

Commonwealth of Massachusetts  
Executive Office of Energy & Environmental Affairs

## Department of Environmental Protection

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KENNETH L. KIMMELL  
Commissioner

### Amended Severe Weather Emergency Declaration

#### *February 2013 Nor'easter*

Pursuant to the authority granted by M.G.L. c. 131, § 40, as amended by Chapter 238 of the Acts of 2012 (see Appendix A) in order to protect of the health or safety of the residents of the Commonwealth, I declare a Severe Weather Emergency in the aftermath of the **February 2013 Nor'easter** on or about February 8, 2013.

#### Duration of the Declaration's Effect:

This Emergency Declaration shall be in effect from **February 8, 2013** until **March 22, 2013**. Work authorized under this Emergency Declaration must be completed by **March 22, 2013**; any work not completed by this date will require the applicant to obtain a written Emergency Certification under 310 CMR 10.06 or obtain a Negative Determination of Applicability or Order of Conditions allowing the work.

#### Geographic Area of the Declaration's Effect:

The provisions of this Emergency Declaration apply to Essex, Suffolk, Norfolk, Plymouth, Barnstable, Bristol, Dukes, and Nantucket counties in the Commonwealth of Massachusetts.

By this Emergency Declaration, I suspend the standard permitting and emergency certification provisions contained at 310 CMR 10.00 for the activities described herein, in order to allow for widespread recovery efforts, debris removal, and roadway and utility repair. The following **activities are allowed** by this Emergency Declaration without filing a Notice of Intent or requesting an Emergency Certification, provided:

- (a) the work is necessitated by damage caused by **February 2013 Nor'easter** on or about February 8, 2013;
- (b) any wetland resource areas altered by the allowed activities are restored to their pre-storm conditions;
- (c) written notification is mailed by post, emailed, or hand delivered to, and received by, the conservation commission of the municipality in which the work is to be performed and the

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appropriate Regional Office of the Department of Environmental Protection prior to **March 1, 2013**;

- (d) the notification provides a detailed description of the work performed and confirms that the work is limited to that necessary to restore conditions existing on **February 7, 2013**;
- (e) the work is completed by **March 22, 2013**; and
- (f) the activity does not include any work on any structures that were previously condemned as uninhabitable by a local or state building official on or prior to **February 7, 2013**.

Activities Allowed:

Removal of objects and debris, including fallen trees, tree limbs, wood, plaster, foundation materials, cars, refuse, and plant or animal matter that does not require filling, dredging, or excavating a wetland resource area to allow for removal or access by heavy equipment. Debris may not be disposed of in any wetland resource area.

Removal of objects and debris blocking culverts, bridges, streams, or river channels to restore stream or river flow capacity existing on or prior to **February 7, 2013**. Stream restoration, including channel or bank stabilization, is not permitted under this Emergency Declaration.

Repair, stabilizing, and shoring up, but not expansion, of any building, structure, or foundation where the work is limited to the footprint of the structure that existed on **February 7, 2013** and the cost of restoring the building or structure to its pre-storm condition does not exceed fifty percent (50%), as defined in 780 CMR 120.00, of the market value of the building or structure immediately prior to the storm damage. Repairs are required to meet applicable minimum requirements of the municipality's flood plain management bylaw or ordinance adopted pursuant to 44 CFR 60.3 in conformance with minimum FEMA requirements for participation in the National Flood Insurance Program. Structures that have been displaced from their foundations are presumed to be greater than fifty (50%) percent damaged; this presumption may be overcome upon a clear showing that the structure is less than or equal to fifty (50%) percent damaged.

Repair to septic systems not requiring a variance of Title 5 (310 CMR 15.00). The installation of a tight tank is not authorized by this Emergency Declaration.

Removal of debris necessary to clear a roadway or railway provided that any such debris may not be disposed of in a wetland resource area. Clean sand removed from roadways or railways near beaches should be replaced on the beach if possible.

Emergency repair, but not expansion, to dams conducted or ordered in writing by the Massachusetts Department of Conservation and Recreation – Office of Dam Safety (MassDCR) where the work is limited to the footprint of the structure that existed on **February 7, 2013**.

Emergency pump-around of water bodies impounded by dams conducted or ordered in writing by MassDCR. Temporary lowering or drawdown of impoundments for flood control purposes or to relieve pressure on dams subject to potential failure when so ordered by MassDCR.

Repair, but not the expansion or realignment, of a roadway, bridge, causeway, or railway passing over or through a wetland resource area, dam, or culvert.

Repair, but not the expansion or realignment, of a culvert through which a stream or river flows.

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Repair of publicly operated wastewater or drinking water treatment plants.

Repair or replacement of utility lines and pipes including, but not limited to, electrical, sewer, water, gas, and telecommunications.

Repair, but not the expansion, of manmade stormwater management structures such as catch basins, drainage pipes, swales, detention basins, and spillways.

Installation of temporary diversion structures to divert floodwaters or urban drainage.

Discharge of water pumped from flooded buildings to wetland resource areas, provided the discharge is not contaminated with oil or other toxic or hazardous material.

Any other storm-related activities, not authorized by this Emergency Declaration, require the request for and receipt of an Emergency Certification (310 CMR 10.06) or a Notice of Intent (310 CMR 10.05(4)), as applicable, and appropriate authorizations from the municipal building official.

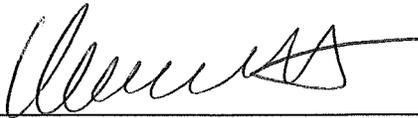
Enforcement:

This Emergency Declaration does not affect MassDEP's ability to enforce any rule or regulation that is not altered by said Emergency Declaration. The provisions of this Emergency Declaration do not apply to property or work for which an enforcement order was issued on or prior to **February 7, 2013**, or to property or work subject to an enforcement order issued while these regulations are in effect.

Notification Requirements:

This Emergency Declaration has been sent electronically to all conservation commissions in the geographic area subject to the severe weather emergency. The Emergency Declaration has been widely made available to the general public through the MassDEP web site, MassDEP ListServe, MassDEP Press Release, Massachusetts Association of Conservation Commissions, and the Association of Massachusetts Wetland Scientists.

**PLEASE NOTE:** The provisions of this Emergency Declaration pertain only to the Wetlands Protection Act. This Emergency Declaration does NOT suspend the requirements of any other statute or regulation, including but not limited to, Waterways (G.L. c. 91, 310 CMR 9.00), 401 Water Quality Certification (314 CMR 9.00), the Massachusetts Clean Waters Act (G.L. c. 21, §§ 26-53), or Inland/Coastal Restriction Orders (310 CMR 12.00 and 310 CMR 13.00).



Kenneth L. Kimmell  
Commissioner

2/15/13  
Date

Appendix A

Chapter 238 of the Acts of 2012 – Section 50: The twenty-sixth paragraph of said section 40 of said chapter 131, as so appearing, is hereby further amended by adding the following 5 sentences: The permitting and emergency provisions in this paragraph shall not apply to severe weather emergencies as declared by the commissioner of environmental protection following a destructive weather event requiring widespread recovery efforts, debris cleanup or roadway or utility repair. A severe weather emergency declaration shall allow for emergency related work to occur as necessary for the protection of the health or safety of the residents of the commonwealth. A severe weather emergency declaration by the commissioner shall describe the types of work allowed without filing a notice of intent, any general mitigating measures to condition the work that may be required in performing such work, any notification or reporting requirements, the geographic area of the declaration's effect and the period of time the declaration shall be in effect which, in no event, shall be longer than 3 months unless extended by the commissioner. A severe weather emergency declared by the commissioner shall be sent electronically to all conservation commissions in the geographic area of the severe weather emergency and shall be made widely available to the general public through appropriate channels for emergency communications. A declaration of a severe weather emergency by the commissioner shall not impact the department's ability to enforce any general or special law or rule or regulation that is not altered by the commissioner's declaration.