



M E M O R A N D U M

TO: James Townsend, Counsel

FROM: Jennifer McAleese, Senior Attorney

RE: Proposed Emergency Authorization Regulation

DATE: October 2, 2013

The purpose of this memo is to introduce a draft of an emergency authorization regulation. As discussed below, staff intends to seek informal input from involved agencies and key stakeholders prior to recommending any formal rulemaking to the Agency for consideration. The following provides background information on the draft emergency authorization regulation and staff's work to date.

Background:

Since 2011, in addition to numerous state disaster declarations, there have been 7 federally declared major disasters for New York State and 3 federal emergency declarations, which included the 2011 flooding events, Hurricane Irene, Tropical Storm Lee, and Hurricane Sandy. During this time, the Agency has received 141 referrals that received emergency authorization from DEC. The DEC regulations set forth specific emergency authorization procedures that provide for expedited project review in emergency situations. See 6 NYCRR § 621.12 (2013).

Many of these activities are jurisdictional to the Agency and the Agency currently lacks a regulatory tool authorizing emergency actions through an expedited review process. Such a procedure is imperative for public health and safety, Agency efficiency, and improved coordination with other state agencies. Due to these reasons, an emergency regulation has been identified as a priority need by the Agency's RASS and Regulatory Programs staff. In response, Agency staff has drafted a proposed emergency authorization regulation to be added to §572 of the Agency's regulations.

Statutory Authority:

The Agency's statutory authority to make emergency determinations is derived from §§ 806, 809 and 814 of the Adirondack Park Agency Act.¹ Each of these sections contains an emergency clause stating the section shall not apply to emergency projects or land use or development immediately necessary for the protection of life or property. The purpose of the emergency authorization regulation is to further define the statutory emergency clauses.

Draft Proposal:

Agency staff has drafted a regulation authorizing the Deputy Director - Regulatory Programs to, at his discretion, issue an emergency authorization letter to a project sponsor in certain circumstances. The Deputy Director must make a finding that there is an emergency and that the proposed emergency action meets a set of specific criteria. Specifically, the emergency action must be directly related to the emergency, be the minimum relief necessary to address the emergency, and cause the least change, modification, disturbance or damage to the environment practicable under the circumstances.

In addition, the Deputy Director - Regulatory Programs retains the authority to place conditions upon or require remedial actions by the project sponsor to limit the scope of the emergency action and minimize the impact of the emergency action on affected resources. Failure to comply with the emergency authorization letter may result in enforcement action.

Conclusion:

After introducing staff's proposed emergency regulation at the October Board meeting, staff intends to seek input from other state agencies, such as DEC and DOT, as well as state and county emergency offices. Staff will also request stakeholder input and review of the proposed emergency regulation. Staff will then bring the proposed regulation to the Board with, hopefully, a recommendation to move forward with a formal rulemaking process.

¹ Article 70-0107 of the Environmental Conservation Law specifies that the Wetlands Act and Rivers Act are subject to the provisions of section 809 of the APA Act. See N.Y. ENVTL. CONSERV. LAW §70-0107 (McKinney 2013).

DRAFT EMERGENCY AUTHORIZATION REGULATION

§572.XX

- (a) Emergency** –(1) A specific natural event or an accidental human-made event which presents an immediate threat that may result in irreversible damage to life or property or (2) a specific storm event or natural calamity that has been declared to be an emergency or major disaster by federal or state officials.
- (b) Emergency Action** – an activity that requires a permit, order or variance from the Agency that is undertaken to address an emergency as defined in subsection (a) of this part.
- (c) The Deputy Director – Regulatory Programs, at his discretion, may issue an emergency authorization letter to a project sponsor for an emergency action if:**
1. The Deputy Director – Regulatory Programs determines there is an emergency:
 - i. as defined in §572.XX (a)(1) and the event causing the emergency occurred within the previous 30 days; or
 - ii. when the existing condition is directly attributable to an emergency as defined in §572.XX(a)(2);
 2. The emergency action is directly related to the emergency;
 3. The emergency action is the minimum relief necessary to address the emergency; and
 4. The emergency action will cause the least change, modification, disturbance or damage to the environment practicable under the circumstances.
- (d) Prior to undertaking an emergency action, or if that is not possible within 24 hours of the commencement of such emergency action, the project sponsor shall contact the Deputy Director – Regulatory Programs, in writing, requesting an emergency authorization letter.**
- (e) In support of the request for an emergency authorization letter, the project sponsor shall provide sufficient information to the Deputy Director – Regulatory Programs including, but not limited to the signature of the owner of record of the land involved, a description of the emergency, the nature and duration of the proposed emergency action, and any remedial actions that will limit the impacts of the emergency action on natural and ecological resources.**
- (f) The Deputy Director – Regulatory Programs may place conditions upon or require remedial actions by the project sponsor in the emergency authorization letter as necessary to limit the scope of the emergency action and to minimize the impact of the emergency action on affected resources.**

- (g) Undertaking a jurisdictional activity not otherwise authorized by the Agency or the failure to comply with the emergency authorization letter shall constitute a violation subject to enforcement action.

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