



# Department of Environmental Protection

100 Cambridge Street Suite 900 Boston, MA 02114 • 617-292-5500

Maura T. Healey  
Governor

Kimberley Driscoll  
Lieutenant Governor

Rebecca L. Tepper  
Secretary

Bonnie Heiple  
Commissioner

## **Severe Weather Emergency Declaration**

September 11, 2023 Severe Storm— Leominster

Urban Flooding from High Intensity Precipitation

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), to protect the health or safety of the residents of the Commonwealth, I declare a Severe Weather Emergency in the aftermath of a storm that occurred on or about September 11, 2023, as detailed below.

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

This Emergency Declaration shall be in effect from September 15, 2023 until December 14, 2023. Post-storm activities authorized under this Emergency Declaration must be completed by **December 14, 2023**; any activities not completed by this date will require the applicant to obtain a written Emergency Certification under 310 CMR 10.06 or obtain a written Negative Determination of Applicability or Order of Conditions allowing the activity before continuing work.

### **Time Periods:**

- Duration of the Severe Weather Declaration: September 15, 2023 to December 14, 2023.
- Written Notification: Must be submitted no later than November 15, 2023. See Condition (c).
- Post-Storm Activities: Must be completed by December 14, 2023 pursuant to 310 CMR 10.06(8)(e). See Condition (e).

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

The provisions of this Emergency Declaration apply only to the following locations: within the resource areas of Riverfront Area, Bordering Land Subject to Flooding, Isolated Land Subject to Flooding, Land under Water Bodies and Waterways, Bank, and buffer zone within the municipal boundaries of the City of Leominster. Those terms are defined in 310 CMR 10.02 and 10.54 to 10.58.

### **Conditions:**

By this Emergency Declaration, I suspend the standard permitting and emergency certification provisions of 310 CMR 10.00 for the activities described herein, to allow post-storm recovery efforts necessary to protect public health and safety from damage caused by the Severe Storm in Leominster on or about September 11, 2023. Post-storm activities are allowed by this Emergency Declaration without filing a Notice of Intent or requesting an Emergency Certification, provided that:

- (a) the post-storm activities are necessary to protect public health and safety from damage caused by the Severe Storm in Leominster on or about September 11, 2023;
- (b) any wetland resource areas altered by post-storm activities, as defined below, are restored to their pre-storm conditions;
- (c) written notification is mailed by certified post, emailed, or hand delivered to, and received by, the Leominster Conservation Commission and the Central Regional Office (CERO) of the Massachusetts Department of Environmental Protection (“MassDEP”) prior to November 13, 2023; the written notification to each agency must indicate that the other agency has been notified. The written notification must be submitted at least 24-hours prior to conducting work in a resource area.
- (d) the written notification provides a detailed description of the post-storm activities to be performed, the resource area(s) in which the post-storm activities are to be conducted, and certifies under the pains and penalties of perjury that the post-storm activities are limited to those necessary to restore conditions existing on September 10, 2023, prior to the storm, will be conducted in accordance with Conditions (a) to (g) of this Emergency Declaration, and are necessary to protect public health or safety from damage caused by the Severe Storm in Leominster that occurred on or about September 11, 2023;
- (e) the post-storm activities are completed by December 14, 2023;
- (f) the post-storm activities do not include any work on any structures that were previously condemned as uninhabitable by a local or state building official on or prior to September 11, 2023; and
- (g) the post-storm activities are limited to, and do not expand beyond, what is described in the list below of post-storm activities allowed by this Emergency Declaration.

The following post-storm activities may be conducted, subject to the requirements specified in Conditions (a)-(g) listed above:

Post-Storm Activities:

Removal of objects and debris, within Riverfront Area, Bordering Land Subject to Flooding, Isolated Land Subject to Flooding or buffer zone, including fallen trees, tree limbs, wood, plaster, foundation materials, motor vehicles, refuse, and plant or animal matter, but only if removal does not require filling, dredging, or excavating any wetland resource area or buffer zone. Debris may not be disposed of in any wetland resource area or buffer zone.

Removal of debris necessary to clear a roadway or railway within the Riverfront Area, Bordering Land Subject to Flooding, Isolated Land Subject to Flooding or buffer zone provided that any such debris may not be disposed of in a wetland resource area or buffer zone.

Removal of objects and debris within culverts or under bridges that is obstructing stream flow to restore conditions existing on or prior to September 11, 2023, provided: debris is removed by hand or by machinery operated from a road or parking lot, no machinery is placed or operated in a river or stream channel, no diversion of river or stream flow is made, no coffer dams are installed, no riprap is placed to along the Bank or in Land Under Water Bodies and Waterways, and no debris is disposed of in a wetland resource area or buffer zone.

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 or replacement of Stream Crossings located in Land Under Water Bodies and Waterways and Bank, provided any such replacement is designed to the Maximum Extent Practicable to meet the

Massachusetts River and Stream Crossing Standards (revised March 1, 2011). Roadways above such Crossings may not be widened.

Repair, stabilizing, and shoring up, but not expansion, of any building, foundation, or other structure located within the Riverfront Area, Bordering Land Subject to Flooding, Isolated Land Subject to Flooding or Buffer Zone where the work is limited to the footprint of the structure that existed on or prior to September 11, 2023 and within Bordering Lands Subject to Flooding, only if the cost of restoring the 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 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.

Emergency repair, but not expansion, to dams located within the Land Under Water Bodies and Waterways, Bank, Riverfront Area, and/or Buffer Zone 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 September 11, 2023.

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 of publicly operated wastewater or drinking water treatment plants. Vegetation clearing at any Separate Storm Overflow (SSO) or Combined Storm Overflow (CSO) is not authorized.

Repair or replacement of utility lines, poles and pipes including, but not limited to, electrical, sewer, water, gas, and telecommunications, provided swamp mats are used where practicable to minimize erosion.

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. Any such temporary diversion structure shall be removed prior to December 14, 2023.

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.

No new armoring of Bank, Land Under Water Bodies and Waterways, or other wetland resource area is authorized herein.

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), a Negative Determination of Applicability, or an Order of Conditions, as applicable.

**Enforcement:**

This Emergency Declaration does not affect MassDEP’s ability to enforce any rule or regulation that is not altered by said Emergency Declaration. Any activities undertaken beyond the scope of this Emergency Declaration could constitute a violation of the Wetlands Protection Act, G.L. c. 131, s. 40, and could subject persons conducting or directing such activities to enforcement by MassDEP. If you have questions about whether the activities you are proposing exceed the scope of this Emergency Declaration, you should contact the Leominster Conservation Commission or the Central Regional Office of MassDEP. The provisions of this Emergency Declaration do not apply to property or activities for which an enforcement order was issued on or prior to September 11, 2023, or to property or activities subject to an enforcement order issued while this Emergency Declaration is in effect.

**Notification:**

This Emergency Declaration has been sent electronically to the Leominster Conservation Commission. The Emergency Declaration is also being made available through the MassDEP web site, MassDEP Listserv, 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), Inland/Coastal Restriction Orders (310 CMR 12.00 and 310 CMR 13.00), or federal or municipal law.**

September 15, 2023

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Bonnie Heiple  
Commissioner

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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.