



SEPTEMBER 2011

## Coastal Permitting in Connecticut Following Hurricane Irene

Given the severity of the damage caused by Hurricane Irene to homes, commercial buildings, docks, seawalls, and other coastal structures in Connecticut, many homeowners and businesses along the shore will have questions about what they need to do to obtain the proper permits to repair or rebuild, from whom they need permits (federal, state, or local officials), or whether permits are even necessary. The answers to these questions depend on a number of factors, including the type of structure, the age of the structure, where the structure is located on the lot, whether a permit was previously issued, and the amount of damage suffered.

### FEDERAL PERMITS

The United States Army Corps of Engineers (Corps) has issued a notice regarding post-hurricane permitting, which you can find at "[Public Information Announcement: Hurricane Irene Storm Damage Repair](#)." Pursuant to federal regulations that exempt "maintenance" of authorized structures in its jurisdiction from further regulation, the Corps anticipates that most post-hurricane repair activities will not require a new permit or authorization. "Maintenance" is defined in the regulation to include emergency reconstruction if undertaken within a reasonable period of time after the damage has occurred but may not include any modifications that change the character, scope, or size of the original design. To determine if a repair is covered by the exemption, property owners should contact the Corps. If the activity is not exempt, it may be eligible for approval under the Corps' General Permit for Connecticut, but property owners should carefully check the terms and conditions of the General Permit before conducting any work to assure compliance.

### STATE PERMITS

#### Temporary Repairs

To prevent further damage while waiting for authorization to implement permanent repairs, the Connecticut Department of Energy and Environmental Protection (DEEP) has issued an authorization for the temporary shoring of damaged shoreline structures (such as the placement of sandbags, scaffolding, steel or wooden plates or sheeting, and/or bracing) and the temporary use of certain equipment in regulated areas to remove storm debris. You can find a fact sheet on the program at "[Post-Irene Coastal Permitting Information](#)." You can view the authorization itself at "[Temporary Authorization No TA-I-8-2011](#)."

The authorization is subject to several requirements and conditions, such as the following:

- All temporary shoring must be removed by October 28, 2011.
- Equipment used in tidal wetlands must be low ground pressure, track-mounted machinery, or low ground pressure mats may be used in the alternative.
- Property owners that take advantage of the temporary authorization must, within 14 days of the completion of work, provide the DEEP with their contact information, the site location, a description of the work, and *before* and *after* photographs of the work.

### **Permanent Repairs or Replacement – Authorized Structures**

Currently, significantly damaged structures that already have a permit from the DEEP and that need to be replaced require a Certificate of Permission (COP) from the DEEP – even if the property owner only wants to put back in place what is authorized in its permit. The COP process is a simplified permitting procedure that takes no more than 90 days, if the activity is eligible, and perhaps as little as 45 days, if the project is straightforward. While it may seem excessive to require a new permit to simply replace a previously authorized structure, no current legal authority waives this requirement. The DEEP states, however, that a general permit for dock repairs is being prepared that will include several types of repairs, including the complete replacement of a dock that has been damaged in the storm, provided the dock has been previously authorized. This general permit will not be issued until late 2011 at the earliest. In the interim, property owners who do not want to wait must follow the existing COP process.

Permitted structures that have minimal damage (that is, damage to fixed out-of-water elements only, such as decking or pier surfaces, and damage to no more than 25 percent of the piles supporting the structure) are exempt from the COP requirement.

The DEEP's *General Permit for Minor Seawall Repair* sanctions minor repairs to existing authorized or legally installed seawalls, but its scope is limited to patching concrete, repointing mortar between stone, resetting fallen stones, and applying a skim coat to the face of the seawall. Unlike some general permits issued by the DEEP, no registration is required to be submitted for the activity to be authorized by this general permit. Work not covered under this general permit, such as extending the wall or raising its elevation, requires a COP or an individual permit.

Yacht clubs or marinas that have a marina or mooring perimeter permit may be allowed to reestablish their pre-storm layout under the DEEP's *General Permit for Marina and Mooring Field Reconfiguration*.

The proper use of any general permits for your particular repair or replacement project should be confirmed with the DEEP or your legal counsel.

### **Emergency Authorizations**

For situations where temporary shoring is insufficient or ineffectual, and the property owner cannot wait the standard time it takes to issue a COP or individual permit, the DEEP can issue an emergency authorization to allow work to begin immediately to prevent "immediate, unforeseen and unacceptable hazards to life, health or welfare, or significant loss of property." After the issuance of the emergency authorization, the property owner then has to apply for a COP or individual permit within 30 days of the expiration of the emergency authorization to retain the work undertaken.

### **Permanent Repairs or Replacement – Unauthorized Structures**

For structures that do not have a permit from the DEEP, there is no right to rebuild or replace what has been damaged or destroyed without first obtaining permission from the DEEP. This requirement becomes particularly complex when dealing with structures that did not need a

DEEP permit at the time they were built, such as retaining walls, waterfront houses, or commercial buildings, but now, because of changes in topography due to erosion or sea-level rise, are within the jurisdiction of the DEEP. If the structure has been in place and "continuously maintained and serviceable" since before June 24, 1939, the start of coastal permitting regulation in Connecticut, it should be eligible for a COP. Structures and activities completed without a permit before January 1, 1995, may also be eligible for a COP but only if they comply with the DEEP's "applicable standards and criteria." For all activities ineligible for a COP, property owners must apply for a full individual permit. To obtain an individual permit, activities must comply with all current permitting guidelines.

## **LOCAL PERMITS**

### **Repairs to Buildings**

Local zoning officials have authority over the implementation of FEMA flood hazard regulations for homes and commercial structures in flood hazard areas. All coastal towns in Connecticut have flood hazard regulations as part of their zoning regulations. In post-hurricane situations, the issue most homeowners face when they need to perform repairs is whether, due to the extent of the damage, any rebuilding will trigger the requirement that the house be "floodproofed" so as to comply with FEMA construction requirements. In general, if the repair or replacement cost is 50 percent or greater than the value of the *building*, the owner must comply with the floodproofing requirements, such as raising the house so the lowest habitable floor is above the "base flood elevation" and installing utility equipment and connections that are resistant to flood damage.

### **Coastal Area Management Requirements**

Local zoning officials also have coastal area management (CAM) review authority for structures outside the permitting jurisdiction of the DEEP but within the coastal boundary (approximately 1,000 feet from mean high water or tidal wetlands). While many repair activities may be exempt from CAM review, seawalls and other "shoreline flood and erosion control structures" are not exempt. As such, any modification to an existing seawall will likely trigger local zoning review, which requires a mandatory referral to the DEEP for comment. As a general rule, seawalls are disfavored under Connecticut's Coastal Management Act, and applications for new seawalls or after-the-fact approvals for existing seawalls without a permit are typically denied by state and local authorities unless they are necessary to protect infrastructure facilities, water-dependent uses, or inhabited structures that predate 1980.

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## **CONTACT US**

Even on calm days, coastal permitting is a complex field, with multiple overlapping regulatory requirements. After a storm, the complexity of the permitting requirements is magnified, especially for property owners who learn for the first time that their dock or seawall does not have a permit and does not comply with the current permitting requirements. The requirements and processes outlined above are only the tip of the iceberg, so to speak, and it is important to keep in mind that each coastal property has its own unique characteristics and history that influence the types of permits it requires. If you have any questions or wish to discuss coastal permitting issues further, please contact [John P. Casey](mailto:jcasey@rc.com).

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