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314 CMR 9.12: Authorization of Emergency Action

In the rare situation where immediate action is essential to avoid or eliminate a serious and immediate threat to the public health or safety or to the environment, a person may act without a certification, provided that the person obtains prior approval of the Department or authorization under M.G.L. c. 131, § 40. Any emergency authorization issued by the Department shall not relieve such person from compliance with other applicable federal, state, and local requirements and approvals, including approval by the Corps of Engineers. The Corps of Engineers' emergency provisions for Section 404 permits are located at 33 CFR 325.2(e)(4).

(1) Any activity subject to the jurisdiction of 310 CMR 10.00: *Wetlands Protection* which has been certified as an emergency by a conservation commission conducted in accordance with 310 CMR 10.06: *Emergencies*, or by the Department under 310 CMR 10.06(5), or is authorized under 310 CMR 10.06(6)(a)4., and any oil or hazardous material "Immediate Response Action" undertaken in accordance with the provisions of 310 CMR 10.06(7), is also authorized under 314 CMR 9.00.

(2) Absent authorization under 310 CMR 10.00: *Wetlands Protection*, a written request shall be submitted to the Department which describes the location, the work to be performed, and why the project is necessary for the protection of the environment or the health or safety of the public. Emergency approval shall be issued in writing and shall specify the limits of activities necessary to abate the emergency. When the necessity for undertaking the emergency action no longer exists, any emergency action shall cease until compliance with the provisions of 314 CMR 9.00. In any event, the time limit for performance of emergency work shall not exceed 30 days, unless a written extension is approved by the Department. The emergency authorization may require the submission of an application. No work may be undertaken without emergency authorization under M.G.L. c. 131, § 40, M.G.L. c. 91, and M.G.L. c. 30, §§ 61 through 62H, where applicable.

(3) Any activity subject to the jurisdiction of 310 CMR 9.00: *Waterways* which is eligible for authorization by the Department under 310 CMR 9.20: *Authorization of Emergency Actions* may receive emergency authorization under 314 CMR 9.12, provided that the applicant submits sediment data or other information if requested by the Department.

(4) "Immediate Response Actions" not subject to the jurisdiction of 310 CMR 10.00: *Wetlands Protection*, which receive oral approval from the Department pursuant to 310 CMR 40.0420(2), or are initiated 24 hours prior to notification and oral approval pursuant to 310 CMR 40.0420(7) and (8), may commence before a written request under 314 CMR 9.12(2) is submitted to the Department, provided the request is made within 24 hours after the Department's oral approval.

Once a request for emergency certification has been made pursuant to 314 CMR 9.12(2), work that commenced prior to such filing may continue pending a decision on the request by the Department.