

Chapter 91 Waterways Permitting Guide

Important

This document is intended to be an unofficial guide to Chapter 91 Waterways permitting. It references the applicable Massachusetts Regulation, 310 CMR 9.00, but paraphrases some of the content from the regulation and should not be considered authoritative. Please refer to the text of the regulation, available through the [State Bookstore](#) or from the [Secretary of State's CMR Subscription Service](#).

The provisions of Chapter 91 apply to existing unauthorized activities as well as new projects proposed in, under, or over publicly owned waterways of the Commonwealth including: flowed tidelands, filled tidelands, great ponds and navigable non-tidal rivers and streams.

Chapter 91 authorization is required for the following jurisdictional activities:

1. Placement, construction or alteration of any structure, regardless of size, whether permanent or seasonal.
2. Unauthorized placement of any fill or unconsolidated material that is confined or expected to remain in place in a waterway.
3. Any use of fill or structures not currently authorized.
4. Any use of the authorized premises or structures other than the authorized use, whether expressed or implied.
5. Any change in the dimensions of a structure or fill from the specifications contained in the existing authorization.
6. Demolition or removal of any fill or structures, not previously authorized.
7. Lowering the water level of any great pond unless that body of water is used for agriculture, manufacturing, irrigation, insect control purposes or public water supply and the lowering furthers those activities.
8. Dredging - Removal of materials, including but not limited to rocks, bottom sediments, debris, sand, refuse, plant or animal matter, in any excavating, cleaning, deepening, widening, or lengthening of any waters in the Commonwealth. The Department must also know the location where the removed material will be disposed.
9. Burning of rubbish or other material upon the water.

Exemptions: Some activities taking place within the geographical jurisdiction of Chapter 91 do not require a license or permit. For specific information on which activities are exempt from Chapter 91 licensing and permitting requirements, please consult 310 CMR 9.05(3) (a)-(m) of the MassDEP Waterways regulations.

Please note that prior to undertaking any of the activities listed at 310 CMR 9.05(3) (a)-(m), you must notify MassDEP of your intent to perform such projects. In turn, MassDEP will provide written notification to the applicant as to whether or not Chapter 91 authorization is required.

Certain activities are categorically prohibited in areas under Chapter 91 jurisdiction. Please see 310 CMR 9.32 or contact the Waterways Program (dep.waterways@state.ma.us).

Proposed Activities and Authorization Requirements

For further information on which type of Chapter 91 authorization your proposed activity or project requires, please consult the following lists of examples:

Proposed Activity	Required Forms and Approvals
<p>If you propose to construct a small dock, pier, seawall, bulkhead or other small-scale structure that is an accessory to a residential use or serves as a non-commercial community docking facility, you may qualify for a simplified license if your structure meets the following requirements:</p> <ol style="list-style-type: none"> a. Structures existing prior to 1984 must be less than 600 square feet: or b. All post-1984 structures, whether existing or new, must be less than 600 square feet and water dependent with no fill involved. <p>Exception</p> <p>If you propose to install a seasonal dock, float, mooring or raft that is bottom-anchored and not permanently pile-supported, it may be authorized by the local harbormaster or other authorized municipal official through an annual Section 10A permit.</p>	<p>Simplified Chapter 91 License (BRP WW06)</p>
<p>If you propose to extend the term of a Simplified License prior to its expiration in order to maintain your structure or activity authorized in the license</p>	<p>BRP WW12: Renewal of Simplified License</p>
<p>If you are not eligible for a Simplified License, and you propose to construct a structure or facility that requires direct access to or location in water, such as but not limited to:</p> <ul style="list-style-type: none"> • Private docks • Piers and wharves • Marinas, boat basins, boatyards and other commercial or recreational boating activities • Commercial fishing and fish processing 	<p>Chapter 91 Water Dependent License (BRP WW01)</p>

facilities

- Waterborne passenger transportation facilities such as those serving ferries, cruise ships, excursion boats, water shuttles and taxis
- Aquaculture facilities
- Bridges that span from bank to bank
- Shore protection structures
- Facilities which promote the public use and enjoyment of the waterfront such as boardwalks, parks or esplanades
- Facilities for fishing, diving, swimming and other water-based recreational activities
- Aquariums and other education, research or training facilities dedicated primarily to marine purposes
- Discharge pipes
- Flood, water level or tidal control facilities
- Industrial infrastructure facilities which cannot reasonably be located at an inland site

If you propose to construct a facility that may benefit from waterfront location but does not require close proximity to water to exist or function, such as but not limited to:

- Restaurants
- Retail shops and stores
- Parking facilities, roadways, gas stations
- Office facilities
- Housing units and other residential facilities
- Hotels, motels and other facilities for transient lodging

OR

If any proposed project or use site consists of a mixture of water dependent and non-water dependent uses, MassDEP classifies the entire site as non-water dependent. For example, if a single-family home (non-water dependent) located on the water has a small dock, which would generally be considered water dependent; MassDEP classifies the entire property as a non-water-dependent use.

Chapter 91 Waterways License:

- I. A Full Application Type (BRP WW14)
- II. A Partial Application Type (BRP WW15)
- III. Municipal Harbor Plan Type (BRP WW16)
- IV. Joint MEPA/EIR Application Type (BRP WW17)

For proposed activities or projects not involving construction or any work on structures or fill. These activities include but are not limited to any:

- Dredging
- Beach Nourishment
- In-water disposal of unconsolidated materials
- Burning of rubbish or other material upon the water
- Lowering of the water level of a Great Pond, except for a body of water used for agriculture, manufacturing, mercantile, irrigation, insect control purposes, or for flowing cranberry bogs, or for public water supply

Chapter 91 Waterways Permit

Application type: Water-Dependent BRP WW 01

Applicants may apply to amend an existing Chapter 91 Waterways licensed or permitted facility/use for the following purposes:

- Authorizing a structural alteration or change in use not defined as substantial (substantial = 10% or greater increase in height or ground coverage of a structure or change in use for at least one continuous year of 10% or more of the surface area of the authorized premises or structure)
- Delineating a reconfiguration zone within a marina, or
- Renewing a license term for period not to exceed the term period authorized under the original license or permit.

Amendment to Chapter 91 License or Permit (BRP WW03)

In certain instances, an applicant may apply for a letter of approval from MassDEP on the basis of providing written notification with sufficient detail for the following activities:

- a. A dock and slip relocation within the reconfiguration zone of a licensed marina
- b. Minor modifications to an existing license
- c. Demolition or removal of authorized

MassDEP Letter of Approval

<p>structures or fill.</p> <ul style="list-style-type: none"> d. Demolition or removal of any unauthorized structures or fill in order to facilitate water-dependent use e. Certain emergency actions where swift and immediate action is essential to avoid or eliminate a serious and immediate threat to health, safety, or the environment. 	
<p>If you are not sure whether your premises, project or activity is subject to Chapter 91 authorization</p>	<p>BRP WW 04: Request for Determination of Applicability (RDA)</p>
<p>After completing your project licensed under MGL Chapter 91, according to the plans, specifications and conditions of that license</p>	<p>BRP WW 05: Certificate of Compliance</p>