

Chapter 7: Emergency Permits – *At a Glance*

What is an Emergency?

Within the context of the Removal-Fill Law, an emergency is a natural or human-caused circumstance that poses an immediate threat to public health, safety or substantial property. If the actions necessary to alleviate the threat involve 50 cubic yards or more of removal or fill below a waterway's ordinary high water (OHW) elevation or in wetlands (or any amount of removal or fill in designated [Essential Salmonid habitat \(ESH\)](#) or a [state scenic waterway \(SSW\)](#), a DSL permit is required and may be authorized as an expedited emergency permit (EP).

The Procedure for Obtaining an Emergency Permit

Step 1: The applicant must collect information including location; nature and cause of the threat; the condition of the waterway; and what action is necessary to alleviate the immediate threat. Remedial actions must be limited to what is necessary to make repairs or prevent irreparable harm, injury or damage to persons or property.

Step 2: Contact DSL to initiate the EP process.

During Business Hours: 503-986-5200 (west of Cascades) or 541-388-6112 (east of Cascades)

After Business Hours: Oregon Emergency Response: 1-800-452-0311

Step 3: Submit the [EP application](#) materials as directed by the DSL Resource Coordinator and as time allows. DSL may conduct a site visit or ask another designated agency, such as ODFW, to do so.

Step 4: Qualifying activities will be issued a written permit as soon as key information is provided. DSL can issue a verbal approval in advance of the written approval where it is necessary to protect public health, safety or property.

After the Emergency

DSL staff may visit the site upon completion of the emergency work, and may require that the project be modified after the initial emergency work is completed or require mitigation to compensate for any impacts to the affected wetland or waterway. A subsequent permit may be required to conduct remedial work.

Chapter 7: Emergency Permits

What is an Emergency?

Oregon Administrative Rule defines an emergency as natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property, including cropland. DSL will use this definition and apply all of the following considerations to assess whether an activity in wetlands or a waterway is eligible for an Emergency Permit (EP):

- Does the nature of the threat allow enough time to obtain some other form of permit or is prompt action required to reduce or eliminate the threat?
- Does the emergency pose a direct threat to public health or safety or substantial property, including but not limited to a dwelling, transportation structure, farm or cropland?
- Is the proposed project the minimal amount necessary to reduce or eliminate the threat and minimizes, to the extent practicable, adverse impacts to waters of this state?

If There is an Emergency-The Procedure for Obtaining an Emergency Permit

There are four steps to obtaining an EP.

Step 1: Before Contacting DSL - the Emergency Situation Must be Documented

To support a determination that an emergency exists and to facilitate approval of the emergency action, the applicant should be prepared to provide the following information during the first contact with DSL:

- The type of property at risk
- The cause of the threat
- The reason prompt action is necessary and why there isn't enough time to obtain another type of permit
- The location, including township, range, section, tax lot and latitude and longitude
- The date the damage or threat was first observed or the date of the event that precipitated the threat
- The nature of the habitat being affected (e.g., if bank erosion, the slope and soil texture of the bank, types and extent of vegetation in the vicinity)
- What action(s) are necessary to alleviate the immediate threat, including volumes and area of removal or fill, construction methods, construction timeline and other project specific information to allow DSL to understand the proposed emergency work
- Photos of the damage and proposed treatment area
- The name and contact information of consultants or engineers working on the emergency project
- Property owner information, including permission to conduct the emergency work

Actions must be limited to what is necessary to alleviate the emergency. Because the purpose of an EP is to alleviate the emergency situation, it is important that the project be the minimal amount of work to alleviate the threat and minimize adverse effects to water resources. Additional removal or fill activities beyond that necessary to alleviate the immediate threat are not allowed under an EP.

Some emergency actions may be exempt from a DSL permit requirement. Two exemptions are commonly applied in emergency situations:

- Emergency repair to currently serviceable roads, bridges and other transportation-related structures
- Maintenance of certain water control structures

Exemptions are further discussed in *Chapter 3: What Activities Are Exempt?* It is recommended that the exempt status of a proposed action be confirmed with a DSL Resource Coordinator before proceeding.

Step 2: Contacting DSL

Once the emergency situation has been documented, DSL should be contacted as soon as possible.

During Business Hours

Normal business hours are Monday – Friday, 8:00 a.m. to 5:00 p.m.. Requests for EPs are initiated by calling the Salem office (503-986-5200) on the west side of the Cascades; and the Bend office (541-388-6112) on the east side. The [Resource Coordinator](#) serving the appropriate county will handle the EP request, or if not available, there is a Resource Coordinator on call in the Salem office.

After Business Hours

If the nature of the emergency is such that waiting until regular business hours is not possible, the [Oregon Office of Emergency Management](#) (Oregon Emergency Response System) should be contacted (1-800-452-0311). The operator will take information regarding the emergency and contact the appropriate agency for immediate follow-up.

Response from DSL upon Contact

DSL will provide the following guidance during the initial contact:

- Determine if a permit is required from DSL for the proposed action and if the action is eligible for an EP
- Discuss what other information may be needed to process the request
- Explain the process and timeframe for making a final decision
- Provide an [EP application form](#)
- Arrange for a site visit, if time allows
- Determine if we will issue a verbal approval during the first contact

If there is sufficient time to prepare an application, the applicant will be asked to do so. If there is not sufficient time, and an emergency has been confirmed, DSL can issue a verbal authorization. If DSL issues a verbal authorization, a written authorization will be issued within five calendar days. The application should be submitted as soon as possible after the emergency work, generally within one week of the verbal authorization.

Resource Coordinators will document the verbal authorization in the EP file, including volumes of removal or fill, design of the emergency work and construction methods authorized. To avoid enforcement action, the application must reflect what was authorized verbally.

Depending on the nature of the emergency and the scope of the proposed action, DSL staff may conduct a site visit or request local ODFW staff to visit the site to verify the emergency situation, evaluate the appropriateness of the proposed action, and develop site-specific EP conditions that may be warranted.

Contacting Other Agencies

DSL will typically contact the local ODFW office to get input on the emergency situation and what changes may be incorporated into the proposed action to limit impacts to the wetland or waterway. Applicants may contact the [ODFW field office](#) directly to get input on the proposed action.

The emergency work may require approval from the Corps. The Corps may be contacted at 503-808-4373 (Portland office) or 541-465-6877 (Eugene office).

Step 3: Submitting the EP Application

Submittal Requirements

The [emergency application](#) is available on the DSL Web site and by e-mail or fax upon request. The emergency application must be filled out completely and sent back to the appropriate DSL office by mail, fax or electronically. The information required by DSL on the application includes:

- Applicant name, address phone number, fax and e-mail
- Entity responsible for performing the activities
- Landowner permission (if different from the applicant)
- Project location (Township, range, section, tax lot and latitude and longitude) and driving directions
- Date that the threat (for example, erosion or landslide) occurred
- The need for the project including an explanation the nature of the threat to public health, public safety or property
- Specific description of the proposed project (dimensions, amount of material to be removed and/or filled in wetlands or waterway)
- A determination if the project is a permanent or temporary solution
- Construction schedule
- Construction plan (how the work will be accomplished, equipment used, site access, etc.)
- Drawings including a location map, plan view and cross section view
- Photos

Timelines for Processing the Emergency Application

State law and administrative rules do not establish a timeline by which DSL has to make a decision for an EP. DSL understands that time is of the essence when an emergency exists and will act as promptly as possible to provide a timely decision.

Application Fees

The EP may be subject to an application fee according to the [fee schedule](#). If a fee is applicable, an invoice will be sent for payment within 45 days of the EP issuance date.

Step 4: Receiving Approval

Verbal and Written Approvals

If the nature of the emergency is such that an immediate approval is necessary to protect public health, safety or substantial property, the Department may issue a verbal approval as soon as sufficient information is provided to make an informed decision. At the time a verbal approval is provided, the Resource Coordinator will explain the location and volumes of removal or fill being authorized and any special conditions required to protect the aquatic environment.

If a verbal approval is given, it will be followed up with a written approval within five days. A written approval will include:

- The party authorized and responsible for the work
- The location and types and volumes of material authorized for removal-fill
- Best management practices to minimize effects on the waterway
- Other permit conditions specific to the site
- ODFW pre-action notification requirement
- Any post project reporting requirements
- Expiration date
- Permit conditions for follow-up work

If DSL determines that the situation or the proposed action does not qualify for an EP, the applicant will be informed of the reason(s) why. The applicant may apply for approval through DSL's standard permitting options.

Conditions of Approval

The person identified on the EP is responsible for complying with the permit conditions, including, but not limited to:

- Use of certain erosion control methods
- Planting requirements
- Post-project reporting
- Mitigation for adverse impacts
- Project modifications post construction
- Requirement to apply for a removal-fill permit once the emergency situation has subsided
- Other BMPs and conservation measures necessary to protect the aquatic environment

A site visit does not eliminate the permittee's responsibility to provide a post-construction report stipulated in the EP.

Expiration of the Emergency Permit

The term of the EP will be limited to the time necessary to reasonably complete the proposed action. EPs are typically valid for no more than 60 days. The expiration date will be clearly identified in the written permit. If the work cannot be completed by the expiration date, a new permit must be obtained.

After the Emergency

Because the review of emergency application is expedited and there is usually not the opportunity for agency input, certain follow-up actions are usually required.

Site Visit

DSL staff may visit the project site upon completion of the emergency work. The purpose of such a visit will be to determine if:

- The project was conducted as authorized in the EP
- Any project modifications are needed to minimize effects to the wetland or waterway
- There are permanent effects that will require mitigation
- If further site monitoring is required

Additional Work May Be Required

DSL may require that the project be modified after the initial emergency work is completed. If the emergency work is determined to be non-sustainable or to present an unacceptable level of impact to the aquatic environment, then a modification of the emergency work may be required. For example, if rip-rap is allowed under an EP, the applicant may have to remove the rip-rap, slope the river bank and plant woody vegetation as a more permanent solution to the erosion problem with less adverse effects. This work may require a separate authorization and would need to be done in the next in-water work period.

If impacts incurred from an emergency action are allowed to remain, the applicant may be required to provide compensatory mitigation. Mitigation actions may include purchase of credits from a mitigation bank, planting riparian vegetation or other actions necessary to offset the adverse effects of the emergency work. Depending on the nature of the required mitigation, a separate approval may be required.

