

 <p>NEW YORK STATE OF OPPORTUNITY.</p> <p>Adirondack Park Agency</p> <p>P.O. Box 99 • Ray Brook, New York 12977 (518) 891-4050 • Fax: (518) 891-3938 www.apa.ny.gov</p>	<p>APA General Permit 2001G-1E</p>	<p>Effective Date: 9/10/04</p>
	<p>In the Matter of the Issuance of a General Permit for the</p> <p>Removal or Modification of Recent Beaver Dams and Debris by Individual Landowners</p>	

SUMMARY AND AUTHORIZATION

This general permit is issued to the Adirondack Park Agency (APA) and the New York State Department of Environmental Conservation (DEC), authorizing the agencies to issue permits as described herein to individual landowners for certain regulated activities relating to the removal or modification of recently constructed beaver dams or debris in ECL Article 24 jurisdictional wetlands within the Adirondack Park.

This general permit is issued pursuant to §809(13)(e) of the Adirondack Park Agency Act and 9 NYCRR Section 572.23 subject to the following provisions:

Prior to removal of any beaver dam or debris in APA jurisdictional wetlands, individual landowners must either:

- a) Receive a signed combined Article 11, Article 15 and Article 24 permit, as appropriate, from the DEC

OR

- b) Receive a signed APA Article 24 permit certification and a signed ECL Article 11 and, as necessary, an ECL Article 15 permit from DEC.

This general permit is issued based on the expressed understanding that each individual project will be undertaken and completed only as described in the completed application, the Findings of Fact herein, and in compliance with the Conditions herein. In the case of conflict, the conditions control.

This general permit is in effect from the date of re-issuance unless otherwise modified or revoked by the Agency.

JURISDICTION

Pursuant to ECL 24-0701(2) and 9 NYCRR 578.3(n)(1) and (2), within the Adirondack Park, any form of dredging, excavation, removal of soil, peat, mud, sand and any other activity which substantially impairs the functions served by or the benefits derived from freshwater wetlands is a "regulated activity" which requires a permit from the Agency. Removal of beaver dams and debris may drain upstream wetlands, transport sediments to downstream wetlands, and thus may adversely affect the character and function of the wetlands.

CONDITIONS

1. Prior to removal of any beaver dam or debris in APA jurisdictional wetlands, individual landowners must apply for and receive Article 24 approval for their specific project from either APA or DEC.
2. Failure to comply with this general permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
3. This permit is issued only for the breaching or removal of recently constructed beaver dams as determined by APA or DEC staff.

Beaver dams are generally considered long established (i.e., not recent) if there is live woody vegetation growing on the dam and/or there exists well-developed emergent or sub-emergent wetland vegetation within and resulting from the impoundment behind the dam. In such cases, an Individual ECL Article 24 permit is required from the Agency.

4. If seeking approval from the APA to remove or modify beaver dams in regulated wetlands within the Adirondack Park, each landowner shall submit a completed and signed "Application and General Permit Certification for the Removal or Modification of Recent Beaver Dams or Debris" to the Director of Regulatory Programs, New York State Adirondack Park Agency." Agency staff will review the application for completeness, conduct a site visit if determined by APA staff to be necessary, and determine if the proposed project meets the terms and conditions of this general permit. If approvable, an authorized APA Representative will sign the "Application and General Permit Certification" and return it to the applicant. The applicant may not begin removal of the beaver dam or debris until the Agency signed permit has been received and an ECL Article 11 permit has been obtained from DEC.
5. Alternatively, if seeking approval from DEC to remove or modify beaver dams in regulated wetlands within the Adirondack Park, each landowner shall complete a

“Complaint Record and Permit Form” with the DEC Regional Wildlife Offices in DEC Regions 5 or 6, as appropriate. DEC staff will review the application, conduct a site visit if determined by DEC staff to be necessary, and determine if the proposed project meets the terms and conditions of this general permit. If approvable, DEC Regional Wildlife staff will sign and issue a combined ECL Article 11, 15 and 24 permit, as appropriate, to the applicant. The applicant may not begin removal of the beaver dam or debris until the DEC signed permit has been received.

6. DEC staff shall assure that DEC permit conditions are in substantial conformance with the APA conditions contained herein.

DEC staff will direct individual landowners to apply to the APA for Individual ECL Article 24 Permits when DEC staff determines that the beaver dam is not recently constructed. APA staff will provide DEC staff with in-service training regarding the differences between “recently constructed” and “long established” beaver dams.

7. The DEC Regional Permit Wildlife Manager in DEC Regions 5 and 6 will each provide the APA Director of Regulatory Programs with an annual report identifying the number and location of DEC issued permits for removal or modification of recently constructed beaver dams within their region in the Adirondack Park. Such reports shall cover the calendar year and be submitted by March 30 each year. The Agency shall maintain similar records.
8. Applicants shall be encouraged to consider other alternatives to breaching or removal in an attempt to end chronic beaver dam problems.
9. Dynamite or other explosives shall not be used.
10. All excavated material shall be disposed of on adjacent uplands or on the remaining dam or dam apron.
11. Disturbances to the beaver dam shall be limited to the minimum necessary to lower the impoundment to the water level that existed prior to the recent beaver dam construction. Water levels shall be lowered gradually by slow and partial breaching before the entire dam is removed.
12. This permit does not authorize removal of stumps, rocks, submerged trees or disturbance to the beaver impoundment other than the beaver dam itself. Disturbances to the other portions of the protected stream or wetland are prohibited.

13. By signing the APA application and certification or the DEC complaint record and permit form, the landowner accepts the full legal responsibility for all damages, direct or indirect, of whatever nature and by whomever suffered, arising out of the project and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from this project.
14. This general permit does not grant the permittee any right to trespass upon the lands of, or interfere with the riparian rights of others in order to perform the permitted work, nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.
15. Nothing contained in this general permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.
16. The use of machinery must be specifically requested and authorized in each individual application, otherwise machinery may not be used. Machinery may be authorized if a) the dam is of such construction or in a state of disrepair that it presents a hazard to those attempting hand modification or removal, or b) where there is potential for imminent loss of human life. If use of machinery is authorized, machinery shall not be allowed in the stream or on its banks where it may cause the bank to be damaged or collapse. Machinery that will work in or adjacent to wetlands shall be tracked. Machinery that will work from macadam or paved surfaces may be rubber tired.
17. The permittee shall require that any agent, contractor, project engineer, or other person responsible for the overall supervision of this project read and understand the permit, including all terms and conditions.
18. Any deviation from the type of project authorized by this permit or failure to comply precisely with all the terms and conditions of this permit must be expressly approved in writing and in advance by authorized APA or DEC staff.
19. This permit is in effect from the date of re-issuance unless otherwise modified or revoked by the Agency.

FINDINGS OF FACT

1. At the September 9-10, 2004 Agency meeting, the Agency members and designees approved extending this existing general permit without a specific expiration date.
2. Freshwater wetland covertypes potentially affected by activities involving removal of recently constructed beaver dams and debris include all those found in the NYS Freshwater Wetlands Act (ECL Article 24): wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands found in the Agency's Rules and Regulations (9 NYCRR Subtitle Q, §578): deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows and bog.
3. The wetlands potentially affected by beaver dam removal or modification provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics and nutrient cycling.
4. Recently constructed beaver dams and accumulated debris can have severe adverse effects upon regulated freshwater wetlands located within the mean high-water mark of the new impoundment. Such impoundments may also pose the threat of loss of human life and property. This general permit is issued to allow landowners to modify or completely remove recent beaver dams and debris causing obstructions to the normal historic water flow, as permitted by APA or DEC staff.
5. Removal or modification of recently constructed beaver dams or removal of debris in accordance with the Conditions of this general permit will not result in undue adverse impacts on Park resources, will not substantially impair the functions served by or the benefits derived from said wetlands, and will provide economic and social benefits to the affected municipalities.

CONCLUSIONS OF LAW

The Agency has considered all the statutory and regulatory criteria for project approval as set forth in Section 24-0801(2) of the Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR 578.10.

The Agency hereby finds that projects for the removal of recently constructed beaver dams or debris are approvable and comply with the above criteria provided they are undertaken in compliance with the conditions herein.

GENERAL PERMIT issued this day
of , 2004.

ADIRONDACK PARK AGENCY

BY: _____
Mark E. Sengenberger
Deputy Director (Regulatory Programs)

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

On the day of in the year 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared Mark E. Sengenberger personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

MES:tjf