



A Summary of the Revisions to MassDEP’s Wetlands, Waterways, and Water Quality Certification Regulations Effective October 24, 2014



Background:

After over three years of extensive work reviewing and incorporating public comments, receiving input from advisory committees and other stakeholders, MassDEP has promulgated the wetlands and waterways regulatory revisions effective October 24, 2014. The revised regulations, application forms and informational workshops will be offered from November 2014 and January 2015 as needed. See MassDEP’s web site at: <http://www.mass.gov/eea/agencies/massdep/>

These changes to the Wetlands, Waterways (Chapter 91) and 401 Water Quality Certificate regulations are intended to save applicants, commissions, and MassDEP time and resources while maintaining fundamental environmental protections.

In addition, revisions to the Wetlands Protection Act under Chapter 238 of the Acts of 2012 (An Act relative to infrastructure investment, enhanced competitiveness and economic growth in the Commonwealth) include changes to Abutter Notification, Emergency Provisions, and the Permit Extension Act as well as adding an exemption for the maintenance, repair and replacement of "sewer" as a public utility. The revisions with regulatory citations are summarized below:

Wetland Proposals

Buffer Zone Minor Activity Exemptions: 310 CMR 10.02(2)(b)

The changes exempts from the filing requirements under the Wetlands Protection Act certain minor activities related to highway safety operation and maintenance work and utility installation work proposed solely in the *buffer zone* of wetland resource areas. These exempt activities has been added to the existing list of minor exemptions located in the wetlands regulations at 310 CMR 10.02(2)(b). The changes also provide standards for the specified types of utility maintenance and roadwork that qualify as exempt minor activities and allow for uniform implementation and oversight of these routine activities. In addition, these minor activities will facilitate the Commonwealth’s efforts in the aftermath of severe weather events to clear roadways and restore utility services, speeding emergency response and recovery.

The new regulatory provisions replaces 310 CMR 10.02(2)(b) which includes a sub-section of the regulations commonly referred to as “Simplified Review,” located at 310 CMR 10.02(2)(b)2 that expired in 2008 pursuant to the sunset provisions of 310 CMR 10.10(12).

Renewable Energy Access Limited Project: 310 CMR 10.53(3)(t) 310 CMR 10.24(7)(c)7

The regulations allow for variation from general wetlands protection performance standards for the construction of a new access roadway, or the repair and replacement of an existing access roadway, needed to transport equipment to renewable energy project sites through inland resource areas and for certain coastal resource areas (land subject to coastal storm flowage outside the velocity zone, designated port areas, and fish runs). Such limited projects may be permitted if designed and constructed in a manner that avoids, minimizes and mitigates adverse impacts to resource areas and complies with the specified conditions, to the maximum extent practicable. The streamlined process established by this regulatory revision is consistent with the Commonwealth's priority of promoting and developing renewable energy technologies.



Stormwater Management Structures: 310 CMR 10.02(2)(c)

These regulatory revision provides that stormwater management systems designed, constructed, and installed after November 18, 1996, the effective date of the Stormwater Policy, do not create jurisdictional resource areas or Buffer Zones. This revision expands the rules that currently apply to stormwater management systems built after the promulgation date of regulations adopted in 2008. The revision also provides that this provision include stormwater systems that were improved after November 1996 provided that the improvement complies with the Wetlands Regulations.



Combined Applications and Permits: 310 CMR 9.11 314 CMR 9.05(1) 310 CMR 10.00

The regulation changes are designed to allow proponents to file combined applications (Combined Applications) and allow MassDEP to issue combined permits (Combined Permits). These regulatory amendments to 310 CMR 9.00, 310 CMR 10.00 and 314 CMR 9.00 create streamlined permitting mechanisms for the review and permitting of projects subject to multiple and different regulatory requirements. The revisions will allow certain projects to be filed as a Combined Application and receive a Combined Permit from MassDEP for at least two separate required permits under Chapter 91 and the 401 Water Quality Certification Regulations. However, these revisions will preserve conservation commissions’ authority to approve projects under the Wetlands Protection Act.

Ecological Restoration Projects: 310 CMR 10.04 (Definitions)

Ecological Restoration Projects (continued):

310 CMR 10.05(6): (Orders of Condition)

310 CMR 10.14 (Restoration Order of Conditions)

310 CMR 10.11 (Pre-NOI)

310 CMR 10.24(8) (Coastal Limited Project)

310 CMR 10.12 (NOI Requirements)

310 CMR 10.35(6) (Fish Run Crossings)

310 CMR 10.13 (Eligibility Requirements)

310 CMR 10.53(4)(Inland Limited Project)

The regulations establish a general permit mechanism for streamlining the permitting process for qualifying projects. The general permit contains standard conditions which makes the permitting process more predictable and consistent for qualified restoration projects. The **amendments create a general permit for six categories of qualifying ecological restoration projects**, including:

- Dam removal;
- Freshwater culvert repair or replacement;
- Culvert replacement to eliminate or reduce tidal restrictions;
- Stream daylighting;
- Restoration of rare species habitat; and
- Improvement of fish passage.



Ecological Restoration projects that do not meet the criteria to obtain a Restoration Order of Conditions (general permit) may still be eligible as a limited project.

The regulations require proponents of all ecological restoration projects to address the major environmental impacts of their projects prior to permit submittal including the mandate that all new and replacement stream crossings projects comply with the Stream Crossing Standards. The regulations also allow for the dredging, disposal, reuse, and placement of fill within an ACEC in connection with an ecological restoration project with appropriate safeguards to prevent the use of contaminated sediments.

Stream Crossing Standards:

- 310 CMR 10.12 and 10.13) – Ecological Restoration*
310 CMR 10.24(10) – Coastal Limited Projects
310 CMR 10.54 - Bank
- 310 CMR 10.53(8) – Inland Limited Project*
310 CMR 10.56 – Land Under Water

Permitting of Test Projects: *310 CMR 10.05(11)* *310 CMR 10.03(7)* *310 CMR 9.30 and 314 CMR 9.05*

The regulatory changes provide a clear and simplified permitting pathway for short-term tests of innovative technology in jurisdictional areas. Presently, none of the regulations provide for the testing of new technology, including the short-term placement of temporary installations. Such projects must undergo standard permitting procedures, which include documenting the anticipated impacts of the project and demonstrating that the project will comply with the performance standards established for all structures. These regulations acknowledge that innovative technologies may lack data necessary to demonstrate compliance with performance standards; permitting authorities are provided the latitude to condition projects to require monitoring impacts during the test or order project modification, cessation, and site restoration if unforeseen impacts arise.

Chapter 91 Waterways Proposals

Coordinate license issuance with Mass. Environmental Policy Act (MEPA) review and WPA permitting process.

- Allow Ch. 91 review by Waterways Program during MEPA process. *310 CMR 9.11(2)(b)(4)*

General License for Small Docks and Piers *310 CMR 9.29*

- Statutory amendment – July 2011
- Applies to coastal docks up to 600 sq ft. with professional plans
- Applies to inland docks up to 300 sq ft. with hand/computer drawn or engineer plans
- Requirements to protect navigation and property rights.
- Planning Board certifies compliance with local law.
- Certification and plan recorded at the Registry of Deeds.



Additional Regulatory Revisions

The regulations also include: (1) changes to clarify the abutter notification requirements, in response to WPA statutory changes; (2) revisions to the Wetlands Regulations, the 401 Water Quality Certification Regulations, and the Waterways Regulations allowing improvement dredging to maintain a historic navigation channel in an Area of Critical Environmental Concern in accordance with an approved Resource Management Plan; and (3) modification of some definitions in the Wetlands Regulations including Aquaculture, Salt Marsh, and Wildlife Habitat. The changes will **create new definitions found in 310 CMR 10.04** to implement the new rules including:

- *Combined Application*
 - *Combined Permit*
 - *Dredge Material*
 - *Velocity Zone*
- *Innovative Technology*
 - *Linear Shaped Projects*
 - *Openness Ratio*
 - *Practicable*
- *Primary Frontal Dune or Primary Dune*
 - *Shellfish Suitability Areas*
 - *Special Flood Hazard Areas*
 - *Restoration Order of Conditions*
- *Sediment*
 - *Project Locus*
 - *Project Site*
 - *Test Project*

Finally, MassDEP’s proposal to modify the definition of Historic Mill Complex and add a definition of Man Made Canal have been withdrawn.