

CHAPTER 42

Beaver or Muskrat-related Threats

MGL ch. 131 s. 80A

BOARD OF HEALTH ROLE AT A GLANCE

Boards of Health (BOH) may grant “emergency permits” to individuals seeking to resolve beaver or muskrat-related problems on their property, or the property of their neighbor (with the neighbor’s consent), when the beaver or muskrat activity is causing a threat to human health and safety.

The newly amended “beaver law,” M.G.L. ch. 131 s. 80A and the related regulations, 321 CMR 2.08, are designed to be a new tool to help communities better handle certain beaver or muskrat caused problems. This law empowers local BOH to help solve those beaver or muskrat related problems that pose a threat to human health and safety. Local boards now have the authority to grant emergency permits to trap beaver, breach dams, or alter water flow. (Note the latter two actions also require the approval of the Conservation Commission).

The use of the word “emergency” means that a permit can be obtained quickly and that the permit is short-lived. “Emergency” does not mean that a public health emergency already exists. In fact, the law provides that a mere threat to human health and safety will suffice as evidence to obtain a permit.

OVERVIEW

Beavers play an important role in the Commonwealth of Massachusetts. They help create and preserve wetlands that spawn ecosystems germane to our fragile environment. But when their activities are the cause of problems such as a flooded septic system or roadway beavers create hazards for people. The “beaver law,” M.G.L. ch. 131 s. 80A and the related regulations, 321 CMR 2.08 which became effective July 21, 2000 are designed to be a new tool to help communities better handle certain beaver or muskrat created problems. This law empowers local Boards of Health to help solve those beaver or muskrat related problems that pose a threat to human health and safety. Local boards now have the authority to grant emergency permits to trap beaver, breach dams, or alter water flow. (It is important to note that permitting for the latter two activities is an authority shared jointly with the local Conservation Commission and will be subject to the local Conservation Commission determinations and conditions.) Boards should not shy away from utilizing this new power when a request comes before them. However, boards should also be sure that the problems presented by the applicant are actually caused by beavers or muskrat, and not some other source.

The authority of Boards of Health with regard to beaver and muskrat problems comes into play when a permit applicant is suffering a threat to human health and safety from beaver or muskrat activity. Such a circumstance includes, but is not limited to those situations enumerated in sections (a)-(i) in M.G.L. ch. 131 s. 80A. Boards of Health need not become involved in all

beaver or muskrat-related problems in their town, only those that involve a threat to human health and safety.

The Massachusetts General Laws provide other remedies for beaver related problems that do not involve the Board of Health and may be more appropriate in non-health related circumstances. For example, when a homeowner is suffering damage to his property (that is damage beyond harm to his land, grass or natural vegetation) as a result of beavers, M.G.L. ch. 131 s. 37 allows that homeowner, or his family member or permanent employee to destroy a beaver via legal means (e.g. no Conibear trap) if the animal is on his or her property. Such a situation would not entail BOH involvement. But when a beaver situation involves a threat to human health or safety, the Board of Health has authority to grant to the homeowner a permit to trap, breach the beaver dam or alter water flow. (The latter two options subject to Conservation Commission conditions). Property damage need not have yet occurred. A mere threat to human health and safety empowers a BOH. Also, the BOH permit authorizes people other than family and permanent employees to remedy the situation. The BOH permit will also allow resolution of the beaver problem if the beaver is on a neighbor's land and consent to enter has been obtained.

BOARD OF HEALTH RESPONSIBILITIES

- Create and/or provide necessary applications for “emergency permits” to alleviate beaver and muskrat related problems that threaten human health and safety.
- Determine whether or not to grant an “emergency permit.”
- Work with Conservation Commission to establish a procedure for handling permit requests for breaching dams or altering waterflow.
- Inform applicant of need for Conservation Commission approval before permit to breach dam or alter waterflow may be granted.
- If the problem is not alleviated in the initial “emergency 10-day permit” period, the Board must decide whether to grant an “additional 10-day permit.”
- If the problem is not alleviated after the granting of the “additional 10-day permit” (the twentieth day), the Board must decide whether it will grant a second “additional 10-day permit.”

Issuance of the initial “Emergency Permit”

When the Board of Health receives a request for an “emergency permit” the BOH must evaluate whether or not a threat to human health or safety exists, and that such threat is a result of beaver or muskrat related activity. The “emergency permit” that the BOH may grant is a 10-day permit to either trap, breach a dam (subject to conditions imposed by Conservation Commission), and/or alter water flow (subject to conditions imposed by Conservation Commission). The term “emergency permit” means that a permit can be obtained quickly, not that an actual public health emergency already exists. As described below, even a mere threat to human health and safety could be sufficient for the issuance of a permit.

The BOH must first determine whether or not the problem effects a public water supply. If the problem does impact a public water supply, the Department of Environmental Protection (DEP) must handle the situation. (see below, State Responsibilities)

If a public water supply is not involved, the BOH must decide whether the problem described is a threat to human health and safety and is the result of beavers or muskrats.

If the applicant is suffering the threat or problem, but the beavers or muskrats are residing on a neighbor's property, the applicant must gain the permission of the neighbor to enter on his or her property. Boards of Health should be sure to include space for written consent from a neighbor on the application. The Board of Health "emergency permit" does not authorize trespassing onto private property.

Mass. Gen. Laws ch. 131 s. 80A sets out a list of circumstances that could constitute a threat to human health and safety. This list is not exhaustive and a BOH may find itself with a situation different from those contemplated in the list, but that is a threat to human health and safety just the same. The law states:

A threat to human health and safety may include, but shall not be limited to:

- (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. M.G.L. ch 131 s 80A

If the BOH determines that the beaver or muskrat activity poses a threat to human health and safety, it shall immediately grant the applicant a 10-day "emergency permit" to trap the beaver, breach the dam and/or alter the waterflow. (If the applicant chooses to pursue the latter two options, the applicant must seek approval from the Conservation Commission as they hold joint authority to grant permits for these activities.) This initial 10-day permit may authorize

the applicant to trap with box/cage or Conibear traps. This permit, and every Board issued permit in this section, is valid for ten consecutive days.

It is recommended that the BOH advise the applicant, when appropriate, that from June 1 through July 15 the beaver kits are completely dependent on their mother. Removal of adults at this time may orphan a beaver at an age when its survival is jeopardized. It should be noted that even during this time period, Boards are authorized to grant a permit.

Denial of the initial "Emergency Permit"

If the BOH denies a permit, the reasons for the denial must be in writing. The Board must specify the reasons for the denial, e.g. not found to be a problem caused by beavers.

The Board shall inform the applicant that he or she has four options:

1. appeal to DPH.

If the BOH determines there is not a threat to human health and safety and therefore elects not to issue a permit, the permit applicant may appeal to the Department of Public Health (DPH).

2. appeal to DFW

If the BOH determines that the problem is not caused by beaver or muskrat, and therefore elects not to issue a permit, the applicant may appeal to the Division of Fisheries and Wildlife (DFW).

3. contact DFW for assistance with solutions covered under the non-health or safety threat section of MGL ch. 131 s. 80A, or

4. contact a private contractor or non-governmental organization for assistance (e.g. MSPCA)

Issuance of Additional Permits

If after the initial ten days the problem is not alleviated, the applicant may apply to the Board for another 10-day permit. At this time the applicant should apply simultaneously to DFW for a 30-day permit. The additional 10-day permit from the BOH may be granted if the applicant has applied for and is awaiting a 30-day extension permit from DFW. If the BOH issues the permit, trapping with box, cage or Conibear traps are available options, as are breaching and altering water flow. The latter two options are still subject to Conservation Commission conditions. At this time, the applicant should, be informed that he or she should work with DFW, local BOH and Conservation Commission to develop a long-term plan to solve the beaver problem using water-flow devices and non-lethal methods.

If after the twentieth day (the last day of the second 10-day permit period) the problem is not alleviated, and the applicant is still awaiting a permit from DFW, the applicant may again request another 10-day permit from the Board of Health. At this point, the Board may only grant a permit for breaching and altering of water flow. Trapping is no longer an option.

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

STATE RESPONSIBILITIES

Sample permit application forms are available from Massachusetts Department of Public Health (DPH) Bureau of Environmental Health.

If there is a concern that the beaver or muskrat related problem may be a threat to a public water supply, the DEP must be notified in order that the DEP make this determination.

If an applicant is denied a permit by the BOH because the Board does not find that the problem described is the result of beaver or muskrat, the applicant may appeal this decision to the DFW.

If an applicant is denied a permit by the BOH because the Board does not find that the problem described is a threat to human health and safety, the applicant may appeal this decision to the DPH or contact DFW for assistance with solutions covered under the non-health or safety threat section of MGL ch. 131 s. 80A .

If a 30-day permit is granted by DFW, DFW shall develop, with the assistance of the applicant, 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 traps, if necessary.

Beaver Guidance Contacts:

For questions regarding public health issues:
Michael Celona
DPH Bureau of Environmental Health Assessment
250 Washington St, 7th Floor
Boston, MA 02108
Phone: (617) 624-5757
Fax: (617) 624-5777

For DPH materials and information about MGL ch. 131 s. 80A and printable forms for permits:

www.state.ma.us/dph/beha/beavers/Beavh.htm