



SEPTEMBER 2020: DROUGHT IMPACTED PROJECTS FACT SHEET

With the significant drought conditions effecting southeastern Massachusetts and many growers considering options for obtaining much needed water, CCCGA has put together this fact sheet to assist growers with understanding some of the regulatory hurdles that may be encountered and how to stay in compliance when undertaking such measures. The information represents our interpretation of the state and federal requirements and by no means is intended to act as a substitute for reading and following the specific regulatory requirements. For more information, please refer to the relevant CCCGA Grower Advisories, available on our web site at www.cranberries.org.

Dredging a Water Source

As an exempt activity, growers may remove sediment and debris that has filled into your water management system including canals, water ways, ponds and reservoirs that are clearly land in agricultural use and used in the manner of their repair. These maintenance activities must be done in such a way that there is no discharge of sediment, debris or any other material into a wetland and any fill must be placed outside of the BVW (wetlands). The rule of thumb to help keep growers in compliance is to keep the area as to what you have historically maintained and not expand into previously untouched areas. To avoid potential neighbor/general public issues, it may be advisable to provide a courtesy notification to your Conservation Commission before proceeding work.

Expanding a Water Source

The state Wetlands Protection Act regulations allow growers to expand an existing water source that is directly related to the bog but with a caution. If you are expanding into upland soils, this activity is exempt, provided there is no discharge of material into a wetland. If you need to enter BVW for the expansion, you can alter up to 10,000 square feet of BVW. You must document the practice improvement in your farm plan, provide the relevant portion of your farm plan to the conservation commission and get their approval before proceeding. If time is critical, ask your commission or conservation agent for an expedited approval or to hold an emergency meeting.

You may alter an additional 10,000 square feet of BVW by filing for an Agricultural Limited Project. This is a lengthier process, involving notifications, a public hearing, etc. You will also need to contact the US Army Corps of Engineers if you are impacting wetlands.

Excavating a New Water Source

Growers may construct a new water source in upland soils as an exempt project if you are in land in agricultural use, which includes necessary and related land (i.e. support land around the bog). You can alter up to 20,000 square feet of BVW (wetland) constructing a new pond but you must have the project denoted in a farm plan and file an Agricultural Limited Project as described above. You would also need to notify the US Army Corps of Engineers if you are impacting wetlands.

Installing a Well

Growers considering drilling a new well to supplement your normal water source (water withdrawal point), may need to obtain a Water Management Permit or Permit Amendment to your existing permit for drilling the new well. Contact Jim McLaughlin at the MassDEP Lakeville office at 508-946-2805 to review your circumstances before proceeding.



Chapter 91 Licensed Structures

(usually confined to water withdrawal structures on great ponds and streams)

Exceeding water withdrawal below benchmark:

There is typically a benchmark denoting the lowest point from which you may withdraw water. If you need to exceed this benchmark, you can request a waiver from MassDEP. Send an email or mail a certified letter to the MassDEP Lakeville office with as much notice as possible. In the letter, state the purpose for the request for relief, record the current pond elevation, an estimate of the water level after you withdraw (if possible, otherwise ignore this if you are unsure), when you anticipate withdrawing the water, how long you anticipate needing the water, if it will be returned to the pond or released elsewhere, your Ch. 91 license number, location of the structure, and information on how to contact you, including your mailing address and telephone number. Send it to the attention of both David Johnston (david.johnston@mass.gov | 508-946-2708) AND Jonathan Hobill (Jonathan.Hobill@mass.gov | 508-946-2870).

The mailing address is: MassDEP, SERO, 22 Riverside Drive, Lakeville, MA 02347

Modifying a Structure:

Ch. 91 licenses allow approximately a 10% change to the size of any part of a structure without approval. Should you need to increase the pipe diameter, extend the reach into the water body, etc., contact MassDEP as noted above to request a permit modification that may be made quickly given the drought conditions.

Excavating a Channel:

If you need to dredge or clear silt from around a pump or flume associated with a Ch. 91 licensed structure, any licenses issued more than 5 years ago need to have a current dredging permit or obtain one before proceeding with the activity. Contact MassDEP as noted above to obtain a permit or inquire about the possibility for emergency relief.

Anadromous Fish Passage

If your water source is home to anadromous fish (herring), you need to be extra vigilant when running pumps. Fall is migration season for the young fish and if their normal outlet has slowed or been lost due to drought conditions, running your pump may appear to the fish as an outlet and they could become entangled in your pump or enter the bog, sometimes in large quantities. "Taking" herring in this manner through what a regulator considers negligence could result in enforcement and fines; installing adequate screening is important.

Emergency Activity Provision

There is a provision in the Massachusetts Wetland Protection Act Regulations (310 CMR 10.06(6)) that allows for some immediate work to occur without a permit that would normally require one from the conservation commission, if the work is necessary due to an agricultural emergency when the "*existing agricultural water source suddenly and unforeseeably has been rendered unusable or unavailable.*" A drought may not always be viewed as "sudden" and this provision may not be allowed. No more than 2,000 square feet of BVW can be altered when invoking this measure. Growers must notify the conservation commission and MassDEP within 3 days of starting the project. Since this emergency provision may not be granted, it is strongly advised that before proceeding, growers contact their local conservation commission or agent to determine eligibility. In most instances, the existing farming practices noted above may prove more beneficial and efficient than invoking this emergency activity.