



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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Governor

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April 22, 2009

Massachusetts Environmental Policy Act Office
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02114

NOTICE OF INTENT TO AMEND REGULATIONS

The Department of Environmental Protection hereby provides notice of its intent to propose amendments to the Wetlands Protection Act Regulations, 310 CMR 10.00, under G.L. c.131, s.40, and Water Quality Certification Regulations, 314 CMR 9.00, under G.L. 21 s.26 to 53. The proposed amendments to 310 CMR 10.00 adopt, as permanent, the emergency regulation provisions for work in wetlands to control the infestation of the Asian Long-horned beetle. The amendments to 314 CMR 9.12 include an authorization for such work undertaken pursuant to the applicable wetland regulations at 310 CMR 10.00.

Attached are:

- Redline/strikeout version of the proposed amendments to 314 CMR 9.12
- New text of proposed regulation amendments to 310 CMR 10.00

If you have any questions, please contact Michael Stroman at (617) 292-5526.

Sincerely,

Glenn Haas, Director
Division of Watershed Management
Bureau of Resource Protection

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 which has been certified as an emergency by a conservation commission conducted in accordance with 310 CMR 10.06, 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.

310 CMR 10.06(6)(a)4:

4. eradicate an infestation of Asian longhorned beetles (*Anoplophora glabripennis*) in response to an order or regulation issued by the United States Department of Agriculture (“USDA”) pursuant to 7 USC §§7701 *et seq.* (the Plant Protection Act), or the Department of Conservation and Recreation (“DCR”) pursuant to G.L. c. 132, §11.

310 CMR 10.06(6)(g)4:

4. The removal of trees, including stumps, and the application of pesticides to trees and soil within an area defined by USDA or DCR in an order or regulation to eradicate an infestation of Asian longhorned beetles, notwithstanding the provisions of 310 CMR 10.06(6)(d) or (e), provided that the work is conducted as follows:

- a. The provisions of 310 CMR 10.06(g)(4) shall apply to USDA or DCR, if those agencies are performing eradication work, or to other persons if authorized or ordered by DCR to undertake eradication activity, in areas subject to regulation under M.G.L. c. 131, § 40. For the purposes of 310 CMR 10.06(g)(4), these agencies or persons shall be defined as authorized persons. At least 14 days prior to beginning work in any municipality, an authorized person shall submit to the conservation commission and MassDEP’s regional office a GIS orthographic photo or map showing all resource areas in which work is to be conducted within the municipal boundaries, including wetland or stream crossings to gain access to work areas or Estimated Habitats for State-Listed Rare Wetlands Wildlife, along with a proposed schedule or phasing plan for the eradication activities. If work is proposed within an Estimated Habitat, an authorized person shall provide the above described photo or map to the Natural Heritage and Endangered Species Program (“NHESP”) at the same time it is submitted to the conservation commission and MassDEP.
- b. At least three days before beginning work at a specific site, an authorized person shall submit to the conservation commission and MassDEP’s regional office a plan on a USGS or other map of at least 1=5:000 scale showing the work in the designated area as well as skid roads, stream and wetland crossings, landings and the general location of erosion control measures. An authorized person shall provide the name and contact information of an on-site supervisor responsible for compliance with the wetland related requirements of the harvest, including maintenance of the erosion control measures. MassDEP, a designated representative of the conservation commission and the authorized person shall conduct a site inspection at least 48 hours before beginning the work, to explore access options, proposed activity in resource areas, erosion controls, and final stabilization with the intent to minimize wetland impacts, unless MassDEP and the designated representative of the conservation commission determine, after a review of the plan, that a site visit is not necessary. If work is proposed within an Estimated Habitat, USDA, DCR or any person authorized or ordered by DCR to

- undertake eradication activity shall provide the above described map to the NHESP and the contact information for an on-site supervisor at the same time the information is provided to the conservation commission and MassDEP and shall also provide the NHESP with reasonable advance notice of any site inspection of the proposed work area.
- c. Storage of materials and equipment shall be on paved surface or otherwise stable surface, outside resource areas, buffer zones, vernal pools, and the Zone I and Zone A of public water supply sources. Fuels, lubricants or hazardous materials shall not be stored, transferred between containers or mixed, and machinery shall not be refueled, in or within 100 feet of a resource area, vernal pool or the Zone I or Zone A of a public water supply.
 - d. Landings, access roads, and skid roads shall be located carefully to avoid steep slopes, resource areas, vernal pools, and stream crossings whenever possible. Access roads shall be stable and minimize site disturbance including impacts to vegetation, soil, topography, hydrology and soils.
 - e. Stream crossings shall be avoided whenever possible. If temporary crossings are unavoidable, the crossing structures shall be removed at the end of the operation, and the site, banks, and approaches shall be stabilized. All crossings shall be made at right angles to the channel, and the approaches to a stream crossing shall be stabilized continuously both during the logging operation and after completion. At least one water bar shall be installed directly uphill from a crossing to prevent water moving down a skid road from reaching a stream. The water bar shall be reinforced as needed during the course of the work. The approaches may be corduroyed with poles to prevent rutting and the churning of soil. Erosion controls shall be placed in the skid road at the approach to a stream crossing at the end of the day.
 - f. When operating in a resource area, harvesters shall concentrate skidding in a few well-defined corridors, use cable and winch as much as possible, and fell trees away from resource areas to facilitate winching them out. Harvesters shall use best efforts to avoid damaging non-targeted trees during eradication efforts. Harvesters shall use brush or corduroy to minimize ground pressure and rutting, shall reduce hitch volumes to minimize rutting, and shall use Best Management Practices (BMPs) to minimize sediment transport. Machinery shall not operate in a resource area unless the ground is dry, frozen, or otherwise stable enough to support it. In some limited situations where work is proposed in less than stable conditions and where, subject to approval by the conservation commission or the Department, tree removal requires heavy equipment operation in wetlands, the equipment shall either have low ground pressure (<3 psi), or shall not be located directly on wetland soils and vegetation. Equipment shall be placed on swamp mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation.

- g. Vehicles and heavy equipment shall not be operated on the banks of water-bodies. For all work along a stream bank, minimize disturbance and discharge of soil to the waterway. Stabilization measures shall be implemented including placement of rock, mulch, seed, erosion control fabric, re-plantings, and/or other measures as appropriate based upon the area of disturbance. Rip-rap shall not be used unless MassDEP and the conservation commission determine that other means of stabilization are not practicable. If stump removal results in bank destabilization, then a means to stabilize the bank shall be performed.
- h. Effective erosion controls (BMPs) shall be utilized to prevent discharge of sediments to resource areas, including silt fencing, temporary berms, stone dikes, and rip-rap. Brush or slash shall be placed on skid roads and seed where vulnerable to erosion. Landings shall be smoothed and graded. Exposed soils shall be seeded or mulched to prevent erosion. Tire tracks and ruts shall be smoothed along the access path.
- i. Upon completion of harvesting, temporary skidder bridges shall be removed, and the authorized person shall ensure that fords and other stream crossings are left in a stable and free-flowing condition. All temporary structures (e.g., culverts, bridges) shall be removed from resource areas. All unnatural debris generated by the eradication activity such as cans, papers, discarded tires and metal parts shall be removed. An authorized person shall not be responsible for the removal of any solid waste or trash that was on the site prior to the eradication effort. Incidental, remaining wood debris shall be left in place to promote rapid decay. Restore original grade of disturbed areas.
- j. Bare soil in buffer zones shall be reseeded with a fast-growing non-invasive grass and disturbed wetland soils shall be reseeded with a wetland native seed mix and wetland species saplings to prevent establishment of invasive species. Reseeding shall take place within 10 days of grading in spring, summer and fall months, or if grading activity takes place in winter, at the beginning of the following spring. Erosion control barriers shall be removed as soon as possible once the site is stabilized, but stabilization and removal shall occur no later than after the first growing season following completion of the work.
- k. MassDEP and a designated representative of the conservation commission may inspect sites to ensure the effectiveness of erosion control and revegetation and reseeded efforts. Within one year of eradication efforts, individual sites shall be inspected by the authorized person, MassDEP and the conservation commission to determine the adequacy of erosion control and revegetation and reseeded efforts if a conservation commission and/or MassDEP have reason to believe that erosion control, reseeded and revegetation efforts at that site have been unsuccessful.
- l. Pesticides shall be handled and applied in accordance with the provisions of 333 CMR 12.00 and 333 CMR 13.00.