

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

## **Summary of the Law**

M.G.L. c.131, s.80A, was amended on July 21, 2000 with the passage of “An Act Relative to Foothold Traps and Certain Other Devices.” This new law was intended to make it easier for applicants to alleviate threats caused by beaver and muskrat-related flooding by granting Boards of Health the authority to 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”.

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.

## **Application Process**

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 of what may constitute a threat, however, the determination of whether an activity poses a threat is left to the judgment of the Board of Health. If the Board of Health determines there is not a threat to public health or safety, this does not mean that the person seeking assistance is without options. 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) as outlined further under **Board of Health Determines a Threat Does Not Exist**.

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.

Once a completed application and consent forms (if necessary) are received in the Health Office, the Health Agent will conduct a site visit and schedule a hearing before the Board of Health.

**Board of Health Determines a Threat Exists**

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. The emergency permit authorizes the applicant to remedy the threat in one of three ways: 1) use of Conibear or box or cage-type traps by licensed trappers, subject to DF&W 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.

If the applicant chooses option(s) 2 or 3, he/she must appear before the conservation commission to obtain an emergency certification regarding specifications for breach size and/or water flow device installation. Once the emergency certification is granted the applicant must return to the Health Agent for a final signature.

### **Permitting Process for DFW 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 subsequently 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**

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. 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.

#### **Board of Health Determines a Threat Does Not Exist**

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.

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. A Notice of Intent to the Conservation Commission seeking an Order of Conditions is required for dam breaching and installation of water control devices. 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.