

The following information is intended to aid in determining what may/may not require a permit from the U.S. Army Corps of Engineers (USACE) following the recent storm damage in Massachusetts. We strongly advise the public to contact us with any questions regarding permitting:

- Paul Maniccia at paul.m.maniccia@usace.army.mil or 978-318-0515 (office)
- Christine Jacek at christine.m.jacek@usace.army.mil, (978) 578-7548 (cell), or (978) 318-8026 (office)
- General email box: cenae-r-ma@usace.army.mil

A majority of work within waters of the U.S. (WOTUS) following the recent storm events is expected to qualify for verification under one or more activities authorized by the Massachusetts General Permits (GPs), unless otherwise exempt. WOTUS include, but are not limited to, lakes/ponds, rivers, streams, intermittent streams, natural drainage courses, ocean and wetlands. The Massachusetts GPs are available at: <https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Massachusetts-General-Permit/>. Additional information regarding the New England District Regulatory Program and submittal of a permit application (as applicable) can be found at: <https://www.nae.usace.army.mil/Missions/Regulatory>.

The following apply for work in WOTUS:

- Permits are required for work or structures in or over navigable waters pursuant to Section 10 of the Rivers and Harbors Act of 1899. Navigable waters are defined as those waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past or may be susceptible for use to transport interstate or foreign commerce (33 CFR 329.4). The following waters have been determined to be Navigable Waters of the United States in Massachusetts: 1) all waters that are subject to the ebb and flow of the tide, 2) Merrimack River, 3) Connecticut River, 4) Charles River to the Watertown Dam. **However, if working in these navigable waterways, repair/replacement activities may qualify for the maintenance general permit (General Permit #2) outlined on pages 10-11 of the GPs.**
- The discharge of fill material into waters of the U.S. requires a permit under Section 404 of the Clean Water Act (CWA), unless otherwise exempt. Many activities to remediate storm damage may be exempt from permitting under the CWA if they involve returning sites to pre-disaster conditions (for example, replacing rip rap within areas that were previously stabilized with rip rap). *In accordance with 33 CFR 323.4(a)(2), any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or*

otherwise subject to regulation under Section 404 of the CWA: “Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. **Maintenance does not include any modification that changes the character, scope, or size of the original fill design.** Emergency reconstruction must occur within a reasonable period of time after damage has occurred in order to qualify for this exemption.” This exemption does not apply to activities located in the navigable WOTUS listed above, which may require authorization pursuant to Section 10 of the Rivers and Harbors Act.

- New impacts to WOTUS **that are not Section 10 waters** may be allowed under Self-Verification of the GPs (i.e., an application is not required) depending on the specific activity. Applicants are encouraged to review the impact thresholds carefully under GPs 1 - 25. All terms and conditions of the GPs starting on page 35 must be followed. We highly advise the public to **document** your records. Taking before/after photos and sketching existing/proposed conditions is highly recommended. Please note the before/after footprint of fill, document the length or rip rap/stabilization and the pre- and post- size of structures replaced.
- Sediment and debris removal to restore sites to pre-flood conditions may not require a permit if there is **no** associated discharge of fill material and the work does not occur within the above listed navigable waterways. Debris removal from these navigable waterways may be authorized under GPs #2 and #7 and may be eligible for Self-Verification under the GPs.
- For anything other than replacement in-kind and/or restoring pre-existing fills to pre-flood conditions, a permit will likely be required. In these cases, we advise the public to call or email USACE (contacts above) to determine whether an application is required.
- In cases where proposed work does not qualify for the exemption or the GPs, and the situation would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action is not undertaken within a time period less than the normal time needed to process a permit application under standard procedures, the District can process an application for a permit under emergency procedures, as stated in 33 CFR 325.2(e)(4). The public should contact us if they feel the work qualifies for the emergency procedures.

The Massachusetts Permits Section team remains poised to assist you with your permitting needs or questions. Please do not hesitate to contact us.