



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

December 20, 2018

Chris Miller
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

AMENDED GENERAL CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR PROJECTS SUBJECT TO U.S. ARMY CORPS OF ENGINEERS' REGIONAL GENERAL PERMIT NO. 54 (SARWQCB NO. 302014-03)

Dear Mr. Miller:

The City of Newport Beach (City) has proposed to renew the sediment suitability determination for this existing Regional General Permit (RGP). The RGP requires that the City maintains and renews the sediment suitability every 5 years. The current sediment suitability expired in July 2018. In preparation for the sediment suitability expiration, the City conducted sediment sampling and reported its findings in a *City of Newport Beach RGP 54 Sediment Characterization Sampling and Analysis Report*, dated June 27, 2018 (Report). The sediment suitability determination contained within the Report was approved by the Southern California Dredged Material Management Team (SC-DMMT) on August 8, 2018. As such, the RGP and this associated Clean Water Act Section 401 Water Quality Standards Certification (Certification No. 302014-03) has been amended, to accommodate the new sediment determination. Amended sections in the following Certification are underlined in this text and the sections that follow. All other sections (not underlined) will remain in effect. Striking out text indicates that the text has been deleted.

On January 22, 2014 we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Anchor QEA, LLC on behalf of the City of Newport Beach ("City") for projects subject to the U.S. Army Corps of Engineers' ("Corps") Regional General Permit No. 54 ("RGP-54"). The application was deemed complete on February 3, 2014.

This letter responds to your request for certification that the activities described in your application will comply with applicable State water quality standards established in the Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan").

Project Description:

RGP-54 is a general permit administered by the U.S. Army Corps of Engineers (Corps) for minor maintenance dredging underneath and adjacent to private, public, and commercial docks, floats, and piers in portions of Lower Newport Bay and Upper Newport Bay. RGP-54 was last certified by the Regional Board on July 29, 2014 (Project No. 302014-03) for a period of five years. The Corps reissued RGP-54 on January 9, 2013.

RGP-54 applies to projects within Section 27 of Township 6 South, Range 10 West, of the U.S. Geological Survey Newport Beach, Calif. Quadrangle map (33 36 36.72 N/ 117 54 20.16 W). The specific areas proposed for coverage under RGP-54 are depicted in Figure 1 and revised Figure 2-3a, 3b, and 3c.

RGP-54 is limited to areas where the sediment has been characterized according to guidelines established by the ~~Southern California Dredged Material Management Team SC-DMMT~~. The guidelines specify that sediment data are valid for a period of five years. ~~The 2012 certification for RGP-54 applied to areas where sediment was sampled in 2009 and 2011 (data valid through May 2014 and May 2016 respectively).~~

The City conducted a new sediment sampling program in July 2013. The SC-DMMT evaluated these data in November 2013, approving discharge of dredged material at adjacent beach sites (for beach nourishment) or disposal at the U.S. EPA's LA-3 Ocean Dredged Material Disposal Site (LA-3) for sediments from all areas except for the Balboa Yacht Basin and Promontory Bay. Sediments not approved for disposal at LA-3 will be disposed of at an upland landfill. These results were valid until July 2018.

The City conducted a new sediment sampling program in September and October 2017 and April 2018. The SC-DMMT evaluated these data and approved them on August 8, 2018.

Although the 2014 certification for RGP-54 has not expired, the City has requested the existing Certification to incorporate updated sediment characterization data and to incorporate additional administrative adjustments to the RGP 54 program based on assessments of program implementation to date. Amended sections are underlined in this text.

The City also requests a number of changes to the General Certification issued in 2012 for RGP-54 that are summarized in Table 1.

Table 1: ~~Changes to Previous Certification for RGP-54~~

Specification	Previous Certification (302012-21)	This Certification (302014-03)
Areal definition	Between pierhead and bulkhead	Into federal channels
Maximum dredge depth	-7 feet MLLW ¹ plus 1 foot overdepth	-10 feet MLLW ¹ plus 2 feet overdepth
Eelgrass	Project ineligible if within 15 feet	Mitigate per SCEMP ² or the <u>2015 Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay</u>
Individual volume limit	1,000 cubic yards	8,000 cubic yards
Annual volume limit	20,000 cubic yards	75,000 cubic yards
Structures	No maintenance allowed	Repair and in-kind replacement ³

¹ MLLW – Mean Lower Low Water

² SCEMP = Southern California Eelgrass Mitigation Policy

³ For “in-kind replacement,” substitution with modern materials is allowed, but an increase in the overwater footprint when compared with the existing structure, and expansion of the structure’s size or function is not allowed.

Findings:

Maintenance dredging is needed to remove accumulated sediment from docks, floats, and piers in Newport Bay. This sediment originates largely from the San Diego Creek Watershed. A large backlog of dredging projects exists as only limited use was made of the previous RGP-54 certifications due to volume and eelgrass restrictions. For example, only sixteen small dock and beach maintenance projects, totaling about 5,700 cubic yards of dredging, received coverage under RGP-54 over the past year.

Depths: The proposed maximum dredging depths represent an increase of four feet compared to the previous certification. The City reasons that this is consistent with the authorized federal channel design depth and is applicable to the entire lower bay. Sediment testing was performed to characterize these depths in most locations. Increasing the maximum depth to the authorized channel design depth is reasonable.

Individual Project Volume: ~~As indicated in Table 1, the previous individual project limit of 1,000 cubic yards will be increased to 8,000 cubic yards. The previous individual volume limit was adequate for typical individual home dock dredging projects, but this certification will also accommodate dredging and structural repair activities by commercial facilities. An 8,000 cubic yard limit will be sufficient to accommodate the dredging volumes from the small marinas that would make use of this general permit.~~

Annual Dredging Volume: ~~As indicated in Table 1, the previous annual program limit of 20,000 cubic yard limit will be increased to 75,000 cubic yards. The increase in the annual limit will accommodate the backlog of dredging and the use of the permit by projects that were not covered by the previous RGP-54. The City estimates a maximum annual dredging volume of about 75,000 cubic yards per year, based on an expected mix of five small marina projects (totaling up to 40,000 cubic yards), four large/medium residential projects (3,500 cubic yards each, totaling up to 24,500 cubic yards), and ten small residential projects dredging (1,000 cubic yards each, totaling up to 10,000 cubic yards).~~

Application Reviews: The City has served as the primary point of contact for projects seeking authorization under RGP-54, reviewing applications for completeness and accuracy before forwarding notifications to the Regional Board. The City proposes to continue serving in this role for the duration of this permit. However, the City proposes that where eelgrass is present, projects will be subject to additional Regional Board review.

Sediment Characterization: ~~Sediments proposed for dredging under the previous RGP-54 re-authorization were characterized by a sampling program conducted in May 2009 and May 2011. The results were evaluated by the SC-DMMT, and most sediment was found to be suitable for discharge of dredged material at adjacent beach sites (for beach nourishment) or disposal at LA-3. These determinations were valid for a period of five years. The sampling results from May 2009 expired in May 2014, while the sampling results from May 2011 will expire in May 2016.~~

~~The City conducted a new sediment sampling program in July 2013. The SC-DMMT evaluated these data in November 2013, approving discharge of dredged material at adjacent beach sites (for beach nourishment) or disposal at the U.S. EPA's LA-3 Ocean Dredged Material Disposal Site (LA-3) for sediments from all areas except for the Balboa Yacht Basin and Promontory Bay.~~

Sediments not approved for disposal at LA-3 will be disposed of at an upland landfill. These results were valid until July 2018.

The City conducted a new sediment sampling program in September and October 2017 and April 2018. The SC-DMMT evaluated these data and approved them on August 8, 2018.

Turbidity: Natural background turbidity in Lower Newport Bay is below 50 Nephelometric Turbidity Units (NTU) except during storm events. For waters with natural turbidity less than 50 NTU, the Basin Plan specifies a water quality objective for turbidity as a maximum increase not to exceed 20% as a result of controllable water quality factors. To implement this objective, this certification specifies numeric limits at a distance of no more than 300 feet from the active dredging area for total suspended solids (TSS), transmissivity, and turbidity.

CEQA: Pursuant to the California Environmental Quality Act (CEQA), the Regional Board has independently determined that the project is categorically exempt from provisions of CEQA under Guidelines Sections 15301 "Existing Facilities," 15302 "Replacement or Reconstruction," and 15304(g) "Minor Alterations to Land" – "Maintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies."

Certification Conditions:

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

1. Notification: Prospective enrollees intending to obtain coverage under RGP-54 must notify the Regional Board at least 30 days prior to commencing work. Prospective enrollees may use the same notification as that used to notify the Corps provided it contains the information listed below. The Regional Board may disqualify a project from coverage under this Certification. In the event of disqualification, the prospective enrollee will be notified in writing within 30 days of receipt of notification. If the prospective enrollee is not contacted by the Regional Board within 30 days after mailing the notification, the prospective enrollee may proceed with the project. The minimum content of a notification includes:
 - a. A statement that the notification is submitted pursuant to General Certification No. 302014-03 for activities subject to RGP-54, and that the prospective enrollee agrees to abide by all conditions contained herein.
 - b. The name, address, and telephone number of:
 - I. The prospective enrollee, and,
 - II. The prospective enrollee's agent (if an agent is submitting the application)
 - c. Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including:
 - I. Federal agency(ies)
 - II. Type
 - 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 those issued by the Department of Fish and Wildlife, and the California Coastal Commission.
 - e. A complete project description, including:
 - I. The purpose and final goal of the entire activity.

- II. The 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. The total estimated quantity of dredge and fill. Fill discharges shall be reported in acres. Fill discharges for channels, shorelines (including bulkheads and seawalls), and other linear habitat shall also be reported in linear feet. Dredge discharges shall be reported in cubic yards.
 - V. Disposition of dredge materials, including longitude and latitude of the disposal site(s).
 - VI. The results of any applicable sediment characterization completed, including testing conducted by others (e.g., the City of Newport Beach), and as required by RGP-54.
- f. Payment by check in the amount specified for "General Orders" in the iteration of Section 2200 (a)(3)(H), Title 23 of the California Code of Regulations in effect when the Notification is submitted, made payable to the State Water Resources Control Board. Currently, this amount is \$132.
 - g. The notification must be signed by the prospective enrollee or the prospective enrollee's agent. The notification must include a statement that the submitted information is complete and accurate.
2. Point of contact: The City of Newport Beach shall serve as the primary point-of-contact for projects enrolling under RGP-54 and shall review all notifications for completeness and accuracy. Once the City has determined that the project meets the conditions of this permit, it shall forward the notification to the Regional Board.
 3. Fees: The City of Newport Beach shall pay the appropriate dredging fee associated with this certification pursuant to Section 2200 (a)(3)(B), Title 23 of the California Code of Regulations ("Dredging Discharges") prior to forwarding enrollee notifications of construction activities authorized by this certification. The City shall make payment of this fee on an annual basis. The first annual payment shall be made one month after all applicable permits for this re-certification of RGP-54 have been obtained. The first annual payment shall be calculated on the basis of the maximum annual dredging volume authorized by this Certification, minus the base fee, which has already been paid. Subsequent annual payments will be based on the maximum annual dredging volume authorized minus the actual dredging volume for the previous year. Subsequent annual payments shall be made on the anniversary of the first payment. Payment shall be made at the Santa Ana Regional Water Quality Control Board payable to the State Water Resources Control Board.
 4. Expiration: ~~This certification expires five years after the date of its issuance.~~ This certification expires December 20, 2020. Any project begun, or in process on that date shall complete all discharges of dredge or fill within thirty days of the expiration date.
 5. Structure Maintenance: Maintenance and repair of structures is allowed but limited to "in-kind replacement." Replacement with modern materials is allowed; increase in the overwater footprint compared to the existing structure, and expansion of existing structure's size or function is not allowed.

6. Sediment Characterization: This certification is limited to areas characterized by sediment sampling and authorized for disposal at LA-3 discharge of dredged material at adjacent beach sites (for beach nourishment) or upland (U.S. EPA's suitability determinations in 2018). Certain areas will require further characterization. These areas are depicted in Figure 1 and revised Figure 2, 3a, 3b, and 3c.
7. Reporting: The City of Newport Beach shall forward pertinent information to the Regional Board for each dredging project undertaken under this general certification. This will include, at a minimum, sediment characterization (if any), monitoring data (if any), dredging volume, area, depth, and disposal location(s).
8. Dredge Volumes: Cumulative dredging volumes cannot exceed 75,000 cubic yards per year. Individual project dredging volumes cannot exceed 8,000 cubic yards.
9. Caulerpa taxifolia: Enrollees must conduct at least one survey for the invasive algae *Caulerpa taxifolia* 30 to 90 days prior to initiating a project. The enrollee can also rely on the Caulerpa presence/absence determination from the City's biennial survey data to satisfy the Caulerpa survey requirement. If *Caulerpa taxifolia* is discovered the enrollee must notify Regional Board staff, the California Department of Fish and Wildlife (CDFW), and/or the National Marine Fisheries Service (NMFS) within 24 hours of discovery. The enrollee may begin dredging only after implementing management measures specified by the CDFW and/or NMFS.
8. Eelgrass: Each enrollee must follow the latest California Eelgrass Mitigation Policy (SCEMP) procedures established by NMFS regarding eelgrass. An eelgrass survey must be conducted within 30 to 90 days prior to the commencement of each project. The enrollee can also rely on the City's eelgrass data collected every two years to satisfy the pre-construction eelgrass survey requirement. If eelgrass is present, mitigation must be performed in accordance with SCEMP policy, or the 2015 Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay, and/or future NMFS-approved eelgrass plans that supersede or update this policy. ~~New policies could include the California Eelgrass Mitigation Policy currently under development by NMFS, the Eelgrass Protection and Mitigation Plan for Shallow Waters in Lower Newport Bay currently under development by the City, or others as developed and approved by regulatory and resource agencies.~~ The City must ensure that projects requiring eelgrass mitigation have received approval from NMFS prior to forwarding the notification to the Regional Board.
9. Best Management Practices: At a minimum, the following BMPs shall be utilized:
 - a. For projects dredging over 1,000 cubic yards, a continuous, floating silt curtain shall be deployed around active dredging areas.
 - b. Operational BMPs such as reduction in dredging rate, modification of clamshell operation, use of favorable tidal conditions to minimize spread of turbidity plumes, and temporary suspension of dredging shall be employed as necessary.
 - c. All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources associated with the project and incorporating all necessary pollution prevention BMPs for each potential pollution source identified.

10. **Receiving Water Limitations:** Enrollees must comply with the following applicable narrative and/or numeric objectives:
- a. **Narrative Objectives for Physical Characteristics:** Wastes associated with the dredging operation shall not violate Basin Plan narrative objectives for color, floatables, and oil and grease, including the following:
 - I. Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses.
 - II. Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.
 - III. Waste discharges shall not result in deposition of oil, grease, wax, or other materials in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.
 - b. **Numeric Limits for Physical/Chemical Characteristics:** Enrollees must comply with the numeric receiving water limitations specified in Table 2. Data shall be collected at a distance of no more than 300 feet from the dredge footprint. The turbidity and transmittance limits in Table 2 are based on recent data collected in Lower Newport Bay¹. Enrollees may use the City of Newport Beach's latest eelgrass survey to determine whether eelgrass is present within 300 feet of the project site. The transmissivity limits in Table 2 apply only if the enrollee chooses to monitor transmissivity in addition to turbidity. When the enrollee monitors both transmissivity and turbidity, compliance will be achieved if either transmissivity or turbidity is below the respective limit shown in Table 2.

Table 2: Numeric Receiving Water Limitations

Parameter	Receiving Water Limitation	
	Eelgrass Present Within 300 feet	No Eelgrass Present Within 300 feet
Transmissivity	38%	16%
Turbidity	16 NTU	47 NTU
pH	7 < pH < 8.6; < 0.2 change from ambient	
Dissolved Oxygen	> 5 mg/L	

11. **Minimum Monitoring Program:** Enrollees must implement a monitoring program to ensure compliance with the receiving water limitations specified in Condition 10, above. Minimum requirements of the monitoring plan are listed in Table 3. The enrollee will be required to perform water quality monitoring on a daily basis during the first individual dredging project using a given type of dredging (e.g., hydraulic suction dredging or mechanical dredging) approved under RGP-54. The results of the monitoring shall be forwarded to the Regional Board as specified in Condition 7 (Reporting). If the monitoring results are within the receiving water limitations specified in Condition 10,

¹ Anchor QEA. Lower Newport Bay Water Quality Monitoring, Suspended Sediment Special Study. May18, 2012.

then subsequent monitoring during individual projects will not be required if the total dredging duration will be less than two days. If dredging will extend beyond two (2) consecutive days, then monitoring will be required every other day beginning with the third day (monitoring will be required on days 3, 5, 7, etc.).

Table 3: Minimum Monitoring Program

Locations	Monitored Constituents	Frequency
Less than or equal to 300 feet from dredge footprint	Turbidity, Dissolved Oxygen, pH	Every other day beginning with the third consecutive day of dredging

12. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.

Standard Conditions:

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

(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 enrollee.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the enrollee to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the enrollee to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby certify that any discharge from the referenced project 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.

This discharge is 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 Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at:

www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

The previous certification issued for RGP-54 (SARWQCB Project No. 302012-21) will be closed to new projects on the date that this certification (SARWQCB Project No. 302014-03) becomes effective.

Should there be any questions, please contact ~~Doug Shibberu~~ Marc Brown at (951) 782-7959 321-4584, or ~~Mark Adelson~~ David Woelfel at (951) 782-3234/7960.

Sincerely,



Hope A. Smythe
Executive Officer

Enclosures: Figure 1 and revised Figure 2, 3a, 3b, and 3c

cc (via electronic mail):

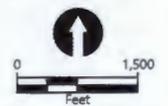
Anchor QEA, LLC, Adam Gale
SWRCB, Office of Chief Counsel – Teresita Sablan
SWRCB, DWQ Water Quality Certification Unit
U.S. Army Corps of Engineers, Los Angeles Office – Gerardo Salas ~~Stephen Estes~~
U.S. Fish and Wildlife Service – Jon Avery
California Department of Fish and Wildlife – Kevin Hupf



SOURCE: Aerial from Bing maps. Lotlines from City of Newport Beach.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

LEGEND:

- | | | | | | |
|-----|---|---|--------|---|--------|
| ⊙## | Actual Sampling Locations (-10 ft + 2 ft Overdepth) | — | Area 1 | — | Area 4 |
| ⊙## | Actual Sampling Locations (-7 ft + 1 ft Overdepth) | — | Area 2 | — | Area 5 |
| | | — | Area 3 | | |



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LEGEND:

- Suitable to -10 feet MLLW plus 2 feet of overdepth for unrestricted disposal at the LA-3 ODMDS. Grain size required prior to beach replenishment or nearshore placement to demonstrate suitability.
- Suitable to -7 feet MLLW plus 1 foot of overdepth for unrestricted disposal at the LA-3 ODMDS. Z-layer testing to confirm post-dredge surface contains mercury less than 1 ppm prior to dredging to demonstrate newly exposed surface is clean. Grain size required prior to beach replenishment or nearshore placement to demonstrate suitability.
- - - - Area not included under RGP 54.
- Material proposed for disposal at LA-3 ODMDS must have chemical testing for mercury with agency concurrence to verify suitability prior to disposal. Z-Layer testing is required to confirm post-dredge surface contains mercury less than 1 ppm prior to dredging to demonstrate newly exposed surface is clean. Material proposed for beach replenishment or nearshore placement must also have grain size verification prior to placement.
- Material proposed for disposal at LA-3 ODMDS must have chemical testing for mercury and PCBs with agency concurrence to verify suitability prior to disposal. Z-layer testing is required to confirm post-dredge surface contains mercury less than 1 ppm and PCBs less than 100 ppb prior to dredging to demonstrate newly exposed surface is clean. Material proposed for beach replenishment or nearshore placement must also have grain size verification prior to placement.
- · - · - Suitable to -10 feet MLLW plus 2 feet of overdepth for unrestricted disposal at the LA-3 ODMDS. Material proposed for beach replenishment or nearshore placement must have grain size verification and chemical testing for DDTs with agency concurrence to verify suitability prior to placement. Z-layer testing is required to confirm post-dredge surface contains DDT concentrations less than 18.0 ppb*.

Revision Date: August 1, 2018

SOURCE: Aerial from Bing maps. Coastline extents from City of Newport Beach.
HORIZONTAL DATUM: California State Plane, Zone 6, NAD83.
VERTICAL DATUM: Mean Lower Low Water (MLLW).

NOTE:
 Areas included in RGP 54 are generally between the bulkhead and pierhead lines with the shoreline/boundary demarcated by the various colors/hatched lines. The colored lines, whether solid or dashed, always follow the shoreline rather than following individual fingers or docks. ODMDS (Ocean Dredged Material Disposal Site) and ppm (parts per million).

* Represents the 95% Upper Confidence Limit for surface sediment concentrations within the RGP permit area.



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