



California Regional Water Quality Control Board

San Francisco Bay Region



Terry Tamminen
Secretary for
Environmental
Protection

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<http://www.waterboards.ca.gov/sanfranciscobay>

Arnold Schwarzenegger
Governor

APPLICATION FOR 401 WATER QUALITY CERTIFICATION AND/OR REPORT OF WASTE DISCHARGE

INSTRUCTIONS

Revised November 2004 – Updated email addresses / staff contacts

This document describes information to be submitted to the San Francisco Bay Regional Water Quality Control Board (Regional Board) when applying for a Clean Water Act §401 Water Quality Certification and/or filing a Report of Waste Discharge for projects that include dredging, filling, or otherwise impacting waters of the United States and/or waters of the State. The application for Water Quality Certification and the Report of Waste Discharge will be referred to collectively in this document as “application.”

Please Note: A Report of Waste Discharge for discharge of waste to land, as in a landfill, must be submitted on Form WD200. Please contact the Regional Board at (510) 622-2300 for this application.

APPLICATION SUBMITTAL

Applications and fees should be submitted to the above address, Attention: 401 Water Quality Certification. A minimum \$500 fee deposit is required as part of a complete application. The total fee amount will be assessed according to 23 CCR Sections 2200 (e) and 3833 (b)(2)(A) (see Water Quality Certification Fee Schedule, on page 7), and full payment is required before a certification or waiver can be issued. Make checks payable to *San Francisco Bay Regional Water Quality Control Board (or SFBRWQCB)*.

We encourage the Applicant to submit the required information using the Regional Board’s Application for 401 Water Quality Certification and/or Report of Waste Discharge (FORM R2C502 or R2C502-E). This application form is available at www.waterboards.ca.gov/sanfranciscobay/certs.htm or by calling 510-622-2300. The U.S. Army Corps of Engineers’ (Corps) 404 permit application form may be used in place of the Regional Board form, but it must be augmented to include all of the information described in these instructions. For projects occurring within multiple State and Federal agency jurisdictions, the Joint Aquatic Resources Permit Application (JARPA) may be used. The JARPA form, which will be accepted by all agencies concurrently, is available at www.abag.ca.gov/bayarea/sfep/projects/JARPA/JARPA.html, or by calling 510-622-2419. Applications submitted on the JARPA form must also be augmented to include all of the information described in these instructions. A letter or other application format will be accepted, provided it contains all required information described herein.

Please note that incomplete applications and/or lack of a deposit fee will delay the processing of your application. The review period of 60 days as required by 33 CFR 325.2 (b)(ii) and notification of other resource agencies will commence when the Regional Board **receives a complete application package**. The 60-day review period can be extended up to one year under special circumstances.

APPLICATION REQUIREMENTS

An application for 401 Water Quality Certification or a Report of Waste Discharge must provide sufficient information for the Regional Board to determine whether the project complies with State water quality standards and will not result in adverse impacts to waters of the State. Water quality standards and the Regional Board’s policies for protecting waters of the State are defined in the San Francisco Bay Basin Water Quality Control Plan (Basin Plan). The Basin Plan may be purchased for \$38 at the above address, and it may be viewed at www.waterboards.ca.gov/sanfranciscobay. Additional state regulations governing Regional Board actions are found in the Porter-Cologne Water Quality Control Act (Sections 13000-14958 of the California Water Code) and Titles 14, 23, and 27 of the California Code of Regulations

Preserving, enhancing, and restoring the San Francisco Bay Area’s waters for over 50 years

(CCR). Contents of a complete application for water quality certification are described in CCR Title 23 Section 3856. Federal regulations applicable to 401 Water Quality Certification actions are found in the Code of Federal Regulations (CFR), Title 33 Part 330, and Title 40 Parts 121, 131, and 230.

The following instructions are intended to help the Applicant prepare a complete application in compliance with CCR Title 23 Section 3856. Following these guidelines will help reduce delays in processing your application. Once an application is determined to be complete, additional information may be requested for clarification.

Answer each question completely. If there is insufficient room on the form for a complete response, please provide an attachment and identify the answer via the corresponding block number.

1. APPLICANT INFORMATION

Blocks 1 through 3: Provide the name, full mailing address, and daytime phone number(s) of the legal Applicant or "responsible party." The Applicant will be the entity or individual to whom the permit will be issued. *If the Applicant is an agency, company, corporation or other organization, indicate the responsible officer and title.*

Blocks 4 through 7: Provide the name, address, and phone number(s) of any agent authorized to act on behalf of the Applicant. If an agent is identified, the Applicant must sign the statement authorizing the agent to act on behalf of the Applicant.

2. PROJECT OR ACTIVITY INFORMATION

Blocks 8 through 11:

- Provide a project name or title consistent with other agency applications.
- Provide the name (if available) and type of any affected waterbody(ies). Indicate on a site location map the exact location of any waterbody(ies) or special aquatic site(s) that may be permanently or temporally affected either directly or indirectly by the project. The term "waterbody," as used in this document, refers to any wetland, stream, creek, intermittent drainage, drainage ditch, drainage swale, seep, pond, bay, estuary, vernal pool, marsh, ground water basin, or other waters of the State. If the project affects an unnamed tributary, clearly show the location of the tributary on a map and indicate the name of the nearest named waterbody to which it contributes. Provide the address (if applicable) of the project site.
- Provide the city, county, and water quality control board region wherein the project site lies. If the project site is in an unincorporated area, so indicate. Note that, if the project site is in two or more regions, the application must be submitted to the State Water Resources Control Board, not the regional boards, for action.

Blocks 12 and 13:

- Provide a map that clearly indicates the project site location and the boundary of the watershed within which the project lies, including an estimation of the drainage area (in acres) upstream of the project (USGS 7 ½ minute quadrangle is recommended). Provide the latitude and longitude of the project site (this can be approximated from an appropriate map).
- Include directions to the site from a known location or landmark, including highway, street names and numbers.

Block 14: Summarize the purpose and need for the over-all proposed project.

Block 15: Provide a full, technically accurate description of the entire activity and associated environmental impacts, including areas outside of jurisdictional waters. The description should include, but should not be limited to, the following points, as applicable:

- Purpose, dimensions, and locations of existing and proposed structures or fill within waters of the State, such as culverts, gabions, riprap, wing walls, dikes, cofferdams, and excavations;
- Impacts and potential impacts to beneficial uses as described in the Regional Board's Basin Plan, for any affected waterbody(ies). *Note: if the waterbody is not named in the Basin Plan, the beneficial uses of the nearest downstream named waterbody apply. For wetlands, beneficial uses are determined according to the methodology described on page 4-50 of the Basin Plan;*
- Acreage size of entire project;
- Pre- and post-construction stormwater management and pollution control measures. If a Stormwater Pollution Prevention Plan (SWPPP) is being prepared for the project, it may be submitted for this requirement as long as it fully describes post-construction control measures proposed;
- Direct or indirect changes in streambed slope, cross sectional dimension or area, vegetation, and/or surfacing;
- Changes in the drainage patterns and potential impacts to onsite and downstream waterbodies, including groundwater;
- The location and dimension of all associated access roads, work staging areas, and structures to be constructed on fill, piles, or floating platforms in waterbodies. Indicate if the structures are permanent or temporary (this should be reflected in Block 18 also). If temporary, provide a schedule or otherwise describe how long they will be placed in waterbodies, and how the site will be revegetated, restored, or otherwise reconditioned on their removal;
- Temporary or permanent dewatering or water diversions; and,
- Construction methods, timeline, and phasing plan.

Block 16: The Regional Board requires that all fill and other impacts to waters of the State be avoided to the extent practicable, and that unavoidable fill and/or other impacts be minimized. Provide information to demonstrate that the project has, to the extent practicable, avoided filling or otherwise adversely affecting waters of the State, and that any remaining impacts have been minimized.

- Describe efforts that have been or will be taken to avoid adverse impacts to waters of the State. Impact avoidance actions might include reconfiguring a project to avoid filling a waterway and to provide creek or wetland buffers, using a span bridge rather than a culvert for a roadway crossing, stacking units or parking structures to reduce project footprint, etc.
- For impacts that cannot be avoided, describe steps that have been or will be taken to minimize adverse impacts. Impact minimization actions might include using bioengineering techniques, sizing and designing structures to minimize hardscape (rather than applying standard designs), phasing or coordinating projects to reduce individual impacts, narrowing roadways to reduce impermeable surface area and associated stormwater runoff, etc.
- Describe and evaluate onsite and offsite alternatives to the project, consistent with the specifications of the U.S. EPA's Clean Water Act Section 404(b)(1) "*Guidelines for Specification of Disposal Sites for Dredge or Fill Material*", dated December 24, 1980.

Block 17: List any environmental documents (not including the CEQA documents listed in Block 20) that have been prepared for the project and/or the project site and which may contain information helpful to Regional Board staff in evaluating the project. Include wildlife and endangered species surveys, wetland or other jurisdictional delineations, hydrologic and geologic studies, groundwater studies, soil sampling reports, and so on. Provide the name of the document, the date prepared, and the name of the individual, firm, or agency that prepared it. Provide a copy of wetland delineations and endangered species surveys. Copies of other documents may be requested during staff review if additional information is needed to make a determination.

3. DREDGE & FILL INFORMATION

Block 18:

- If the activity involves the discharge of material into a wetland, creek, or other waterbody, including the temporary placement of material, list and explain each fill action.
- If the activity involves dredging material from a wetland, creek, or other waterbody, including “clean scoop” dredging, list and explain each dredge action.
- For each discharge/dredge action, describe the type and amount of material being discharged/dredged. State the quantity of each material being discharged in cubic yards.
- For each discharge/dredge action, provide the total estimated area of waters of the State that will be **temporarily and/or permanently** affected by a discharge or dredging. Specify temporary **(T)** or permanent **(P)**. Area estimates should be provided in acres and, for projects affecting linear features such as creeks, channels, shorelines, and riparian corridors, additionally in linear feet. Dredging estimates should be provided in acres and cubic yards.
- Provide a map, plan, or figure that shows the location of each action.

Block 18 Example:

Map Location Number	LOCATION (show on plan & indicate waterbody)	REASON FOR ACTION (See instructions)	AMOUNT AND TYPE OF MATERIAL (in cubic yards, see instructions)	SURFACE AREA AFFECTED (in acres and/or linear feet; specify (T) or (P); see instructions)
1	NW corner of parcel on Creek A	Place riprap to stabilize slope	3 CY ¼-ton riprap 10 CY root wads	.002 acre (P)
2	Creek B above construction	Construct coffer dam to dewater site	15 CY bags of clean gravel	.002 acre (T)
3	Along length of Creek B	Reconstruct failing bank	60 CY ½-ton riprap	2,100 LF (0.72 acre) (P)
4	Along length of Creek A	Dredge channel bottom to increase capacity	Remove 2,000 CY of sediment	3,000 LF (1.37 acre) (P)

4. MITIGATION

Block 19: In most cases, if the proposed project involves unavoidable temporary or permanent impacts to wetlands and/or other waters of the State, mitigation will be required. Describe the proposed mitigation in terms of area and function. Functions to evaluate may include wetland or riparian habitat, aquatic habitat, groundwater recharge or discharge, flood peak attenuation, water quality enhancement, sediment retention, sediment transport, etc., and are dependent on the character and function of the waters impacted. Except in the situation of a very minor impact

and simple mitigation, a Mitigation Plan should be attached that describes the proposed project's physical and biological impacts, mitigation goals, a mitigation work plan, a management and maintenance plan, success criteria and performance indicators, a monitoring plan, site protection measures, and financial assurance. Guidance for preparing a Mitigation Plan is available at www.waterboards.ca.gov/sanfranciscobay. Mitigation proposals should be consistent with the "Habitat Mitigation and Monitoring Proposal Guidelines" (U.S. Army Corps of Engineers, San Francisco District, October 1991) and/or "Guidelines for Monitoring Riparian Mitigation Projects" (U.S. Army Corps of Engineers, San Francisco District, 1994).

5. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As a Responsible Agency under CEQA, the Regional Board is required to consider CEQA documents prepared by the Lead Agency¹ prior to taking a permitting action, to determine whether the CEQA document(s) are adequate, and whether there are any unmitigated environmental impacts. The Regional Board may not approve a project as proposed if there are any feasible alternatives or feasible mitigation measures "...that would substantially lessen or avoid any significant effect the project would have on the environment" (14 CCR 15096(g)(2)). The Regional Board must make an independent finding as a Responsible Agency that the project has adequately followed the CEQA process.

Note: Although CEQA documentation is not required to complete an application, the Regional Board must be provided with, and have ample time to properly review, a final copy of valid CEQA documentation before taking a certification action. It is recommended that you provide copies of CEQA documents as soon as they are available.

Block 20: Identify the Lead Agency and contact. Provide the State Clearinghouse Number, if available. Provide the status, and date of completion where applicable, of any CEQA documents prepared for the project. Provide the exemption number (CCR Title 14 Section Number) for categorical or statutory exemptions. Attach a copy of any draft or final CEQA document(s). CEQA guidance is available at http://ceres.ca.gov/topic/env_law/ceqa/guidelines/.

6. ADDITIONAL INFORMATION

Block 21: If any portion of the proposed project has been initiated, describe the work and the extent to which it has been completed, and provide the date(s) it was done. Indicate whether any enforcement action, such as a stop work order or legal complaint, has been made or is planned against the project.

Block 22: Title 23 CCR 3858 requires the Regional Board Executive Officer to provide public notice of an application for water quality certification at least twenty-one days before taking action on the application. Alternatively, the Applicant or a federal agency may provide such notice. Please indicate whether you or a federal agency has provided such notification, and if so, the date and time of notification (e.g., via newspaper of local circulation, Corps Public Notice, etc.) If public notice has not been provided, provide the name, address, and phone number (if available) of any property owners, lessees, etc., whose property adjoins this property and also adjoins any waterbody being impacted, as well as the name, address, and phone number (if available) of any parties known to be interested in the project.

Block 23: List other state, federal, and local licenses, permits and agreements ("permits") that will be required for any construction, operation, maintenance, or other actions associated with the project. This would include, but is not limited to, permits from agencies such as the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS), U.S. Army

¹ The CEQA Lead Agency is usually the local agency with the most jurisdictional responsibility for a project.

Corps of Engineers (USACE or Corps), San Francisco Bay Conservation and Development Commission (BCDC), the California Coastal Commission, the State Water Resources Control Board (SWRCB), or the Regional Water Board (SFBRWQCB). Such licenses or permits might include, but are not limited to CWA Section 404; Section 10 of the Rivers and Harbors Act of 1899; CDFG streambed alteration agreements; BCDC permits; local zoning, building, and floodplain permits, water rights permits, and any other permits or orders from the SFBRWQCB. For each permit, provide the permit number (if available), the name and telephone number of a contact person at the permitting agency, and the date and status of application.

Attach copies of all final (or draft if not finalized) documents.

Note regarding federal permits: If no federal applications are required, provide a copy of any notification(s) concerning the proposed activity issued by the federal agency(ies). If no federal notifications are issued, provide a copy of any correspondence between the Applicant and the federal agency(ies) describing or discussing the proposed activity. If no application, notification, correspondence or other document must be exchanged between the Applicant and federal agency(ies) prior to the start of the activity, the application must include a written statement to this effect. If the federal licenses or permits required for the activity include a FERC license or amendment to a FERC license, DO NOT USE THIS APPLICATION, CONTACT THE STATE WATER RESOURCES CONTROL BOARD.

Block 24: List and describe any projects implemented by the Applicant within the last five years, or planned by the Applicant for implementation within the five years, that are in any way related to the proposed activity or that may impact the same receiving waterbody(ies) as the proposed activity. For purposes of this item, the waterbody extends to a named source or stream segment identified in the Regional Board's Basin Plan.

Block 25: Signature of the responsible party or authorized agent indicated in blocks 1 through 7 of the application.

For assistance, please contact the technical staff representative listed below for the county in which the project is located (current as of July 30, 2007):

Alameda	Brian Wines	(510)	622-5680	BWines@waterboards.ca.gov
Contra Costa	Matt Graul;	(510)	622-2381	MGraul@waterboards.ca.gov ;
	Kathryn Hart	(510)	622-2356	KHart@waterboards.ca.gov
Marin	Farhad Ghodrati	(510)	622-2331	FGhorati@waterboards.ca.gov
	Marla Lafer	(510)	622-2348	MLafer@waterboards.ca.gov
Napa	Tobi Tyler	(510)	622-2431	TTyler@waterboards.ca.gov
San Francisco	John West	(510)	622-2352	JWest@waterboards.ca.gov
San Mateo (Bayside)	Habte Kifle	(510)	622-2371	HKifle@waterboards.ca.gov
San Mateo (Coastal)	Carmen Fewless	(510)	622-2316	CFewless@waterboards.ca.gov
Santa Clara	Brian Wines	(510)	622-5680	BWines@waterboards.ca.gov
Solano	Jolanta Uchman	(510)	622-2432	JUchman@waterboards.ca.gov
Sonoma	Abigail Smith	(510)	622-2413	ASmith@waterboards.ca.gov
<u>401 Program Manager</u>	Elizabeth Morrison	(510)	622-2330	EMorrison@waterboards.ca.gov

WATER QUALITY CERTIFICATION FEE SCHEDULE

Effective October 28, 2003

23 CCR §2200 (a)(2) - Dredge and Fill Operation fees shall be assessed as follows, not to exceed \$40,000, plus applicable surcharge(s)².

Type of Discharge	Fees
(i) Fill & Excavation ³ Discharges. Size of the area as expressed in hundredths of acres (0.01 acre) (436 square feet) rounded up.	\$500 Base Price + (Discharge area in hundredths of an acre x \$21.50)
(ii) Dredging Discharges Dredge volume expressed in Cubic Yards.	\$500 Base Price + (Dredge volume in cubic yards x \$0.08)
(iii) Channel and Shoreline Discharges Includes linear discharges to drainage features and shorelines, e.g., bank stabilization, revetment and channelization projects. (Note): The fee for channel and shoreline linear discharges will be assessed under the "Fill and Excavation" or "Channel and Shoreline" schedules, whichever results in the higher fee.	\$500 Base Price + (Discharge length in feet x \$5.00)
(iv) Discharges to Non-federal (e.g. "Isolated") Waters. Discharges to waters or portions of waterbodies not regulated as "waters of the United States", including waters determined to be "isolated" pursuant to the findings of <i>Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers</i> (2001) 121 S. Ct. 675.	Double the applicable fee schedules except for (vi) restoration projects
(v) Low Impact Discharges. Projects may be classified as low impact discharges if they meet all of the following criteria: 1. The discharge size is less than all of the following: (a) for fill, 0.1 acre, and 200 linear feet, and (b) for dredging, 25 cubic yards. 2. The discharger demonstrates that:(a) all practicable measures will be taken to avoid impacts, (b) where unavoidable temporary impacts take place, waters and vegetation will be restored to pre-project conditions as quickly as practicable, and (c) where unavoidable permanent impacts take place, there will be no net loss of wetland, riparian area, or headwater functions, including onsite habitat, habitat connectivity, floodwater retention, and pollutant removal. 3. The discharge will not do any of the following: (a) directly or indirectly destabilize a bed of a receiving water, (b) contribute to significant cumulative effects, (c) cause pollution, contamination, or nuisance, (d) adversely affect candidate, threatened, or endangered species, (e) degrade water quality or beneficial uses, (f) be toxic, (g) include "hazardous" or "designated" material. 4. Discharge is to a waterbody regulated as "Waters of the United States".	\$500 Flat fee.
(vi) Restoration Projects. Projects funded or sponsored by a government program with the primary purpose of restoring or enhancing the beneficial uses of water. This schedule does not apply to projects required under a regulatory mandate or to projects undertaken primarily for some other non-restorative purpose, e.g., land development.	\$500 Flat fee
(vii) General Orders. Projects which are required to submit notification of a proposed discharge to the State and/or Regional Board as a condition of compliance with a general waste discharge requirement associated with permitting discharges authorized by a federal general permit or license, e.g., a U.S. Army Corps of Engineers nationwide permit.	\$60 Flat Fee

- ¹ When a single project includes multiple discharges within a single dredge and fill fee category, the fee for that category shall be assessed based on the total area, volume, or length of discharge (as applicable) of the multiple discharges. When a single project includes discharges that are assessed under multiple fee categories, the total fee shall be the

sum of the fees assessed under each applicable fee category; however a \$500 base fee, if required, shall be charged only once.

- ² “Excavation” refers to moving sediment or soil in shallow waters or under no-flow conditions where impacts to beneficial uses are best described by the area of the discharge. It typically is done for purposes other than navigation. Examples include trenching for utility lines, other earthwork preliminary to construction, removing sediment to increase channel capacity, and aggregate mining in fresh waters.
- An application cannot be considered complete without the initial deposit of \$500.
- Any certification action is not effective until payment of the required total fee.
- All fees should be made payable to and submitted to the Regional Water Quality Control Board at the above address, attention: 401 Certifications.
- **A fee calculator is available: <http://www.waterboards.ca.gov/sanfranciscobay/certs.htm>**