California Regional Water Quality Control Board
Santa Ana Region

Alan C. Lloyd, Ph.D.
Agency Secretary

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Arnold Schwarzenegger
Governor

September 29, 2005

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

GENERAL CERTIFICATION FOR REPLACEMENT OF SHEET PILES AND DOCK PILES SUBJECT TO NATIONWIDE PERMIT 3 AND/OR SECTION 10 OF THE RIVERS AND HARBORS ACT

Dear Mr. Durham:

Clean Water Act (CWA) Section 401 states, in pertinent part, that, "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate." Regional and State Board staff believe that CWA Section 401 is not limited to Federally regulated activities under CWA Section 404, but includes any Federally regulated activity which may result in a discharge to navigable waters. Consequently, the Regional Board issues CWA Section 401 Water Quality Standards Certifications (Certifications) for activities resulting in discharges of dredge or fill subject to CWA Section 404 and some activities regulated under Section 10 of the Rivers and Harbors Act (RHA).

In order to streamline the issuance of Certifications, we are issuing this General Certification for the replacement of sheet piles and dock piles in the Santa Ana Region, subject to specified limitations. This General Certification is intended to address projects involving the replacement of existing sheet piles and dock piles in freshwater lakes and marine waters in both inundated and dry conditions. In inundated conditions, hydro-jetting is typically employed whereas in dry conditions, typical excavation techniques are employed but bed materials are generally returned to their original location and the original bottom elevations are maintained.

As outlined, this General Certification applies to a subset of activities authorized by the U.S. Army Corps of Engineers Nationwide Permit 3 and/or Section 10 of RHA and does not necessarily certify all activities authorized by Federal permits or licenses issued thereunder. The activities authorized by this General Certification are categorically exempt from the California Environmental Quality Act in accordance with Public

Resources Code § 21084; Class 1, Guidelines Section 15301 and Class 2, Guidelines Section 15302.

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

If Regional Board staff determines that a particular project involves special circumstances warranting exclusion from coverage under this General Certification, Regional Board staff will notify the Corps and the discharger or their agent in writing within 30-days of receiving notification, as described in Condition 7 below, and an individual Certification or waste discharge requirements will be issued.

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

1. Materials shall not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the discharger shall recover the material to the maximum extent practical.
2. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters to be increased by values greater than the following objectives[1] at a distance of 100 feet from the activity:
    a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
    b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
    c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.
3. In marine environments, the discharger shall survey for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread. If *Caulerpa taxifolia* is found prior to or during implementation of the project, the applicant shall not begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the

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

Regional Board shall be notified within 48-hours of the location and date of the discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Game (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Robert Hoffman at (562) 980-4043 (bob.hoffman@noaa.gov)) within 24-hours of discovery. Further information regarding a *Caulerpa taxifolia* sighting can be obtained at www.sccat.net. Should no *Caulerpa* be observed during the project, the applicant shall notify the Regional Board of this fact when all construction has been completed. Please contact Wanda Marquis-Smith at (951) 782-4468 concerning issues related to *Caulerpa taxifolia*.

4. Where sheet piles or dock piles are replaced in known toxic "hot spots", as defined in California Water Code Section 13391.5(e), the discharger shall implements BMPs to contain suspended or excavated sediments within the immediate work area to the maximum extent practical using best available technology and best conventional technology.
5. This General Certification shall not apply to projects requiring coverage under State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ.
6. This General Certification shall not apply to projects involving the construction of any new storm drain outfall.
7. Not later than 30 days prior to commencing work on the proposed activity, the applicant must submit to the Regional Board a "Notification" containing, at a minimum, the information listed below. If a "Notification" is required as part of the U.S. Army Corps of Engineers' (Corps) permit, a copy of the "Notification" to the Corps can be used instead. To avoid project delays, the applicant should submit the "Notification" as early as possible. If the applicant is not contacted by the Regional Board within 30 days of the postmarked date of the "Notification", the applicant may assume that the project meets the conditions of certification and may proceed with the project. The minimum content of a notification includes:
    a. A statement that the notification is submitted pursuant to this General Certification for the replacement of sheet piles and dock piles and that the applicant agrees to abide by all of the conditions contained herein.
    b. The name, address, and telephone number of:
        i. The applicant and
        ii. The applicant's agent (if an agent is submitting the notification).
    c. Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including:
        i. Federal agency.
        ii. Type (e.g., NWP Number).
        iii. File number(s) assigned by the federal agency(ies), if available.

d. Complete identification of any State-issued licenses/permits being sought for or applying to the proposed activity, including the Department of Fish & Game and the California Coastal Commission.
e. A complete project description including:
    i. The purpose and final goal of the entire activity.
    ii. Address (including city and county), cross-streets, or other appropriate location description, and the longitude and latitude of the project site.
    iii. Name(s) of any receiving water body(ies) that may receive a discharge.
    iv. Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).
    v. For each water body type reported under subsection e.iv. of this section, the total estimated quantity of waters and the types of discharge material(s) that may temporarily or permanently impact the waters of the State. Fill discharges shall be reported in acres. Fill discharges for channels, shorelines, riparian corridors, and other linear habitat shall also be reported in linear feet. Dredge discharges shall be reported in cubic yards.
f. A check in the amount specified in 23 CCR section 3833(b)(3), made out to the Santa Ana Regional Water Quality Control Board.
g. The "Notification" must be signed by the applicant or the applicant's agent (if an agent is submitting the "Notification"). The "Notification" must include a statement that the submitted information is complete and accurate.

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

(a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

This letter constitutes a Clean Water Act Section 401 Water Quality Standards Certification. I hereby issue an order certifying that any discharge from the above referenced projects will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. As stated above, discharges authorized by this certification are also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification".

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

Sincerely,

Gerard J. Thibeault
Executive Officer

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