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**Guidance for Boards of Health Implementing M.G.L. c.131, s.80A
Threats from Beaver and Muskrat-Related Activities**

Summary of the Law

The Massachusetts Legislature recently amended M.G.L. c.131, s.80A, with the passage of "An Act Relative to Foothold Traps and Certain Other Devices." This new law became effective on July 21, 2000, and was intended to make it easier for applicants to alleviate threats caused by beaver and muskrat-related flooding.

Any person may apply to the Board of Health (Board) for an emergency permit to immediately alleviate a threat to human health and safety from beaver or muskrat-related activity. The law includes a list of activities, set forth below, that may constitute a threat to human health and safety. The activities in this list are intended to be suggestions about what could constitute a threat, but the determination of whether an activity poses a threat is left to the judgment of the local health officials. If local health officials determine that there is not a threat to public health or safety, this does not mean that the person seeking assistance is without options. With appropriate permits, they can still install water flow devices, breach dams, or trap, under different conditions, which are outlined within the last three paragraphs of MGL c. 131, s. 80A. The person can also appeal the Board's decision to the Massachusetts Department of Public Health (MDPH) or the Division of Fisheries and Wildlife (DF&W) (see page 11).

A threat to human health and safety may include:

- (a) beaver or muskrat occupancy of a public water supply;
- (b) beaver or muskrat-caused flooding of drinking water wells, well fields or water pumping stations;
- (c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping stations;
- (d) beaver or muskrat-caused flooding of a public or private way, driveway, railway or airport runway or taxi-way;
- (e) beaver or muskrat-caused flooding of electrical or gas generation plants or transmission or distribution structures or facilities, telephone or other communications facilities or other public utilities;
- (f) beaver or muskrat-caused flooding affecting the public use of hospitals, emergency clinics, nursing homes, homes for the elderly or fire stations;
- (g) beaver or muskrat-caused flooding affecting hazardous waste sites or facilities, incineration or resource recovery plants or other structures or facilities whereby flooding may result in the release or escape of hazardous or noxious materials or substances;
- (h) the gnawing, chewing, entering, or damage to electrical or gas generation, transmission or distribution equipment, cables, alarm systems or facilities by any beaver or muskrat;

- (i) beaver or muskrat-caused flooding or structural instability on property owned by the applicant if such animal problem poses an imminent threat of substantial property damage or income loss, which shall be limited to: (1) flooding of residential, commercial, industrial or commercial buildings or facilities; (2) flooding of or access to commercial agricultural lands which prevents normal agricultural practices from being conducted on such lands; (3) reduction in the production of an agricultural crop caused by flooding or compromised structural stability of commercial agricultural lands; (4) flooding of residential lands in which the municipal board of health, its chair or agent or the state or federal department of health has determined a threat to human health and safety exists. The Department of Environmental Protection shall make any determination of a threat to a public water supply.

If the Board of Health determines that such a threat exists, the Board shall immediately issue an emergency permit to alleviate the threat. The permit is valid for ten consecutive days. If the Board determines that such a threat does not exist, the Board shall immediately deny the permit and specify, in writing, the reasons for the denial. In case of a denial, the Board shall also inform the applicant that he or she can employ one of the following options for resolving their problem: 1) appeal to the state Department of Public Health for a determination as to the existence of the threat; 2) appeal to the DF&W if there is a question as to the cause (i.e., type of wildlife) of the threat; 3) contact DF&W for assistance with solutions covered under the non-health or safety threat section of the law (last three paragraphs of M.G.L. c. 131, s. 80A); or 4) contact a private contractor or non-governmental organization for assistance. MDPH and DF&W have agreed to consult with each other on issues where either agency clearly has more expertise, i.e., DF&W will take the lead on issues requiring wildlife expertise, and MDPH will take the lead on issues requiring public health expertise.

The permit authorizes the applicant to remedy the threat in one of three ways: 1) use of Conibear or box or cage-type traps (subject to DF&W but not Conservation Commission

regulation); 2) breaching of dams, dikes, bogs or berms, subject to determinations and conditions of Conservation Commissions; or 3) use of any non-lethal management or water-flow devices, subject to determinations and conditions of Conservation Commissions (see Sample Permits in Appendix I).

If the applicant has been unable to solve the problem within the 10-day emergency permit period, the applicant, in conjunction with the Board of Health, shall subsequently apply to the DF&W for a 30-day extension permit. While awaiting approval from the DF&W for the 30-day extension permit, the applicant may apply to the Board for two additional ten-day emergency permits (see page 9 for guidance on extension permits).

Beaver and muskrat-related problems that are determined not to constitute threats to public health and safety under this new law may still be addressed. DF&W staff, private contractors, and non-governmental organizations specializing in this work, can assist individuals with dam breaching, installation of water control devices, and trapping subject to any necessary permit. Under M.G.L. c. 131, s. 80A, permits to use a Conibear trap can be issued by DF&W if box or cage traps and alternative methods like water control devices have been tried unsuccessfully for 15 days.

Making Public Health/Safety Determinations

The Board of Health must make a determination as to whether the applicant has a “threat to human health and safety”. The intent of the legislation was to provide a quick remedy to flooding caused by beaver or muskrat. In the law, the permit is termed an “emergency permit”. Such terminology is meant to imply that the permit is short lived (i.e., ten days) and will be issued quickly. The term “emergency” is NOT meant to imply that the applicant has a public health or safety emergency. The “emergency permit” is issued by the Board of Health to solve a “public health or safety threat”. As defined under Chapter 131, Section 80A “A threat to human health or safety may include, but shall not be limited to:” the nine items listed in the law under sub-headings (a) through (i). Although this may become a simple determination once Boards of health become experienced with

such threats, DF&W has had four years of experience making such determinations. DF&W and MDPH have agreed to assist Boards of health upon request. MDPH has likewise had four years of experience in addressing these types of public health threats. During this four-year period, less than ten such incidents have been reported to MDPH. Such assistance may be as simple as a phone conversation with the DF&W District Office Biologist (see attached Directory). That office may have an existing file of the applicant's flooding complaint. Such a file could be used to make a determination not only of the applicant's complaint but also as to the best strategy to solve the problem (e.g., traps, breach or water flow device). DF&W has reported that it has been their experience, however, that a site visit is usually necessary to make a determination as to the cause of the problem as well as to design a strategy for solving the problem. DF&W has agreed to accompany the Board of Health on site visits when requested. It is also recommended that conditions at the site be appropriately documented (e.g., with photographs, videos, maps, drawings, etc.).

The list of nine (a through i) public health/safety threats may be difficult to apply to each situation. For example, the applicant may request a permit to trap beaver because of a threat to a septic system. Under the law, "(c) beaver or muskrat-caused flooding of sewage beds, septic systems or sewage pumping stations" may be cause to issue a permit. A site visit may reveal that the flooding is caused by a beaver, but that the water is quite a distance from the septic system and the real problem for the homeowner is a flooded lawn (or the smell of the wetland or the mosquitoes in the wetland). While the Board of Health could make a determination under sub-section (i) (4) that the flooding of residential land is a public health/safety threat, it may be prudent to deny the application and have the applicant work with DF&W using non-lethal strategies such as a water flow device. Therefore, if the Board of Health denied the permit, the applicant would apply to DF&W for a non-emergency permit to breach the dam and install a water flow device. Permission would still be needed by the Conservation Commission. The difference between the two outcomes has to do with the speed with which the applicant gets a permit and whether the applicant gets permission to use Conibear traps. If the Board of Health determines that a public health/safety threat exists, a ten-day emergency permit

can be issued that authorizes the use of Conibear traps. If a water flow device is to be installed in the dam or the dam is to be breached, the Board of Health sends the applicant to the Conservation Commission (i.e., that the Conservation Commission issues an Emergency Certification under the Wetlands Protection Act for the installation of the device). Conversely, if the Board of Health makes a determination that there is NOT a threat to public health/safety, the applicant can employ one of the following options for resolving their problem: 1) appeal to MDPH for a determination as to the existence to the threat; 2) appeal to DF&W if there is a question as to the cause (i.e., type of wildlife) of the threat; 3) contact DF&W for assistance with solutions covered under the non-health or safety threat section of the law (last three paragraphs of M.G.L. c. 131, s. 80A; or 4) contact a private contractor or non-governmental organization for assistance. Conservation Commission approval is still necessary for breaching a dam or installing a water flow device. If a Board of Health or MDPH determines that no threat exists, the Conservation Commission should not use the emergency certification mechanism but use its normal permitting process to address the activity.

The law provides that the Department of Environmental Protection (MDEP) shall make any determination of a threat to a public water supply. MDEP has issued a “Standard Operating Procedure” for such determination. In these cases the MDEP should notify the MDPH, Bureau of Environmental Health Assessment.

How Does The Board of Health Interact With The Conservation Commission?

Once a determination has been made by the Board of Health that an applicant has a public health or safety threat, the Board of Health shall issue an emergency permit to: 1) trap beaver and/or 2) breach beaver dams (and install water flow devices as above). The Board of Health has sole authority over permitting trapping, but joint authority with the Conservation Commission over the breaching of beaver dams.

The Legislature recognized that Conservation Commissions have an important role to play in solving beaver and muskrat problems, and specifically declared that breaching

and other water management proposals are subject to “determinations and conditions” of Conservation Commissions pursuant to the Wetlands Protection Act (M.G.L. c.131, s.40). MDEP has recently developed a similar Guidance Document to all Conservation Commissions. On page four of that document, MDEP outlines a “Recommended Process” for the issuance of breach permits. Emergency Certifications may be issued by the Conservation Commission for up to 30 days to allow for the breaching of beaver dams or the installation of water flow devices. MDEP recommends that the Emergency Certification be issued to overlap the ten-day Board of Health permit. No matter what process is used, it is essential that the Conservation Commission approve modifications to beaver dams prior to such work.

Types of Permits for Health and Safety Threats

There are two types of permits for health and safety threats-- emergency permits issued by Boards of Health and extension permits issued by DFW. Emergency permits may be subdivided into initial permits and additional permits.

Initial Emergency Permit

If the Board of Health determines that a threat to human health and safety exists, the Board may authorize a ten-day emergency permit to applicants or their duly authorized agents that authorizes the applicant to take the following actions: 1) trap beaver or muskrat using Conibear-type traps, or cage or box type traps (subject to DFW regulations), 2) breaching of dams, dikes, bogs or berms (subject to approval and conditions of the Conservation Commission), and 3) use of any water-flow device or control structure (subject to approval and conditions of the Conservation Commission).

Discussion of Remedies Allowed by the Emergency Permit

1. Conibear-type Trap: upon determination that a public health or safety threat exists, the Board of Health has the authority to issue the ten-day emergency permit to the

applicant or his/her duly authorized agent to use Conibear-type body-gripping traps. These traps are restricted under the law and can only be used with a valid permit. Licensed trappers and Problem Animal Control agents have received training to use Conibear-type traps. DFW regulations also restrict the setting and placing of such traps. For example, Conibear-type traps can only be used underwater for the capture of beaver or muskrat. It is recommended that Boards of Health advise the applicant that during the period from June 1 through July 15, the kits are completely dependent on their mother. Beaver kits are born at the end of May and the beginning of June. Removal of the adults at this time may orphan beaver at an age when their survival may be jeopardized. In the case of public health and safety threats, the Board of Health does have the authority to issue emergency permits at this time.

2. Breaching: beaver dams are protected by law and cannot be breached without a permit. The Board of Health has the authority to issue the ten-day emergency permit to breach a beaver dam (and similar structures), subject to the conditions of the Conservation Commission. The permittee or his/her duly authorized agent has the responsibility to obtain the permission of the landowner where the beaver dam is located. The Board of Health emergency permit does not authorize the permittee to trespass on private property.

Water may be lowered from a site by breaching or removing a beaver dam. If beavers are not residing at the complaint site, this action can provide a long-term solution. Breaching a dam is usually only a temporary solution when beaver are occupying the site since they will repair the breach or rebuild the dam, thus re-flooding the site. The Conservation Commission will issue conditions for the breach to ensure that both upstream and downstream impacts to people, property and habitat are minimized. The Conservation Commission should advise the applicant that if a dam is breached during the winter months, the entrance to the beaver lodge might be exposed to the elements. Such exposure may jeopardize the survival of the beavers inside the lodge. Environmental conditions are such (i.e., snow and ice hinders establishment of new lodges or establishment of winter food caches) that beavers cannot relocate to a new area after

October 1 and before April 1. Limited breaches based upon Conservation Commission conditions may be warranted at this time.

3. Installation of Water Flow Devices: Boards of Health may issue emergency permits to breach beaver dams (or similar structures) for the purpose of installing water flow devices. Such permits are subject to Conservation Commission conditions. These devices can provide long-term solutions to beaver flooding problems provided that appropriate environmental conditions exist. Such devices do not work well in flat or shallow wetlands. The guidance above relative to breaching should also pertain to the installation of flow devices.

Permitting Process for Extension Permits

If the Board of Health has issued the initial ten-day emergency permit, and the threat to human health and safety has not been alleviated within the ten days, the applicant or his duly authorized agent, in conjunction with the Board of Health, shall apply to DFW for a 30-day extension permit. This permit allows all three remedies specified above, subject to determinations and conditions of the Conservation Commission.

If the 30-day extension permit is granted, DFW shall develop, with the assistance of the applicant, his/her agent, the Board of Health, and the Conservation Commission, a plan to abate the beaver or muskrat problem using alternative, non-lethal management techniques in combination with water flow devices, subject to Conservation Commission determinations and conditions. The plan may include cage or box type traps, if necessary.

Permitting Process for Additional Emergency Permits

Depending on the scenario, an applicant may obtain additional ten-day emergency permits, as follows.

Procedure 1: if the applicant has applied for and is awaiting, approval from DFW for the 30-day extension permit, the Board of Health may issue an additional ten-day emergency permit for all three remedies (see above). If, after such additional permit has expired, the applicant has still not received approval for the 30-day extension permit, the Board may issue a second ten-day additional permit. Such second additional emergency permit shall not allow the use of Conibear-type traps. In other words, an applicant is limited to two additional 10-day emergency permits under this procedure.

Procedure 2: the applicant applied for and received the initial ten-day emergency permit, and seemingly solved the problem within nine or less days (i.e., did not apply for the 30-day extension permit). However, the problem then recurs. He/she may then apply to the Board for an additional ten-day emergency permit. The applicant must state in writing that there exists on his/her property an animal problem which poses a threat to human health and safety, and which cannot be reasonably abated by the use of alternative non-lethal measures or cage or box traps, and that the applicant has tried to abate the problem using such alternative measures or cage or box traps.

Procedure 3: the applicant has applied for and received the initial ten-day emergency permit, has applied for and received the 30-day extension permit, and may have received one or two additional emergency permits under procedure one. The applicant appears to have trapped all beaver using the initial emergency permit, and is utilizing the extension permit to implement dam breaches or water flow device installation. The beaver problem then recurs. The applicant may then apply to the Board for an additional ten-day emergency permit. The applicant must state in writing that there exists on his/her property an animal problem which poses a threat to human health and safety, and which cannot be reasonably abated by the use of alternative non-lethal measures or cage or box traps, and that the applicant has tried to abate the problem using such alternative measures or cage or box traps.

Procedure 4: the applicant has applied for and received the initial ten-day emergency permit and has applied for the 30-day extension permit. While awaiting approval for the

30-day extension permit, the applicant has applied for and received one or two additional emergency permits. The 30-day extension permit is granted. The applicant appears to have trapped all beaver using the initial and additional emergency permits, and is utilizing the extension permit to implement dam breaches or water flow device installation. The beaver problem then recurs. The applicant may then apply to the Board for an additional ten-day emergency permit. The applicant must state in writing that there exists on his/her property an animal problem which poses a threat to human health and safety, and which cannot be reasonably abated by the use of alternative non-lethal measures or cage or box traps, and that the applicant has tried to abate the problem using such alternative measures or cage or box traps.

Denials and Appeals

The applicant has the right to appeal a Board of Health decision to deny a permit to either DPH or DFW. DPH and DFW have agreed to the following appeal process. DPH will determine appeals if the reason for appeal is related to threats to human health or safety as set forth in (a) through (i) in §80A, and DFW will determine appeals if the reason for appeal is related to the type of wildlife causing the problem.

Reporting

Boards of Health should send a copy of each permit (mailed on a monthly basis) to the Assistant Commissioner for Environmental Health, Department of Public Health, 250 Washington Street, Boston, MA 02108-4619.