



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

**Department of Environmental
Conservation**

DIVISION OF WATER
Wastewater Discharge Authorization Program

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April 29, 2021

U.S. Army Corps of Engineers, Alaska District
Regulatory Division, CEPOA-RD
Col. Damon Delarosa, District Commander
P.O. Box 6898
JBER, Alaska 99506-0898

Re: USACE, Regional General Permit-04, Suction Dredging
POA-2007-372-M4, Statewide Waters

Dear Col. Delarosa:

In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation (DEC) is issuing the enclosed Water Quality Certificate for Regional General Permit-04 Suction Dredges pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) associated with suction dredge activities off floating structures or vessels for the purpose of mining metals in Navigable Waters of the United States within the State of Alaska.

DEC regulations provide that any person who disagrees with this decision may request an informal review by the Division Director in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. An informal review request must be delivered to the Director, Division of Water, 555 Cordova Street, Anchorage, AK 99501, within 20 days of the permit decision. Visit <http://dec.alaska.gov/commish/review-guidance/> for information on Administrative Appeals of Department decisions.

An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, PO Box 111800, Juneau, AK 99811-1800; Location: 410 Willoughby Avenue, Suite 303, Juneau within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,

A handwritten signature in cursive script that reads "James Rypkema".

James Rypkema
Program Manager, Storm Water and Wetlands

Enclosure: 401 Certificate of Reasonable Assurance

cc: (with encl.)

Ryan Winn, USACE, Anchorage
Megan Marie, ADF&G/Habitat, Anchorage

Anchorage USFWS Field Office
EPA, Region 10 AK

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATE OF REASONABLE ASSURANCE

In accordance with Section 401 of the Federal Clean Water Act (CWA) and the Alaska Water Quality Standards (18 AAC 70), the Department of Environmental Conservation (DEC) is issuing a Water Quality Certification to the U.S. Army Corps of Engineers, Regulatory Division (Attn: Col. Delarosa) at P.O. Box 6898, JBER, Alaska 99506-0898 for Regional General Permit-04 Suction Dredges (POA-2007-372-M4) pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) associated with suction dredge activities off floating structures or vessels for the purpose of mining metals in Navigable Waters of the United States within the State of Alaska.

On July 3, 2007, the Corps authorized GP 2007-00372, which expired July 3, 2012. The GP was re-issued October 1, 2012 with minor changes which expired October 1, 2017. The GP was extended to allow the Corps time to review the conditions of the permit and issue a new public notice. The 2012 reissuance of the GP changed the permit to only include section 10 waters, remove nozzle restrictions, and mirror the new Nationwide Permit Conditions. On April 12, 2019, the Alaska District Corps of Engineers (Corps) published a Public Notice (PN) for Department of the Army (DA) permit number POA-2007-00372-M1, to reissue and modify Rational General Permit (RGP) 2007-00372-M1 under authority of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). On November 12, 2020 the Corps issued a Special Public Notice reference number POA-2007-00372-M2 to revise and clarify that the RGP is intended solely for suction dredging off flowing structures or vessels in navigable waters of the U.S. Furthermore, for all non-reporting operations, the Permittee will be restricted to a suction nozzle size of 10 inches or less. For operations with a nozzle size larger than 10 inches, a Preconstruction Notification Form must be filed with the Corps to either confirm their operation qualifies under this RGP or if a Standard Permit is required.

A state issued water quality certification is required under Section 401 because the proposed activity will be authorized by a U.S. Army Corps of Engineers permit (POA-2007-00372) and a discharge of pollutants to waters of the U.S. located in the State of Alaska may result from the proposed activity. Public notice of the application for this certification was given as required by 18 AAC 15.180 in the Corps Public Notice POA-2007-00372-M2 posted from November 12 to November 27, 2020.

Antidegradation Analysis Finding

Pursuant to the Department's Antidegradation Policy and Implementation Methods at 18 AAC 70.015 and 18 AAC 70.016, DEC finds that the project would comply with the requirements for Tiers 1 and 2 regarding water quality impacts to receiving water immediately surrounding the dredge or fill material pursuant to the Corps evaluation and findings of no significant degradation under 33 U.S.C. 1344 and under 40 CFR 230. The use of appropriate best management practices and provisions of the RGP and Special Conditions will adequately protect the existing water uses and the level of water quality necessary to protect existing uses. Any potential water quality degradation is expected to be temporary and limited and necessary to accommodate important social and/or economic development in the area.

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

The Department of Environmental Conservation (DEC) reviewed the application and certifies that there is reasonable assurance that the proposed activity, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the CWA and the Alaska Water Quality Standards, 18 AAC 70, provided that the following additional measures are adhered to.

Pursuant to 18 AAC 70.020(a) and the Alaska Water Quality Criteria Manual for Toxics and Other Deleterious Organic and Inorganic Substances in 18 AAC 70.020(b), the following conditions are designed to reduce pollutants from operations permitted under the RGP to ensure compliance with the applicable water quality standards.

Turbidity

1. The project proponent shall obtain applicable wastewater discharge permit authorization associated with suction dredge activities with the State of Alaska, Department of Environmental Conservation, Alaska Pollution Discharge Elimination System Permit (18 AAC 83). For further information contact the Alaska Department of Environmental Conservation, Division of Water, Wastewater Discharge Authorization Program, 610 University Ave, Fairbanks AK 99709, phone 907-451-2142, <http://dec.alaska.gov/water/wastewater/mining/>.

General

2. USACE has stated that projects shall be reviewed under the federal rules in place at the time the application is received. This project and its mitigation were reviewed under the federal and state statutes and laws in place at the time the application was received. If the USACE determines any part or condition of this Certification is not lawful or is waived and unenforceable, the determination shall apply only to the part or condition so determined. The determination shall not apply to nor invalidate any remaining parts or conditions of this Certification. If the USACE makes such a determination, the applicant remains responsible for meeting state water quality statutes and rules, and if a violation occurs, may be subject to state enforcement (18 AAC 70.010).
3. This Certification does not release the applicant from any liability, penalty, or duty imposed by Alaska or federal statutes, regulations, rules or local ordinances, and it does not convey a property right or an exclusive privilege.
4. If your project is not completed by the time limit specified under the USACE Permit and will continue, or for a modification of the USACE permit, you must submit an application for renewal of this certification at least 60 days before the expiration date or any deadline established by USACE for certification action on the modification, or 60 days before the proposed effective date of the modification, whichever is sooner. (18 AAC 15.120(b), 18 AAC 15.130, 18 AAC 15.180).

Date: April 29, 2021



James Rypkema, Program Manager
Storm Water and Wetlands