

From: Mears, David

Sent: Thursday, September 22, 2011 6:44 PM

To: MacLean, Alex

CC: Markowitz, Deb; Recchia, Chris; Johnson, Justin

Subject: Additional Information Regarding Flood Emergency Stream Alteration Authorizations

Attachments: Emergency Flood River Protection Procedures-Revised.docx; Public Assistance Announcement_09_23_11.docx; 2011-09-22 Memo to Governor re Emergency Stream Alt Authorizations.docx

Alex: I am attaching three documents: (1) a slightly revised press release (with additional language regarding what constitutes a public emergency); (2) an announcement for towns about the need to get state approval in order to qualify for FEMA Public Assistance funds; and (3) a memo from me to Governor Shumlin providing the requested additional information about how we will determine what qualifies as a public emergency and also the procedure we will use for authorizing non-public emergency flood response work.

Thank you for this request – this effort to clarify is important work and will form the basis of guidance and training documents we are using.

Please let me or Deb know if you or the Governor would like to discuss further or have any questions. My cell phone number is 371-8933. Sincerely, David

PRESS RELEASE

Vermont Agency of Natural Resources

September 23, 2011

Contact: Ginny Colbert - 802-241-3600

Vermont Agency of Natural Resources Enters a New Phase in our Flood Recovery

Montpelier. The Vermont Agency of Natural Resources (ANR) announced today that staff will begin the shift from an exclusive focus on emergency response to working with municipalities, businesses and homeowners to maximize the long-term effectiveness of our state's flood recovery work. "The first phase of the disaster response primarily involved emergency river work that would enable Vermonters to get back to their homes and businesses," said Vermont Agency of Natural Resources Secretary Deb Markowitz. "The work of opening up travel routes remains critical to public health and safety and our economy," stressed Markowitz, "so we are still involved in emergency efforts to allow these repairs, but now is the time to prepare for the floods that will come with melting snow and spring rains."

The expedited process used by the state to authorize river work helped get important road and bridge repair underway as soon as possible during the first weeks of the disaster, and ANR will continue to use this process where true emergency work is ongoing. As permanent fixes are being developed, deliberation and documentation are more critical. Secretary Markowitz added, "We still need to stay on a fast track, so we will assist towns, state, and federal agencies and authorize upcoming river work in tandem with the documentation required for federal grants and reimbursements."

Recognizing that recovery in the aftermath of a statewide flood disaster requires extensive in-stream work, the Department of Environmental Conservation's (DEC) Rivers Program will assist landowners, municipalities, and other agencies as they conduct emergency and long-term recovery work. DEC staff will ensure that rebuilding occurs in the best possible way in order to minimize loss in the next flood.

State Rivers Program Manager Mike Kline, who works with and supervises the State's river engineers, said, "The ability to give technical assistance through verbal authorizations has made it just possible to keep up with the demands for forty or fifty site visits and dozens of calls for assistance in a single day. Resolving or managing conflicts between human investments and the dynamics of rivers, for longer term stability, however, will require us to move past the emergency phase. We need to document the authorized work when a temporary fix needs to evolve into a more permanent solution."

At the discretion of the DEC River Management Engineer, three levels of authorization to conduct stream alterations will be used:

1. **Expedited assistance and approvals.** DEC Rivers Program staff will use its emergency authorities, general permit process and expedited written and verbal approvals to address public emergency situations that still exist as a result of the flood (i.e., necessary to avoid danger to human health and safety, loss of significant built assets-public and private, and disruption of commerce,).
2. **Documented guidance and approvals.** DEC Rivers Program will use its emergency authorities and general permit processes to expedite written approvals or signoffs of stream alterations, related to the flood, but not deemed to be a public emergency. The Rivers Program will not authorize this category of work using purely verbal approvals. These signoffs will serve the purpose of documenting the compliance with state laws necessary to secure state and federal grants and reimbursement for flood recovery work.

3. **Stream Alteration Permits.** DEC Rivers Program will use its stream alteration general permit and individual permit authority to issue written permits for activities unrelated to the current flood disaster recovery effort, not including those activities that may already proceed as non-reporting activities under the State Stream Alteration General Permit (<http://www.anr.state.vt.us/dec/waterq/rivers.htm>). Emergency authorities will not be applied in these circumstances and verbal approvals will not be provided.

Practices that will require state and local approvals during the flood recovery period: The following practices can contribute to damage caused by flood erosion and inundation. Consequently, permits will be required from the DEC Rivers Program or municipality prior to the use of these techniques:

1. **Berming** – using gravel and other aggregate to fill and create a linear barrier between the river and its floodplain. Placement of fill in a mapped floodway or special flood hazard area must meet the requirements of the National Flood Insurance Program in those communities enrolled in the NFIP. Fill is not permitted in the floodway unless the applicant can demonstrate, using standard engineering practices, that the proposed development with fill will not result in an increase in base flood elevations (44 CFR §60.3). Municipal approval under the community’s flood hazard bylaw and state review by the Floodplain Management Program are required for floodway and floodplain fills.
2. **Excavating and rechanneling streams in unstable dimensions and/or elevations** –excavating the channel substantially deeper, wider, and/or steeper than the dimensions and longitudinal slope of the channel required for the annual flood discharge; or extending dredging operations beyond that necessary for the removal of existing threats is curtailed. These activities may be authorized, however, in severely aggraded areas, where ongoing aggradation (i.e., sediment accumulation) is anticipated by the Rivers Program, and where use of materials in flood recovery may reduce other emergencies situations. However, commercial gravel mining in streams is prohibited by law, and statutory limits for riparian landowner use of 50 cubic yards without a permit still apply in flood recovery periods.
3. **Creating new straightened river channels** –excavating new channels that did not exist prior to the flood event will be not be allowed, except in very limited circumstances, where threats to life and critical infrastructure would exist otherwise.
4. **Reconstruction of streambanks and/or roadway embankments** - encroaching into and excessively narrowing the stream channel and/or using undersized or otherwise unsuitable materials for streambank and/or roadway embankment stabilization.

“ANR is here to help communities recover, and will be wherever we are needed to offer technical assistance during this extreme situation,” Secretary Markowitz said, “but it is important to remember that the environmental protections that protect our streams are not suspended during flood recovery. With permission from our River Management Engineers, emergency and recovery in-stream work will proceed, and we will continue to do everything in our power to expedite the process.”

Contact information and coverage maps for River Management Engineers is located at:
<http://www.anr.state.vt.us/dec/waterq/rivers.htm>

MEMORANDUM – Please Read**Reminder to Secure State Approval from River Management Engineers for ALL FEMA Public Assistance – Funded Projects Involving In-Channel, Streambank, and Stream Crossings Work Associated with the Federal Disaster Declarations in Vermont**

TO: All Vermont Municipalities Seeking FEMA Public Assistance (PA)
FR: David Mears, Commissioner, Vermont Department of Environmental Conservation
DATE: September 23, 2011
RE: Reminder to Secure Approval from River Management Engineer
CC: Mike O’Neil, VEM Director; Alec Portalupi, AOT Technical Assistance Engineer; Mike Kline, DEC Rivers Program Manager

This memorandum is to remind all communities seeking Public Assistance funds from the Federal Emergency Management Agency (FEMA) that securing approval from Vermont River Management Engineers for any work in a stream channel *is required* for all FEMA Public Assistance (PA)-funded projects.

The FEMA PA Grant Program provides supplemental financial assistance to communities for recovery activities required as a result of a presidentially declared disaster. The purpose of this reminder is to ensure that activities funded by PA will not create new flood hazards (as required by 10 V.S.A. § 1023). This topic was discussed at last week’s Applicant Briefings for FEMA Public Assistance.

Please contact the State River Management Engineer in your region for approval of all in-channel work (see attached regional coverage map). **Failure of an applicant to obtain or comply with the approval conditions of the River Management Engineers could result in the de-obligation of FEMA funds.**

To expedite the approval process, it is recommended that municipalities:

1. Index brief work descriptions to a town map showing the location(s) of all stream work to be performed by the municipality;
2. Arrange a meeting with the River Management Engineer; visit stream work sites; and revise work descriptions based on their technical input;
3. Obtain a signoff from the Engineer on the revised work plan agreements; and
4. Submit stream work approvals with applications to FEMA PA Grant Program.

To: Governor Shumlin
From: David Mears, DEC Commissioner
Cc: Alexandra MacLean, Secretary of Civil and Military Affairs
Deb Markowitz, ANR Secretary
Date: September 22, 2011
Subject: Explanation of Emergency Stream Alteration Authorization Process

Thank you for asking for clarification of (1) the definition of what constitutes a public emergency under our proposed process for issuing stream alteration authorizations and (2) the process we intend to use for stream alteration work that does not constitute a public emergency. This memorandum supplements the information in our draft press release related to this subject. Below, I provide a more detailed explanation of the reason for our recommended approach, and then answer each of your questions.

I. Purpose of the Revised Approach:

The revised process described in the press release is intended to serve three primary purposes:

1. To provide a means to effectively prioritize our review and authorization of the most important and critical work in streams and rivers so that the monies expended on this work is eligible for FEMA funding;
2. To reduce the long-term costs to taxpayers and minimizing future hazards by ensuring that the work done in streams will not cause future damage to public or private assets; and
3. To minimize the risk to human health, safety and the environment, and to recover the normal flow of commerce without creating unnecessary red tape.

A means to prioritize our work is necessary because of the scale of the task before us. This task includes,

- A. Going back to visit all of the emergency work sites we have already authorized in order to document and formally authorize this work so that it is eligible for FEMA funding;
- B. Providing authorization for the remaining work that qualifies as a public emergency so that work can proceed immediately;
- C. Providing authorization for the work needing to be done on the 20,000 town sites that need authorizations so that the work can be completed before winter; and
- D. Providing a means to give authorizations to the thousands of individuals, farmers and companies that need to complete work in order to protect their homes, farms and businesses.

In addition to revising our process to enhance our work, we are also creating a new organizational approach including diverting other departmental and agency resources to support and coordinate this work. We are also establishing technical assistance teams to work at the town level in coordination with

RPC's, AOT , consulting river engineers and scientists, and staff from other states to ensure that towns and individuals can get assistance in providing both the technical design work as well as with the necessary documentation.

II. Revised Approach: Three Tiers of Authorizations

We have defined three tiers of activities in order to prioritize our work:

1. Tier One applies to work necessary to avert “public emergencies,” as defined below. This tier will continue to be treated as we have been proceeding since the beginning of this flood response effort, with verbal authorizations, and documentation after the work is done.
2. Tier Two applies to flood-related work that is not considered a “public emergency.” The process for giving authorizations in this tier will require a stripped down written authorization process, described below.
3. Tier Three applies to routine, non-flood related work which will require a stream alteration permit. If the work triggers the need for an individual permit, the process will entail completing a written application with appropriate plans and maps, and a public notice and comment period.

III. Definition of a Public Emergency

For the purposes of this stream alteration emergency flood response procedure only, a “public emergency” will be considered work necessary to:

- Protect primary transportation infrastructure including roads, rail lines and bridges;
- Protect primary utility infrastructure including power, telecommunications, sewer and water lines.
- Protect abutments and other structures that are necessary to defend significant built assets against future flooding.
- Correct major avulsions or flood-caused diversions of stream and river channels where necessary to protect or recover significant built assets.

“Significant built assets” includes transportation and utility infrastructure, village and town centers, hospitals, schools, industrial parks, business districts, and large industrial developments.

IV. Process for Authorizing Tier Two Work

Technical assistance and guidance: As noted above, we will expand the level of technical assistance we provide to towns, individuals and businesses through the use of Technical Assistance Teams, trained and coordinated by our River Protection Program staff. These teams will assist the towns and project sponsors with the development of an appropriate plan for the work. Towns and project proponents may also rely upon their own staff or consultants, where they possess the necessary expertise.

Three step procedure for seeking authorization:

1. Submit informal written requests: Towns and other project sponsors will be asked to contact our River Management Program in order to determine what level of authorization is required. If in Tier Two, they will be asked to provide,
 - a. a brief written description of the location of the work, indexed to a map,
 - b. a brief written description of the work to be done, and
 - c. a sketch showing the location of the work.

The written description may be in any form including handwritten notes and electronic mail. The sketch may be hand-drawn and does not need to be to scale nor will it require any engineering certification.

2. River Program Approval: Upon receiving the request, the assigned DEC River Engineer will either authorize the request by signing or initialing the request or will suggest modifications and approve once those suggestions are accepted.
3. Final Certification: Upon completion of the work, the town or project sponsor will notify the assigned DEC River Engineer and they will provide the written certification necessary to obtain FEMA compensation.