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### **310 CMR 10.06: Emergencies**

(1) Unless authorized by a Severe Weather Emergency Declaration issued by the Commissioner pursuant to 310 CMR 10.06(8), any person requesting permission to do an emergency project shall specify why the project is necessary for the protection of the health or safety of the citizens of the Commonwealth and what agency of the Commonwealth or subdivision thereof is to perform the project or has ordered the project to be performed. If the project is certified to be an emergency by the conservation commission or the Commissioner, the certification shall include a description of the work which is to be allowed and shall not include work beyond that necessary to abate the emergency. A site inspection shall be made prior to certification.

(2) An emergency certification shall be issued only for the protection of public health or safety.

(3) The time limitation for performance of emergency work shall not exceed 30 days, or 60 days for Immediate Response Actions approved by the Bureau of Waste Site Cleanup (BWSC) of the Department of Environmental Protection in accordance with the provisions of 310 CMR 40.0410: *Immediate Response Actions*, unless written approval of the Commissioner is obtained.

(4) A copy of an emergency certification shall be sent to the Department when it is issued by a conservation commission, and to the conservation commission when it is issued by the Department.

(5) The Department may, on its own motion or at the request of any person, review: an emergency certification issued by a conservation commission and any work permitted thereunder; a denial by a conservation commission of a request for emergency certification; or the failure by a conservation commission to act within 24 hours of a request for emergency certification. Such review shall not operate to stay the work permitted by the emergency certification unless the Department specifically so orders. The Department's review shall be conducted within seven days of: issuance by a conservation commission of the emergency certification; denial by a conservation commission of the emergency certification; or failure by a conservation commission to act within 24 hours of a request for emergency certification. If certification was improperly granted, or the work allowed thereunder is excessive or not required to protect the health and safety of citizens of the Commonwealth, the Department may revoke the emergency certification, condition the work permitted thereunder, or take such other action as it deems appropriate.

### **(6) Agricultural Emergencies**

(a) Notwithstanding the provisions of 310 CMR 10.06(1) through (4), any person may undertake work for the emergency agricultural activities described in 310 CMR 10.06(6)(g) when necessary to:

1. eliminate an imminent threat to land in agricultural use;

2. restore land in agricultural use that has been damaged due to a storm or other sudden, unforeseen event; or
3. provide an emergency agricultural water source when the existing agricultural water source suddenly and unforeseeably has been rendered unusable or unavailable.
4. eradicate an infestation of Asian longhorned beetles (*Anoplophora glabripennis*) in response to an order or regulation issued by the United States Department of Agriculture (USDA) pursuant to 7 USC §§ 7701 *et seq.* (the Plant Protection Act), or the Department of Conservation and Recreation (DCR) pursuant to M.G.L. c. 132, § 11.

(b) Written notice of any work undertaken as an emergency activity under 310 CMR 10.06(6) must be received by the conservation commission and mailed to the Department within three days after the work has commenced or within three days after the end of the emergency event, whichever is sooner. Such notice shall state the name of the person performing the work, the name of the property owner (if different), the property and the location on the property where the work is to be performed, the exact nature of the emergency and of the work which is to be performed, and when the work was begun and when it is expected to be completed. The commission may, at its discretion, conduct a site visit to view the work being performed under such notice and to confirm that the information in the notice is correct.

(c) When an emergency is caused by a storm, any work undertaken as an emergency activity under 310 CMR 10.06(6) must commence within 30 days following the storm event which caused the agricultural emergency.

(d) Any work undertaken as an emergency activity under 310 CMR 10.06(6) shall be completed within 30 days from the commencement of such work unless written approval for a later completion date is given by the Commissioner.

(e) No work under 310 CMR 10.06(6) shall be allowed within estimated habitat which is indicated on the most recent Estimated Habitat Maps of State-listed Rare Wetlands Wildlife published by the Natural Heritage and Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife.

(f) Work under 310 CMR 10.06(6) shall not fill or dredge a Salt Marsh.

(g) Only the following emergency activities are allowed under 310 CMR 10.06(6)(a):

1. The installation of stream bank stabilization measures, provided that:
  - a. such activity is carried out in accordance with Soil Conservation Service best management practices;
  - b. no more than 100 linear feet of bank are altered per storm event, and no more than 200 linear feet of new rip rap or gabions are placed on the bank of a stream under 310 CMR 10.06(6) cumulatively; and
  - c. after the 200 foot threshold has been reached the placement of additional rip rap or gabions following future storm events shall require the filing of a Notice of Intent.
2. The removal of storm debris, including trees, brush, branches, and cobbles, that were deposited in a stream channel during the storm event, provided that:
  - a. after the material is removed it is not placed on a bank or in a Bordering Vegetated Wetland;
  - b. Soil Conservation Service best management practices are followed; and
  - c. removal of material from a stream is limited to 100 linear feet per storm event.
3. The development of an emergency agricultural water source where the existing agricultural water source suddenly has been rendered unusable because of contamination,

sudden diversion, or other unforeseen circumstances. Where an emergency agricultural water supply is required:

- a. the work shall be conducted so that impacts to Bordering Vegetated Wetland are minimized and all impacts, including excavation, access, and any other alterations to Bordering Vegetated Wetland, shall not exceed 2,000 square feet;
- b. the size of the water supply shall be limited to that necessary to provide the amount of water required to abate the emergency, but not to exceed 2,000 square feet;
- c. a Notice of Intent shall be filed if the agricultural water supply is to be used for more than 60 days, in which case the agricultural water supply shall comply with existing performance standards under 310 CMR 10.53(3)(a), (b), and (g); and

d. all work shall comply with the Water Management Act, M.G.L. c. 21G.

4. The removal of trees, including stumps, and the application of pesticides to trees and soil within an area defined by USDA or DCR in an order or regulation to eradicate an infestation of Asian longhorned beetles, notwithstanding the provisions of 310 CMR 10.06(6)(d) or (e), provided that the work is conducted as follows:

a. The provisions of 310 CMR 10.06(6)(g)4 shall apply to USDA or DCR, if those agencies are performing eradication work, or to other persons if authorized or ordered by DCR to undertake eradication activity, in areas subject to regulation under M.G.L. c. 131, § 40. For the purposes of 310 CMR 10.06(6)(g)4., these agencies or persons shall be defined as authorized persons. At least 14 days prior to beginning work in any municipality, an authorized person shall submit to the conservation commission and MassDEP's regional office a GIS orthographic photo or map showing all resource areas in which work is to be conducted within the municipal boundaries, including wetland or stream crossings to gain access to work areas or Estimated Habitats for State-listed Rare Wetlands Wildlife, along with a proposed schedule or phasing plan for the eradication activities. If work is proposed within an Estimated Habitat, an authorized person shall provide the above described photo or map to the Natural Heritage and Endangered Species Program (NHESP) at the same time it is submitted to the conservation commission and MassDEP.

b. At least three days before beginning work at a specific site, an authorized person shall submit to the conservation commission and MassDEP's regional office a plan on a USGS or other map of at least 1=5:000 scale showing the work in the designated area as well as skid roads, stream and wetland crossings, landings and the general location of erosion control measures. An authorized person shall provide the name and contact information of an on-site supervisor responsible for compliance with the wetland related requirements of the harvest, including maintenance of the erosion control measures. MassDEP, a designated representative of the conservation commission and the authorized person shall conduct a site inspection at least 48 hours before beginning the work, to explore access options, proposed activity in resource areas, erosion controls, and final stabilization with the intent to minimize wetland impacts, unless MassDEP and the designated representative of the conservation commission determine, after a review of the plan, that a site visit is not necessary. If work is proposed within an Estimated Habitat, USDA, DCR or any person authorized or ordered by DCR to

undertake eradication activity shall provide the above described map to the NHESP and the contact information for an on-site supervisor at the same time the information is provided to the conservation commission and MassDEP and shall also provide the NHESP with reasonable advance notice of any site inspection of the proposed work area.

c. Storage of materials and equipment shall be on paved surface or otherwise stable surface, outside resource areas, buffer zones, vernal pools, and the Zone I and Zone A of public water supply sources. Fuels, lubricants or hazardous materials shall not be stored, transferred between containers or mixed, and machinery shall not be refueled, in or within 100 feet of a resource area, vernal pool or the Zone I or Zone A of a public water supply.

d. Landings, access roads, and skid roads shall be located carefully to avoid steep slopes, resource areas, vernal pools, and stream crossings whenever possible. Access roads shall be stable and minimize site disturbance including impacts to vegetation, soil, topography, hydrology and soils.

e. Stream crossings shall be avoided whenever possible. If temporary crossings are unavoidable, the crossing structures shall be removed at the end of the operation, and the site, banks, and approaches shall be stabilized. All crossings shall be made at right angles to the channel, and the approaches to a stream crossing shall be stabilized continuously both during the logging operation and after completion. At least one water bar shall be installed directly uphill from a crossing to prevent water moving down a skid road from reaching a stream. The water bar shall be reinforced as needed during the course of the work. The approaches may be corduroyed with poles to prevent rutting and the churning of soil. Erosion controls shall be placed in the skid road at the approach to a stream crossing at the end of the day.

f. When operating in a resource area, harvesters shall concentrate skidding in a few well-defined corridors, use cable and winch as much as possible, and fell trees away from resource areas to facilitate winching them out. Harvesters shall use best efforts to avoid damaging non-targeted trees during eradication efforts. Harvesters shall use brush or corduroy to minimize ground pressure and rutting, shall reduce hitch volumes to minimize rutting, and shall use Best Management Practices (BMPs) to minimize sediment transport. Machinery shall not operate in a resource area unless the ground is dry, frozen, or otherwise stable enough to support it. In some limited situations where work is proposed in less than stable conditions and where, subject to approval by the conservation commission or the Department, tree removal requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure (<3 psi), or shall not be located directly on wetland soils and vegetation. Equipment shall be placed on swamp mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation.

g. Vehicles and heavy equipment shall not be operated on the banks of waterbodies.

For all work along a stream bank, minimize disturbance and discharge of soil to the waterway. Stabilization measures shall be implemented including placement of rock, mulch, seed, erosion control fabric, re-plantings, and/or other measures as

appropriate based upon the area of disturbance. Rip-rap shall not be used unless MassDEP and the conservation commission determine that other means of stabilization are not practicable. If stump removal results in bank destabilization, then a means to stabilize the bank shall be performed.

h. Effective erosion controls (BMPs) shall be utilized to prevent discharge of sediments to resource areas, including silt fencing, temporary berms, stone dikes, and rip-rap. Brush or slash shall be placed on skid roads and seed where vulnerable to erosion. Landings shall be smoothed and graded. Exposed soils shall be seeded or mulched to prevent erosion. Tire tracks and ruts shall be smoothed along the access path.

i. Upon completion of harvesting, temporary skidder bridges shall be removed, and the authorized person shall ensure that fords and other stream crossings are left in a stable and free-flowing condition. All temporary structures (*e.g.*, culverts, bridges) shall be removed from resource areas. All unnatural debris generated by the eradication activity such as cans, papers, discarded tires and metal parts shall be removed. An authorized person shall not be responsible for the removal of any solid waste or trash that was on the site prior to the eradication effort. Incidental, remaining wood debris shall be left in place to promote rapid decay. Restore original grade of disturbed areas.

j. Bare soil in buffer zones shall be reseeded with a fast-growing non-invasive grass and disturbed wetland soils shall be reseeded with a wetland native seed mix and wetland species saplings to prevent establishment of invasive species. Reseeding shall take place within ten days of grading in spring, summer and fall months, or if grading activity takes place in winter, at the beginning of the following spring. Erosion control barriers shall be removed as soon as possible once the site is stabilized, but stabilization and removal shall occur no later than after the first growing season following completion of the work.

k. MassDEP and a designated representative of the conservation commission may inspect sites to ensure the effectiveness of erosion control and revegetation and reseeded efforts. Within one year of eradication efforts, individual sites shall be inspected by the authorized person, MassDEP and the conservation commission to determine the adequacy of erosion control and revegetation and reseeded efforts if a conservation commission and/or MassDEP have reason to believe that erosion control, reseeded and revegetation efforts at that site have been unsuccessful.

l. Pesticides shall be handled and applied in accordance with the provisions of 333 CMR 12.00: *Protection of Groundwater Sources of Public Drinking Water Supplies from Non-point Source Pesticide Contamination* and 13.00: *Standards for Application*.

(7) Notwithstanding any other requirement of 310 CMR 10.06, Immediate Response Actions receiving oral approval from the Bureau of Waste Site Cleanup (BWSC) of the Department of Environmental Protection pursuant to 310 CMR 40.0420(2), or initiated up to 24 hours prior to notification to and oral approval by BWSC pursuant to 310 CMR 40.0420(7) and (8), may commence before requesting the conservation commission to issue an emergency certification under 310 CMR 10.06, so long as such request is made within 24 hours after BWSC has orally

approved commencement of the Immediate Response Action. Once a request for emergency certification has been made pursuant to 310 CMR 10.06(7), work that commenced before such filing may continue pending a decision on the request by the conservation commission. Such work may also continue pending a decision on a request for Departmental review unless the request has not been filed with the Department within one business day of: issuance by the conservation commission of the emergency certification; denial by a conservation commission of the emergency certification; or failure by a conservation commission to act within 24 hours of a request for emergency certification.

(8) In the event of a destructive weather event requiring widespread recovery efforts, debris cleanup or roadway or utility repair, the Commissioner may issue a Severe Weather Emergency Declaration that allows emergency-related work necessary for the protection of the health or safety of the residents of the Commonwealth to occur without filing a Notice of Intent or a request for an emergency certification or authorization pursuant to 310 CMR 10.06(1) through (7). The Severe Weather Emergency Declaration shall describe:

- (a) the types of work allowed without filing a notice of intent;
- (b) any general mitigating measures to condition the work that may be required in performing such work;
- (c) any notification or reporting requirements;
- (d) the geographic area of the Declaration's effect; and
- (e) the period of time the Declaration shall be in effect which shall not be longer than 90 days, unless extended by the Commissioner.

The Declaration may include other conditions or limitations as deemed appropriate by the Commissioner. The Commissioner may revise or revoke the Severe Weather Emergency Declaration as he or she deems appropriate to further recovery efforts and protect public health and safety. If the Commissioner deems it necessary for the completion of recovery efforts, he or she may extend the duration of a Severe Weather Emergency Declaration for a period not to exceed 90 days. An extension may include a revision of the elements listed in 310 CMR 10.06(8)(a) through (d) as deemed appropriate to further recovery efforts. A Severe Weather Emergency Declaration and any extension, revision, or revocation thereof, shall be sent electronically to all conservation commissions in the geographic area of the Declaration's effect, shall be posted on the Department's website at [www.mass.gov/eea/agencies/massdep](http://www.mass.gov/eea/agencies/massdep) and shall be made widely available to the general public through appropriate channels for emergency communications. A Declaration shall not affect the Department's ability to enforce any general or special law or regulation that is not altered by a Severe Weather Emergency Declaration, or enforce the terms of such a Declaration.