

 <p>NEW YORK STATE Adirondack parkagency</p> <p>P.O. Box 99 • Ray Brook, New York</p> <p>apa.ny.gov</p>	<p>APA General Permit 2001G-2A</p>	<p>Effective Date: January 13, 2006</p>
	<p>In the Matter of the Issuance of a General Permit for the</p> <p>Removal or Modification of Recent Beaver Dams and Debris by Transportation Departments</p>	

SUMMARY AND AUTHORIZATION

This general permit is issued pursuant to §809(13)(e) of the Adirondack Park Agency Act to state, county and municipal transportation departments within the Adirondack Park seeking to remove OR modify recently constructed beaver dams or debris in culvert openings and bridge openings, or within 50 feet of the driving surface of the road or railroad or within the highway or railroad right-of-way, on conditions.

This general permit is in effect from the date of re-issuance unless otherwise modified or revoked by the Agency.

JURISDICTION

Pursuant to ECL 24-0701(2) and 9 NYCRR 578.3(n)(1) and (2), any form of dredging, excavation, removal of soil, peat, mud, sand and any other activity which substantially impairs the functions served by or the benefits derived from freshwater wetlands is a "regulated activity" which requires a permit from the Agency. Removal of dams and debris, although undertaken to protect highways, drains upstream wetlands, and transports sediments to downstream wetlands, thus adversely affecting wetland function.

CONDITIONS

1. Failure to comply with this general permit is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the permit.
2. Dynamite or other explosives shall not be used.

3. All excavated material shall be disposed of on adjacent uplands or on the remaining dam or dam apron in a manner to prevent sedimentation in wetlands or waterbodies.
4. Disturbances to the beaver dam shall be limited to the minimum necessary to lower the impoundment. This permit does not authorize removal of stumps, rocks, submerged trees or disturbance to the beaver impoundment other than the dam itself. Disturbances to the other portions of the protected stream or wetland are prohibited.
5. This permit is issued only for the breaching or removal of recently constructed beaver dams blocking drainage culverts or bridge and trestle openings, or within 50 feet of the driving surface of roads and railroads or within the highway or railroad right-of-way, whichever is furthest. The beaver dam is considered long established if there is live vegetation growing on the dam or there exists well developed emergent or sub-emergent wetland vegetation within the impoundment behind the dam. In such cases, an Individual ECL Article 24 permit is required from the Agency.
6. The permittee accepts the full legal responsibility for all damages, direct or indirect, of whatever nature and by whomever suffered, arising out of the project described in this permit and has agreed to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from this project.
7. This permit does not grant the permittee any right to trespass upon the lands of, or interfere with the riparian rights of others in order to perform the permitted work, nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.
8. Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local. ECL Article 11 or Article 15 permits may be needed from the New York State Department of Environmental Conservation.
9. Alternatives to or in addition to breaching or removal shall be investigated in an attempt to end chronic damming problems.
10. The use of machinery is authorized if a) the dam is of such construction or in a state of disrepair that it presents a hazard to those attempting hand modification or removal, or b) where there is potential for imminent loss of human life. If use of machinery is authorized, the bed and banks of the stream shall not be disturbed nor shall machinery be allowed in the stream or on its banks where it may cause the bank to collapse. Machinery that will work in or adjacent to wetlands shall be tracked. Machinery that will work from macadam or paved surfaces may be rubber tired.

11. Water levels must be lowered gradually by slow and partial breaching before the entire dam is removed and can be lowered no more than one (1) foot per hour in the upstream impoundment.
12. The permittee shall require that any agent, contractor, project engineer, or other person responsible for the overall supervision of this project acknowledge in writing that they have received a copy of and have read and understand this permit and all general and special conditions.
13. Any deviation from the type of project authorized by this permit or failure to comply precisely with all the terms and conditions of this permit must be expressly approved in writing and in advance by authorized staff of the Agency.

FINDINGS OF FACT

1. At the January 2006 Agency meeting, the Agency members and designees approved renewing this existing general permit.
2. Freshwater wetland covertypes affected by activities involving removal of beaver dams and debris include all those found in the NYS Freshwater Wetlands Act (ECL Article 24): wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands found in the Agency's Rules and Regulations (9 NYCRR Subtitle Q, §578): deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows, and bog.
3. The wetlands affected by beaver dam removal or modification provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics, and nutrient cycling.
4. Recently constructed beaver dams or accumulated debris can have severe adverse effects upon freshwater wetlands located within the mean high-water mark of the new impoundment. Such impoundments also pose the threat of loss of human life and property. The general permit is issued to allow state, county and municipal transportation departments to routinely clear culverts and bridge and trestle openings and remove recently constructed dams and debris within 50 feet of the driving surface of roads and railroads or within the highway or railroad right-of-way, whichever is further.

5. Removal or modification of recently constructed beaver dams or removal of debris in accordance with the Conditions of this general permit will not result in undue adverse impacts on Park resources, will not substantially impair the functions served by or the benefits derived from said wetlands, and will involve economic and social benefits.
6. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all the statutory and regulatory criteria for project approval as set forth in Section 24-0801(2) of the Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR 578.10. The Agency hereby finds that projects for the removal of recently constructed beaver dams and/or removal of debris are approvable and comply with the above criteria provided they are undertaken in compliance with the conditions herein.

