

**MassDEP Natural Disaster Guidance for Coastal and Inland Wetland Resource Area Impacts:
Hurricane or Tropical Storm Sandy**

Tropical Storm Sandy may cause severe flooding, erosion and other impacts to wetland and waterway resources. MassDEP recognizes that these events may require municipalities or agencies to take action to mitigate certain impacts, or to alleviate or prevent further impacts to public health and safety.

Damage associated with high winds and flooding can be widespread across coastal or inland floodplain areas or localized as in flash floods that effect areas contiguous to flashy mountain streams or urbanized areas.

Proactive steps are being taken by MassDEP to further protect public health and safety. Prior to the arrival of Tropical Storm Sandy, MassDEP has issued emergency regulations that allow municipalities and others to take action in response to storm damage to restore those conditions that existed immediately prior to the storm, including the repair of damaged utility lines, repair of buildings, and removal of debris from resource areas such as wetlands, rivers and streams to unblock culverts to maintain hydraulic capacity without going through a permitting process at the local or state level. Simple notification to MassDEP is the only requirement prior to undertaking most work.

Emergency regulations are issued herewith by MassDEP because wide-spread damage is expected to occur or is imminent. The emergency regulations spell out what is permitted to be done. These emergency regulations must be thoroughly read and followed carefully. **Any other work or actions in wetland resource areas are not allowed and are not permitted pursuant to these emergency regulations.** In the event that a situation is encountered that does not fit within the regulatory allowances and is judged to be a threat to public health or safety, prior consultation with MassDEP or the municipal conservation commission is strongly advised before undertaking action in wetland resource areas. If the emergency regulations issued by MassDEP do not apply, the wetland regulations contain provisions that allow local conservation commissions to issue emergency certifications on a case-by-case basis provided the work is ordered or undertaken by a public agency.

Emergency wetland regulations for coastal and inland wetland and waterways impacts **do not allow** dredging or filling of a stream, river or wetland, new armoring of banks, new rip-rapping of stream channel, or expansion of existing buildings or roads. These activities would require a wetlands authorization from the local Conservation Commission or MassDEP and potentially a permit from the Army Corps of Engineers. Local declaration of a state of emergency does not negate the need for these permits. Landowners, conservation commissions, and other local officials are strongly encouraged to call the MassDEP regional office if there is any question as to what actions are allowable or not under the emergency provisions. The Regional Office telephone numbers are:

Central Region, Worcester: 508-792-7683	Northeast Region, Wilmington: 978-694-3200
Southeast Region, Lakeville: 508-946-2714	Western Region, Springfield: 413-755-2214

MassDEP can be contacted through emergency channels if normal communications are unavailable via our 24-hour Emergency Response Telephone Hotline: **1-888-304-1133**. In addition, MassDEP maintains staff at the Massachusetts Emergency Management Agency (MEMA) emergency operation center (EOC) in Framingham during all declared emergencies. If emergency is declared, DEP staff at MEMA operation center may be reached at phone number: (508) 820-2000. Local Emergency Management Directors may contact MassDEP around the clock through MEMA when emergencies are declared. The municipal Conservation Commission may also be contacted in the event of a natural disaster that has the potential to impact wetland or waterway resources.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Emergency Certification Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Storm damage cleanup and repair for **Tropical Storm Sandy** Pursuant to 310 CMR 10.61(3)

A. Emergency Information

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



FROM: _____
 Issuing Authority

 Applicant Name and Address

1. TO: _____
 Property Owner Name and Address if Different

 Site Location

2 Reason for Emergency:

To authorize the immediate repair to existing structures damaged by **Tropical Storm Sandy** in all Commonwealth of Massachusetts municipalities for the specific repair activities listed in 310 CMR 10.61, such as repair of damaged buildings, roads, culverts, bridges, dams, waste water treatment plants, and utility lines; and discharge of water pumped from flooded buildings.

3. Public agency to perform work or public agency ordering the work to be performed:
 Non-applicable for purposes of **Tropical Storm Sandy**

4. Date of Site Visit if conducted: _____ Start Date: _____ End Date*: _____

*The above described work shall be completed by End Date specified, but in **no case later than February 23, 2013**

5. Work to be allowed*. Attach additional sheets if necessary.

* May not include work beyond that necessary to abate the emergency.

B. Signatures

Certified to be an Emergency by this Issuing Authority.

Signatures:

 Chairman (or designee) _____ Date _____



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E. Appeals

The Department may, on its own initiative 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.

Use this sheet if necessary to further describe work authorized or additional Special Conditions:

10.61: Storm Emergency Regulations in the Aftermath of TROPICAL STORM SANDY (ON OR ABOUT OCTOBER 28, 2012).

(1) Communities Affected

Effective **OCTOBER 26, 2012**, 310 CMR 10.61 shall be in effect in all Commonwealth of Massachusetts municipalities unless the conservation commission holds a public meeting, votes to revoke these regulations in its municipality, and provides written notification of such revocation to the Department of Environmental Protection by **NOVEMBER 25, 2012**. The public shall be notified of the revocation at the earliest opportunity: through the publication of a legal notice in a newspaper of local circulation; by broadcast on local cable news channel; or by posting on the municipal web page, followed by immediate public posting of such notice in the office of the municipal clerk or on the principal official bulletin board of the municipality. Where the conservation commission votes to revoke these regulations, subsequent work requiring Emergency Certification will be governed by the provisions of 310 CMR 10.06. Emergency work commenced prior to a municipal revocation remains subject to the provisions of 310 CMR 10.61.

(2) Activities not requiring Emergency Certification or the filing of a Notice of Intent

The following activities shall not require Emergency Certification pursuant to 310 CMR 10.06 or 10.61(3), or the filing of a Notice of Intent pursuant to 310 CMR 10.05(4), provided that:

- (a) the work is necessitated by damage caused by **TROPICAL STORM SANDY**;
- (b) any wetland resource areas altered by the activities listed in 310 CMR 10.61(2)(g) are restored;
- (c) written notification is mailed by post, emailed, or hand delivered to, and received by, the conservation commission of the municipality in which the work is to be performed and the appropriate Regional Office of the Department of Environmental Protection prior to **DECEMBER 26, 2012**;
- (d) the notification describes in detail the work that is to be performed and confirms that the work is limited to that necessary to restore conditions existing on **OCTOBER 26, 2012**;
- (e) the work is completed by **DECEMBER 26, 2012**;
- (f) the activity does not include any work on any structures that were previously condemned as uninhabitable by a local or state building official prior to **OCTOBER 26, 2012**; and
- (g) the work falls within the following categories:
 - (i) Cleanup and removal of objects and debris, including fallen trees, tree limbs, wood, plaster, foundation materials, cars,

refuse, and plant or animal matter that does not require filling, dredging, or excavating a wetland resource area to allow for removal or access by heavy equipment. Debris may not be disposed of in any wetland resource area.

(ii) Repair, but not expansion, of any building or foundation where the work is limited to the footprint of the structure that existed on **OCTOBER 26, 2012** and the damage is less than or equal to fifty percent (50%) of the pre-storm market value of the structure, as long as the repair meets all of the applicable requirements of the municipality's flood plain management ordinance adopted in accordance with the Federal Emergency Management Agency's National Flood Insurance Program minimum requirements. Repairs made under the Federal Emergency Management Agency's Housing Regulations (a program to make homes habitable after disasters) are included under 310 CMR 10.61(2)(g)(ii). Repair shall not be allowed under 310 CMR 10.61(2)(g)(ii) if the effects of the storm damaged a septic system or a well serving the building. Emergency repairs under this section are not allowed for structures damaged in excess of fifty percent (50%) of the pre-storm market value of the structure. Repairs to structures damaged in excess of fifty (50%) percent require the filing of a Notice of Intent and appropriate authorizations from the municipal building official. 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. If the conservation commission determines that any repair authorized under 310 CMR 10.61(2)(g)(ii) would alter a resource area, an Emergency Certification or a Notice of Intent may be required.

(iii) Clean-up and removal of objects and debris (e.g. downed tree limbs) blocking culverts, bridges, streams, or river channels to restore stream or river flow capacity to pre-flood conditions.

(iv) Removal of debris necessary to clear a roadway or railway, provided that any such debris may not be disposed of in a wetland resource area. Clean sand removed from roadways or railways near beaches should be replaced on the beach if possible.

(v) Emergency repair, but not expansion, to dams conducted or ordered in writing by the Massachusetts Department of

Conservation and Recreation where the work is limited to the footprint of the structure that existed on **OCTOBER 26, 2012**.

(vi) Emergency pump-around of water bodies impounded by dams conducted or ordered in writing by the Massachusetts Department of Conservation and Recreation (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 Office of Dam Safety.

(vii) 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.

(viii) Repair, but not the expansion or realignment, of a culvert through which a stream or river flows.

(ix) Repair of publicly operated wastewater or drinking water treatment plants.

(x) Repair or replacement of utility lines and pipes such as electrical, sewerage, and drinking water.

(xi) Repair, but not the expansion, of manmade stormwater management structures such as catch basins, drainage pipes, swales, detention basins, and spillways.

(xii) Installation of temporary diversion structures to divert floodwaters or urban drainage.

(xiii) 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.

The work authorized under 310 CMR 10.61(2) must be completed by **DECEMBER 26, 2012**. If the work is not completed by **DECEMBER 26, 2012**, the applicant must obtain a written Emergency Certification under 310 CMR 10.61(3) or 10.06, obtain a Negative Determination of Applicability or Order of Conditions allowing the work.

This section does not apply to property or work for which an enforcement order has been issued prior to **TROPICAL STORM SANDY** or to property or work that is the subject of an enforcement order issued while these regulations are in effect.

(3) Activities Requiring Written Emergency Certification

The activities listed in this subsection (310 CMR 10.61(3)(a)-(e)) require written emergency certification. The written certification shall be made on a form provided by the Department specific to storm damage caused by **TROPICAL STORM SANDY** (posted at MassDEP's web site at <http://mass.gov/dep>). The conservation commission may condition the work so as to protect the interests of the Wetlands Protection Act (M.G.L. c. 131, §40). Any person requesting to conduct activities listed at 310 CMR 10.61(3)(a)-(e) to repair damage caused by **TROPICAL STORM SANDY** shall specify the work to be performed.

(a) Stabilizing and shoring up a building or foundation where such repair is not covered under the provisions of 310 CMR 10.61(2)(g)(ii), but only to the extent that such work is necessary to prevent imminent harm to the structure. Complete restoration will require filing of a Notice of Intent pursuant to 310 CMR 10.05(4).

(b) Major 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. For purposes of this requirement only, major repair is work that will take greater than 30 days to complete.

(c) Restoration of a stream channel damaged by emergency dam releases or impoundment pump-arounds to restore conditions that existed on **OCTOBER 26, 2012**.

(d) Repair or replacement in the same location, but not expansion, of a dock, pier, or walkway that is less than fifty (50%) percent destroyed when such a structure was previously licensed or has a license application pending before the Department pursuant to M.G.L. c.91 and 310 CMR 9.00.

(e) For a structure that is less than fifty (50%) percent damaged (as defined in 310 CMR 10.61(2)(g)(ii)); permanent or temporary repairs of a septic system where the septic system will comply with Title 5 (310 CMR 15.00) without the need for a variance; and temporary repair of a septic system where the septic system will comply with Title 5 after receiving a variance. A tight tank shall not be installed under 310 CMR 10.61(3).

If the project is certified to be an emergency by the conservation commission or the MassDEP Commissioner, the written certification shall include a description of the work that is to be allowed and shall not allow work beyond that necessary to restore conditions existing on **OCTOBER 26, 2012** (the date immediately prior to the storm). Notwithstanding 310 CMR 10.06(1), said emergency work need not

be conducted by an agency of the Commonwealth or subdivision thereof, or ordered by a public official.

The conservation commission has the discretion to grant a written Emergency Certification for any other project not listed in 310 CMR 10.61(2) or (3)(a)-(e), subject to the provisions of 310 CMR 10.61(4), (5) and (6).

Conservation commissions may condition work authorized under a written Emergency Certification to protect the interests of the Wetlands Protection Act or require restoration of resource areas impacted by the work authorized hereunder.

A copy of any written Emergency Certification issued under the provisions of 310 CMR 10.61(3) shall be sent to the appropriate Department Regional Office when it is issued by a conservation commission.

The Department may, on its own initiative or at the request of any person, review any Emergency Certification decision issued by a conservation commission and any work permitted thereunder. Such review shall not operate to stay the work permitted by the Emergency Certification unless the Department specifically so orders. If certification was improperly granted, the Department may revoke the Emergency Certification, condition the work permitted thereunder, or take such other action as it deems appropriate.

(4) Site Visits

Conservation commissions need not conduct site visits to issue Emergency Certifications pursuant to the provisions of 310 CMR 10.61.

(5) Issuance of written Emergency Certification

Conservation commissions may designate one or more members or an employee of the municipality to issue Emergency Certifications pursuant to 310 CMR 10.61. Emergency Certification must be in writing on a form provided by the Department for this purpose. All written Emergency Certifications must be issued by **DECEMBER 26, 2012**, and all work allowed under an Emergency Certification must be completed by **FEBRUARY 23, 2013**.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

12.20 (Coastal): Storm Emergency Provisions in the Aftermath of **TROPICAL STORM SANDY (ON OR ABOUT OCTOBER 28, 2012)**

The terms of any restriction order adopted pursuant to M.G.L. c.130, §105, that are inconsistent with the provisions of 310 CMR 10.61 shall not prohibit work undertaken in accordance with 310 CMR 10.61. Work initiated in accordance with 310 CMR 10.61 may continue until **FEBRUARY 23, 2013** if an Emergency Certification pursuant to 310 CMR 10.06 or 10.61 is granted not later than **DECEMBER 26, 2012**.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

13.23 (Inland): Storm Emergency Provisions in the Aftermath of **TROPICAL STORM SANDY (ON OR ABOUT OCTOBER 28, 2012)**

The terms of any restriction order adopted pursuant to M.G.L. c.131, §40A, that are inconsistent with the provisions of 310 CMR 10.61 shall not prohibit work undertaken in accordance with 310 CMR 10.61. Work initiated in accordance with 310 CMR 10.61 may continue until **FEBRUARY 23, 2013** if an Emergency Certification pursuant to 310 CMR 10.06 or 10.61 is granted not later than **DECEMBER 26, 2012**.

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

9.56: Storm Emergency Waterways Provisions in the Aftermath of **TROPICAL STORM SANDY (ON OR ABOUT OCTOBER 28, 2012)**

(1) Communities Affected

310 CMR 9.56 shall be in effect in all Commonwealth of Massachusetts municipalities.

(2) Activities Not Requiring Permit or Emergency Authorization

Due to the emergency situation caused by **Tropical Storm Sandy (on or about OCTOBER 28, 2012)** and its aftermath, only the following activities will not require a permit pursuant to 310 CMR 9.05(2)(b) and 310 CMR 9.40 or emergency authorization pursuant to 310 CMR 9.20.

(a) Pump-around of impoundments or other water bodies located immediately up-gradient of the dams in the listed municipalities conducted or ordered in writing by the Massachusetts Department of Conservation and Recreation.

(b) Emergency repair to dams conducted or ordered in writing by the Massachusetts Department of Conservation and Recreation, but not expansion, where the work is limited to the footprint of the structure that existed on **OCTOBER 26, 2012 (IMMEDIATELY PRIOR TO THE STORM)**.

(c) Minor repair, but not the expansion or realignment, of a roadway, bridge, causeway, or railway passing over a dam, bridge or culvert.

(d) Repair to any pier, dock, or other structure previously authorized pursuant to M.G.L. c. 91 to the original specifications contained in a Chapter 91 license.

(3) Application Requirements for Emergency Authorization

No permit or license application shall be required pursuant to 310 CMR 9.20(4) unless explicitly required by the Department in its emergency authorization.