

STATE OF VERMONT
EXECUTIVE DEPARTMENT

ADDENDUM 2 TO THE
AMENDED AND RESTATED EXECUTIVE ORDER NO. 03-23

[Declaration of State of Emergency, Guard Call-Out and Continued Activation of Emergency Operations Plan for the State of Vermont in Response to Anticipated Storm-Related Damage]

WHEREAS, on Sunday, July 9, 2023, the Governor issued Executive Order 03-23, Declaration of State of Emergency, Guard Call-Out and Activation of Emergency Operations Plan for the State of Vermont in Response to Anticipated Storm-Related Damage (“Emergency Declaration”), declaring a state of emergency for the State of Vermont in response to the July 2023 severe storm (“Flood of 2023”); and

WHEREAS, on July 10, 2023, the President declared that an emergency exists in the State of Vermont; and

WHEREAS, once it became clear flood damage and mudslides from a storm in the Killington area July 7, 2023, and excessive rain, flooding, water runoff, erosion and resulting damages statewide during the period July 9-11, 2023, were not going to be isolated incidents, but rather part of series of events which would continue throughout the coming week, with widespread flooding, repeated flash flooding, water runoff, erosion and mudslides due to inundated soils and slope instability, statewide, the Governor, in consultation with FEMA, requested a Presidential Declaration of a Major Disaster for the period July 7, 2023, and continuing; and

WHEREAS, on July 14, 2023, the President issued a Major Disaster Declaration based on flooding beginning on July 7, 2023, and continuing through July 21, 2023; and

WHEREAS, the scope and severity of the Flood of 2023 exceeded that of Hurricane Irene in 2011; and

WHEREAS, exactly one year later, the remnants of Hurricane Beryl caused excessive rain combined with water runoff, flooding, erosion and widespread damages to property and public infrastructure in Vermont from July 10, 2024 to July 12, 2024, for which Vermont recently requested a Presidential Major Disaster Declaration; and

WHEREAS, July 30, 2024 Washington and Caledonia Counties experienced devastating flooding caused by excessive rainfall, with erosion, landslides and widespread damages to property and public infrastructure, for which Vermont is currently assessing damages with the intent of requesting another Presidential Major Disaster Declaration; and

WHEREAS, the remnants of Hurricane Debby now threaten Vermont with the imminent likelihood of excessive rain combined with water runoff, flooding, erosion, landslides and resulting damages beginning August 9, 2024 and ongoing, with the likelihood of new and exacerbated widespread damage, and posing new threats to property and public safety in Vermont; and

WHEREAS, I have determined it is necessary for the State of Vermont, through its various agencies and the Vermont National Guard, to continue to manage the ongoing recovery work from the Flood of 2023, continue to manage the existing 2024 flooding emergencies, as well as take steps to prepare for the anticipated August 2024 storm; and

WHEREAS, the ongoing nature of the July 2024 flooding has resulted in widespread debris and wreckage in waterways and on public and private property, which is beyond the capacity of many residents and communities to manage in a timely manner; and

WHEREAS, remaining debris and wreckage is widespread and threatens public health and safety, and the economic recovery of many rural communities and residents throughout Vermont; and

WHEREAS, the State must take action to not only remove, but ensure debris, including stumps, can be temporarily and permanently staged and disposed of.

NOW THEREFORE, pursuant to the authority vested in me as Governor of the State of Vermont and Commander-in-Chief, Vermont National Guard by the Constitution of the State of Vermont, Chapter II, Section 20, and pursuant to the emergency powers set forth in 20 V.S.A. §§ 8, 9 and 11 and other laws and the Emergency Management Assistance Compact, 20 V.S.A. Ch. 4, I hereby declare a State of Emergency for the State of Vermont.

IT IS HEREBY ORDERED:

1. The Director of the Division of Emergency Management (VEM) shall maintain the activation of the Vermont State Emergency Operations Plan and continue to coordinate statewide hazard mitigation, and support response and recovery efforts to preserve public safety and property in Vermont.
2. In preparing for and responding to this State of Emergency, all agencies of the State shall use and employ State personnel, equipment and facilities or perform any and all activities consistent with the direction of the Department of Public Safety (DPS)/VEM in accordance with the State Emergency Management Plan.
3. I hereby re - authorize and direct the Adjutant General to call into Active State Service, for the purpose of assisting and supporting the State of Vermont, in its efforts to respond to the conditions created or caused by this impending storm to conduct hazard mitigation, support response and recovery efforts to alleviate hardship and suffering of citizens and communities and preserve public safety and property of the State, any and all units of the National Guard of the State of Vermont as he, in consultation with DPS/VEM, may deem appropriate to carry out the purposes of this Order.
4. Relevant rules and permitting requirements shall be suspended to the extent necessary to respond to the conditions created or caused by this impending storm to conduct hazard mitigation, support response and recovery efforts to alleviate hardship and suffering of citizens and communities and preserve public safety and property of the State, including, but not limited to, those rules and permitting requirements specified in Addendum 1 to this Amended and Restated Executive Order No. 3-23, and as set forth herein.

ENVIRONMENTAL REGULATORY RELIEF

5. In accordance with 20 V.S.A. §§ 8, 9 and 11, I hereby waive Act 250 Land Use Permit conditions on gravel pit and rock quarry extraction, asphalt plants and concrete plants, including operating hours, noise and blasting, crushing, limits on area, rate, depth, or volume of extraction, and related trucking to assure availability of material for the use of the

State or towns, or contractors on behalf of the State or towns, for purposes of this Emergency Declaration, as amended and restated. The Natural Resources Board and its successor the Land Use Review Board (the “Board”) through the chair, district commissions and district coordinators shall allow gravel pits and rock quarries, permitted and unpermitted, to be accessed consistent with this Emergency Declaration to assure availability of material for the use of the State or towns, or contractors on behalf of the State or towns, on demand as set forth in this Emergency Declaration.

- a) Where there is gravel or rock fill needed for 2024 Severe Storm remediation or recovery that cannot reasonably be met from permitted sources, as determined in the sole discretion of the Agency of Transportation, the Agency of Transportation shall implement this waiver without further action from the Board, district coordinators or district commissions.
- b) The Board shall issue instructions and guidance for State and town contractors for the purpose of documenting the use of materials from gravel pits, quarries, asphalt plants, and concrete plants in accordance with this Emergency Declaration, as amended and restated.
- c) This Emergency Declaration, as amended and restated, shall not be construed to waive any other applicable laws or other applicable existing Land Use Permit conditions relating to gravel pits and quarries, permitted and unpermitted and asphalt plant and concrete plant operations.
- d) Upon the expiration of this Emergency Declaration, but not later than December 15, 2024, all gravel pits, rock quarries, asphalt plant and concrete plant operations must come into compliance with all applicable Act 250 permitting requirements, including permitted hours, extraction limits or other conditions. All operations, permitted and unpermitted, shall return to pre-emergency operations and conditions, including removal of any temporary infrastructure and reclamation of all operation areas utilized in accordance with this Emergency Declaration, as amended and restated, to standards prescribed by the Board, which may extend full reclamation based on seasonal considerations or for other good cause shown.

6. In order to meet the needs of the State, municipalities and property owners as they implement measures to protect health and safety and preserve lives and property of the people of the State, the secretary of the Agency of Natural Resources (ANR) is hereby directed, effective July 10, 2024 through October 1, 2024 to:

- a) Waive the production and fuel use limits for hot mix asphalt plants currently operating under an Air Pollution Control Permit to Operate and being used for emergency road repair. The secretary of ANR will provide guidance on the implementation of this waiver and, in consultation with the secretary of the Agency of Transportation (AOT), the waiver of such other current limits as may be needed to facilitate the production of hot mix asphalt to be used for emergency road repair.
- b) ANR shall waive the certification limits of the Coventry Landfill and transfer station operating hours to allow longer hours and weekend days. ANR shall also waive the daily tonnage limits to allow transfer stations to increase throughput without being limited by daily capacity limits.
- c) ANR shall authorize transfer stations to 1) store flood debris and construction and demolition (C&D) waste outside of the tipping building (or the designated storage areas) without the need for a certification amendment or approval from the State; and 2) manage household hazardous wastes, whitegoods (with refrigerants) electronics, mercury containing bulbs, batteries, propane tanks and tires so long as these dangerous and hazardous wastes can be managed and stored safely.

- d) ANR shall authorize the storage of flood debris, including stumps, in exhausted gravel pits and rock quarries and other areas designated by AoT and VEM in consultation with ANR, without the need for additional permitting or permit amendments.
7. In order to meet the needs of municipalities and property owners as they implement measures to protect health and safety and preserve and restore access to property, the secretary of ANR is hereby directed, effective July 10, 2024 through December 31, 2024 to:
 - a) Modify ANR's Stream Alteration Rules, §27-506 (Authorizations Under the General Permit) and §27-601 (Purpose; Application; Public Notice) by suspending the requirement that ANR provide notice of draft permit decisions and a public comment period for individual and general permit authorizations issued for the repair or replacement of infrastructure damaged by the flood, the timely repair or replacement of which is necessary to mitigate ongoing risk to public health and safety.
 - b) For those projects that are not eligible for authorization as emergency protective measures under §27-701 (Purpose and Applicability of Emergency Protective Measures) of the Stream Alteration Rules but are still necessary to repair or replace infrastructure damaged by the flood, the timely repair or replacement of which is necessary to mitigate ongoing risk to public health and safety, ANR shall not require public notice of draft permitting decisions, or a public comment period on draft decisions.
 - c) ANR shall post the final permit decisions to the Environmental Notice Bulletin.
 8. In order to meet the needs of municipalities and property owners as they implement measures to protect health and safety, the secretary of the Agency of Natural Resources (ANR) is hereby directed, effective July 10, 2024 through September 14, 2025 to:
 - a) Modify the notice requirements for dam safety orders required under 10 V.S.A. § 1085(1), 10 V.S.A. § 7712, and 10 V.S.A. § 7714 by requiring a 10-day notice period instead of a 30-day notice period.
 - b) ANR shall post the final permit decisions to the Environmental Notice Bulletin.
 9. ANR shall allow all uses and activities in a Class I or Class II wetland and its buffer without a permit when required for:
 - a) emergency repair, cleanup, or maintenance of structures and facilities (including utility poles and lines, public transportation facilities, bulkheads, docks, piers, pilings, paved areas, houses, or other buildings), or emergency actions required to provide for public health, safety and welfare for disaster relief in connection with this Emergency Declaration, as amended and restated, and any associated federal Major Disaster Declaration;
 - b) the operation of existing hydroelectric facilities in accordance with all applicable requirements established by federal and state agencies which may involve dredging, draining and/or altering the flow of water into or out of a wetland; and
 - c) cleanup activities for spills of oil or hazardous materials, when performed in connection with damages occurring in connection with the July and August 2024 Severe Storms.

MOTOR VEHICLE REGULATION

10. Pursuant to 49 CFR § 390.23, motor carriers providing direct assistance to the emergency in Vermont are granted extended emergency relief from 49 CFR § 395.3 (maximum driving time for property-carrying vehicles) as set forth in this Emergency Declaration and guidance issued by the Commissioner of the Department of Motor Vehicles (DMV).
 - a) Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services (such as water pump-outs, electricity, medical care, sewer, water, telecommunications, and telecommunication transmissions) or essential supplies (such as food, fuel, and gravel). It does not include transportation related to long-term rehabilitation of damaged physical infrastructure or routine commercial deliveries after the initial threat to life and property has passed.
 - b) This relief for motor carriers is effective as of July 10, 2024, was originally set to expire August 9, 2024, but is now extended for another 30-day period through September 8, 2024 at midnight.
 - c) Upon termination of direct assistance to this emergency relief effort, no motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive in commerce until the driver has met the requirements of Title 49 CFR 395.3(a), (b) and (c).

The Commissioner of DMV is hereby directed to issue instructions and guidance in furtherance of applicable federal law and rule and this Emergency Declaration, as amended and restated.

DEBRIS REMOVAL

11. Pursuant to my authority in 20 V.S.A. § 8, 9, 11 and 36, and notwithstanding any other provision of state law or rule, I hereby direct the Agency of Transportation (AOT), in coordination with the Department of Public Safety (DPS), the Chief Recovery Officer and ANR, to clear, remove and store or dispose of debris and wreckage that may threaten public health or safety, or public or private property at the discretion of AOT, as directed by the secretary of AOT. This directive shall be exercised when the affected local government, corporation, organization, or individual has unconditionally authorized the removal of debris and wreckage.

In the case of removal of debris or wreckage from private property, the owner shall first agree to indemnify the State government against any claim arising from the removal and AOT may move the debris and wreckage to the public Right of Way to sort and remove it following the requirements municipalities must meet to be eligible for reimbursement from FEMA. AOT shall carry out this directive until such time as it is determined by the Governor that removal of debris and wreckage from the July 2023 and July and August 2024 Severe Storms is equitable from community to community and household to household; and removal of debris and wreckage is substantially complete.

12. Pursuant to the powers granted to the Governor in 20 V.S.A. §§ 8, 9 and 11 and other provisions of law, I shall from time-to-time issue recommendations, directives and orders as circumstances may require.

This Second Addendum to the Amended and Restated Executive Order 03-23 shall take effect upon signing and shall continue in full force and effect until the Governor, in consultation with DPS/VEM, shall assess the emergency and determine whether to amend or rescind this Order.



WITNESS my name hereunto subscribed and the Great Seal of the State of Vermont hereunto affixed at Montpelier this 8th day of August, 2024.

A handwritten signature in blue ink, which appears to read "Philip B. Scott", is written over a horizontal line. The signature is stylized and cursive.

Philip B. Scott
Governor

By the Governor:

A handwritten signature in black ink, which appears to read "Brittney J. Wilson", is written over a horizontal line. The signature is cursive and legible.

Brittney J. Wilson
Secretary of Civil and Military Affairs

AMENDED AND RESTATED EXECUTIVE ORDER 03-23 – ADDENDUM 2