 s. 26-53: Massachusetts Clean Waters Act; 314 CMR 3.00: Massachusetts Surface Water Discharge Permit Program.

Jurisdiction: Discharges to the navigable waters of the United States.

Applicability: Domestic, industrial, and commercial discharges of wastewater or stormwater to surface waters.

Regulatory Summary: The U.S. Environmental Protection Agency (EPA) administers the National Pollutant Discharge Elimination System (NPDES) Program. In addition, the permits issued are also done under State of Massachusetts authority by the Department of Environmental Protection (MassDEP). Massachusetts is a non-delegated NPDES permit state; however, the permits are jointly issued by EPA and MassDEP and are equally and separately enforceable by both agencies. Under the NPDES Program, as authorized by the federal Clean Water Act, no point sources of pollutants can be discharged to the waters of the United States without a permit. Permits regulate discharges with the goals of: (1) protecting public health and aquatic life, and (2) assuring that every facility treats wastewater. Permits include site-specific effluent limits, and monitoring and reporting requirements. Regulated pollutants include sanitary waste, toxic pollutants, and non-conventional pollutants including nutrients such as nitrogen and phosphorus. Industrial or commercial facilities may need more than one NPDES permit as stormwater and wastewater are each regulated by separate permits. Permits are issued for up to five years and are renewable.

Review Process: An initial contact with EPA's Water Permits Division to determine applicable permits is recommended. Applicants must file Form 1 General Information Consolidated Permits Program describing the location and nature of the proposed discharge and its receiving waters. The Form 1 application covers many of the NPDES permits for different types of discharges. Other forms in addition to the Form 1 are required, depending upon the nature of the discharge (40 CFR 122.21). NPDES permits are not valid until the applicant has received a 401 Water Quality Certification (18) from MassDEP and a concurrence from Massachusetts Office of Coastal Zone Management (CZM) that the project is consistent with state coastal policies (22). CZM can begin its review of the proposed discharge when EPA has issued the draft permit and a federal consistency certification has been provided to CZM. CZM cannot complete its review until MassDEP issues 401 Certification for the discharge.

Forms: General Information Form 1 Consolidated Permits Program at http://www.epa.gov/npdes/pubs/form_1.pdf

Fees: Permits issued under authority of MassDEP require a fee for non-municipal dischargers; see MassDEP 310 CMR 4.00.

Web Site EPA at <http://cfpub.epa.gov/npdes>;
MassDEP at <http://www.mass.gov/dep/water/surfhome.htm> .

Contact: U.S. EPA Region I, NPDES Coordinator (888) 372-7431; MassDEP Surface Water Discharge Permit Program (508) 767-2796.

28. 401 WATER QUALITY CERTIFICATION FOR DISCHARGE

Authorities: 33 U.S.C. 1341 *et seq.*, § 401: Federal Water Pollution Control Act; M.G.L. c. 21, §§ 26-53: Massachusetts Clean Water Act; 314 CMR 4.00: Surface Water Quality Standards, 314 CMR 9.00: 401 Water Quality Certification.

Jurisdiction: Discharge of wastewater to waters and wetlands subject to state and federal jurisdiction if a National Pollution Discharge Elimination System (NPDES) permit is required for the project.

Applicability: Any activity proposed that would result in a discharge of dredged material, dredging, or dredged material disposal greater than 100 cubic yards that is also subject to federal regulation must obtain a 401 Water Quality Certification.

Regulatory Summary: The 401 Water Quality Certification Program is administered by the Division of Wetlands and Waterways in the Department of Environmental Protection (MassDEP). The 401 review ensures that a proposed dredge and/or fill project that can result in the discharge of pollutants complies with Massachusetts Surface Water Quality Standards, the Massachusetts Wetlands Protection Act, and otherwise avoids or minimizes individual and cumulative impacts to Massachusetts waters and wetlands. As the authority to administer the 401 Water Quality Certification is derived from the Federal Water Pollution Control Act, only projects that require a federal permit are subject to 401 review.

Review Process: Reviews are divided into Major Projects (5,000 cubic yards of dredging or more) and Minor Projects (less than 5,000 cubic yards of dredging). The 401 application must include a description and plans of the proposed dredging area, method of dredging, a description of the material to be dredged, and the proposed disposal site. If the proposed dredging is in an Outstanding Resource Water (314 CMR 4.00) the applicant must publish a public notice in the *Environmental Monitor*. Copies of the public notice must be sent to the local Conservation Commission and to MassDEP. Written comments on the application are accepted by MassDEP for 21 days. MassDEP may condition the Certification to ensure that state surface waters are not harmed by the project.

Forms: BRP WW 07, 08, 09 Water Quality Certifications, Dredging Projects at <http://www.mass.gov/dep/water/approvals/wwforms.htm#wqcert> .

Fees: Major Project Certification: \$250; Minor Project Certification: \$50.

Web Site: <http://mass.gov/dep/service/matrix.htm>.

Contact: MassDEP Water Quality Certification Program (617) 292-5695.

29. HAZARDOUS MATERIALS REQUIREMENTS

Authorities: 42 U.S.C. §§ 6901 *et seq.*: Resource Conservation and Recovery Act; 40 CFR 265: Solid Waste; M.G.L. c. 21C, §§ 4, 6 and M.G.L. c. 21E: Hazardous Waste Management Act; 31 CMR 30.000: Hazardous Waste Regulations.

Jurisdiction: Handling, transporting, and disposing of hazardous materials in Massachusetts.

Applicability: Projects that generate hazardous materials must store and dispose of them in compliance with Resource Conservation and Recovery Act (RCRA) requirements.

Regulatory Summary: The Massachusetts Department of Environmental Protection (MassDEP) administers the Hazardous Waste Management Act M.G.L. Ch. 21C and its implementing regulations 31 CMR 30.00, which are more stringent than the RCRA hazardous material handling requirements. Massachusetts regulates the collection, transportation, separation, recovery, and disposal of solid and hazardous materials. Hazardous materials are defined as ignitable, corrosive, reactive, and/or toxic. Regulatory requirements for shipping and storage differ, depending on the amount and type of hazardous material generated.

All generators of hazardous waste are responsible for its proper disposal. RCRA requires a national “cradle to grave” tracking system for hazardous waste. In Massachusetts, every shipment of hazardous waste by a large or small quantity generator must be transported by a licensed hauler and sent to a licensed treatment, storage, or disposal facility, or a permitted recycling facility, and must be accompanied by a Uniform Hazardous Waste Manifest. A list of requirements for storage, handling, and shipping is included in *A Summary of Requirements for Small Quantity Generators of Hazardous Waste*, available from MassDEP.

Review Process: Review applies to licensed haulers and treatment, storage, or disposal facilities.

Forms: Uniform Hazardous Waste Manifest, available from licensed haulers.

Fees: Determined by licensed hauler.

Web Site: <http://www.mass.gov/dep/toxics/hazmatma.htm>.

Contact: MassDEP Bureau of Waste Prevention (617) 292-5898.

30. SOLID WASTE REQUIREMENTS

Authorities: M.G.L. c. 111, §§ 31-31B: Removal of Garbage and 150A-150B: Solid Waste Disposal Facilities; 310 CMR 19.017: Waste Control.

Jurisdiction: Solid waste disposal in the Commonwealth of Massachusetts.

Applicability: Storage, transport, and disposal of waste materials.

Regulatory Summary: Local boards of health have authority over the general public health and may regulate the removal, transportation, and disposal of refuse. The Department of Environmental Protection (MassDEP) has mandated closing of unlined landfills and has limited the development of new solid waste disposal facilities, to better encourage reuse and recycling of waste material. In addition, MassDEP Waste Ban regulations restrict disposal of various recyclable and hazardous materials in solid waste facilities. Options for disposal of solid waste are therefore limited. Projects that generate solid waste will have to consider the cost of short-term on-site storage, transport of waste materials to an approved site, and tipping fees in their business plans. Proponents are encouraged to identify opportunities to reduce and recycle materials generated in construction as well as operation of proposed facilities.

Review Process: Locally determined.

Forms: Locally determined.

Fees: Locally determined.

Web Site: <http://www.mass.gov/dep/recycle/solidwas.htm> .

Contact: Local Board of Health.

31. CLEAN AIR ACT

Authorities: 42 U.S.C. §§ 7401 *et seq.*: Clean Air Act; M.G.L. 111, §§ 142A-142J: Massachusetts Clean Air Act; 310 CMR 7.00: Air Pollution Control.

Jurisdiction: State and national air quality.

Applicability: Any construction, reconstruction, or alteration of a project that has the potential to cause or contribute to a condition of air pollution.

Regulatory Summary: The federal Clean Air Act charges the U.S. Environmental Protection Agency (EPA) with setting limits on the amount of a pollutant that can be in the air anywhere in the United States. As much of the implementation of the Clean Air Act is accomplished by the states, each state must prepare an implementation plan for approval by EPA. The Massachusetts Air Program has been developed in conformance with the federal Clean Air Act and its amendments and is administered by the Department of Environmental Protection (MassDEP). MassDEP must give a pre-construction operating permit for any large, stationary source of air pollution.

Review Process: Based on the amount of emission and category of emission source, an applicant may seek a Limited Plan approval, a Non-major Comprehensive Plan approval, or a Major Comprehensive Plan approval from MassDEP. An applicant must submit two copies of the appropriate application forms, signed by a licensed Professional Engineer, to the local MassDEP regional office. The content of the application and the review time lines are dependent on the amount and type of emission. Reviews may take from 150 to 440 days and may include a public comment period. Approved plans are in effect until the permitted project is reconstructed or altered.

Forms: BWP AQ 01, 02, 03 - Plan Approvals at <http://www.mass.gov/dep/air/approvals/aqforms.htm#airpapp>.

Fees: Limited Plan Approval - \$300.00, Non-major Comprehensive Plan Approval - \$1,100, Major Comprehensive Plan Approval - \$11,250.

Web Site: <http://www.mass.gov/dep/air/index.htm>.

Contact: MassDEP Northeast Regional Office (978) 661- 7600.

MassDEP Southeast Regional Office (508) 946-2700.

MassDEP Central Regional Office (508) 792-7650.

MassDEP Western Regional Office (413) 784-1100.