



FACT SHEET

Office of Water Resources / June 2022

WETLANDS # 22-5

FRESHWATER WETLANDS APPLICATION TYPES

Introduction

The Department of Environmental Management's (DEM) Freshwater Wetlands Program has different types of applications each geared to a very specific purpose. The type of application a property owner prepares depends upon what his or her objectives are. This Fact Sheet presents and briefly explains the purposes of each of the application types. Once you determine which application best suits your needs, you can find details about the submittal requirements in the [Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act \(250-RICR-150-15-3\)](#). DEM recommends that you, as the property owner and applicant, be familiar with the application requirements even if a professional consultant prepares the application package for you. Pre-application assistance is available from the DEM Office of Customer and Technical Assistance. Meetings can be scheduled by contacting Ron Gagnon at 401-222-4700, ext. 2777500 (Email: ron.gagnon@dem.ri.gov) or Joseph Antonio, ext. 2774410 (Email: joseph.antonio@dem.ri.gov).

I. Applications Related to Understanding Your Property

NEW Request to Determine the Presence of Jurisdictional Area (Rule 3.8.1(A)(1))

This application may be submitted to request that the Department determine if regulated freshwater wetlands or other jurisdictional area are present on the applicant's property. The Department possesses the sole authority to determine which areas are deemed freshwater wetlands, buffers, floodplains, areas subject to storm flowage or areas subject to flooding. The purpose of the Request to Determine the Presence of Jurisdictional Area application is to learn from DEM whether there are Jurisdictional Area as defined in the Rules on the property. You, as the property owner, are required to submit an application form, property plan, and fee check (see Rule 3.9.2). The site plans must not include a proposed project at this stage. In response, you will receive a "determination" letter from DEM that identifies the types of Jurisdictional Area on your property, if any, and their approximate locations. This "determination" is valid for 5 years. DEM will not determine or flag the exact edges of any wetlands or other Jurisdictional Area for you. Persons who are considering buying property (and who want to know if there are wetlands on it) also often use this application type, and for this purpose, the current property owner must sign the application form.

Request to Verify Freshwater Wetland Edges (Rule 3.8.1(A)(2))

The Request to Verify Freshwater Wetland Edges application is used by property owners who already know they have wetlands. The property owner hires a private wetland consultant to determine and flag the exact edges of the wetlands and a surveyor to illustrate the wetland edges and the limit of any floodplain on a property plan. The application form, wetland edge plan, and fee check are submitted to DEM (see Rule 3.9.3). In response, a DEM wetland biologist will visit the property and verify the accuracy of the flagged wetland edges. DEM will issue the applicant (property owner) a "verification" letter describing the types of wetlands on the property with any associated buffer zones and, if necessary, any minor changes that may be required to consider the wetland flagging accurate and verified. If DEM requires major changes to the flagged wetland edges completed

by your consultant, a revised plan may be requested before the “verification” letter will be finalized. This verified wetland edge is then illustrated on any subsequent permit application plans submitted to DEM. DEM finds that having a verified wetland edge allows for more effective pre-application meetings, and it also speeds up the permit application review process. A verified freshwater wetlands edge will be valid for 5 years.

II. Applications for New Projects or Regulated Activities

Request for Regulatory Applicability (Rule 3.8.1(A)(3))

The Request for Regulatory Applicability application is intended to facilitate your receiving a decision from the DEM regarding the applicability of the regulations to your proposed project or activity. This application may be useful to you if you require documentation or desire confirmation that your proposed project does not require a freshwater wetlands permit. As the property owner, you are required to submit an application form, fee check, plan, photographs, and descriptions of the project and how wetlands impacts have been avoided (see Rule 3.9.4). Depending on your project, a verified wetlands edge may help facilitate the decision. DEM will determine 1) whether your project is exempt or that it will not alter the character of the wetland; or 2) whether a subsequent application for a permit is required.

NEW Application for a Freshwater Wetlands General Permit (Rule 3.8.1(A)(4))

This application may be submitted to seek approval for a proposed project that meets all the eligibility requirements of a Freshwater Wetlands General Permit as defined in the Rule 3.10(A)(1). The General Permit shall cover projects and activities as described in the permit that are more appropriately authorized under a general permit than under individual Freshwater Wetlands Permits. The general permit is intended to cover categories of projects or activities that are substantially similar in scope and duration and of limited potential impact to the freshwater wetlands resources.

NEW Application for a Freshwater Wetlands Permit (Rule 3.8.1(A)(5))

The Freshwater Wetlands Permit application is used when a property owner proposes a new project or regulated activity in or near a wetland. Unless a proposed project or activity is exempt (see Rule 3.6) or is eligible for approval of a Freshwater Wetlands General Permit (see Rule 3.10), this application should be submitted for a proposed project located within jurisdictional areas or for a project that requires approval in accordance with Rule 3.5. The applicant is required to complete fieldwork and to illustrate the existing conditions (including wetland edges) and the proposed project on a site plan (see Rule 3.8). If the review of the Application confirms that the project is in compliance with wetland protection standards, including the buffer standard, and related review criteria, a Freshwater Wetland Permit will be issued.

For a project that does not meet all of the standards specified in Rule 3.7.1, a request for a variance to the standards in accordance with Rule 3.7.3 must be submitted with the Application for a Freshwater Wetlands Permit. Applicants will be required to submit a description of how potential impacts to freshwater wetlands and buffers have been avoided and minimized in the design of their project. This permit category is not intended for projects that propose a significant alteration of any freshwater wetland, buffer or floodplain. A Freshwater Wetlands Permit is valid for 5 years and can be renewed once for an additional one (1) year period. The permit serves as the preliminary determination pursuant to R.I. General Laws § 2-3-22(a).

For projects on existing single family lots of record, an applicant may choose to submit to the DEM a Joint OWTS Application for New Building Construction or for Alteration to a Structure and for a Freshwater Wetlands Permit, herein referred to as a Joint OWTS/Freshwater Wetlands Application, provided that the project does not involve variances from either these Rules or the Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems.

Application for a Significant Alteration (Rule 3.8.1(A)(6))

An Application for a Significant Alteration is used by a property owner to obtain a permit for a proposed project that includes a significant alteration of a freshwater wetlands, buffer, floodplain, area subject to flooding or area subject to storm flowage (see Rule 3.12). This is the most involved application type, requiring technical information and reports not required for the Application for a Freshwater Wetlands Permit. In addition, a forty-five (45) day public notice period is required. Under most circumstances, DEM recommends that an applicant submit an Application for a Freshwater Wetlands Permit first to determine with certainty whether the proposed alterations are indeed significant. Some applicants are certain that their proposal is significant and begin with the Application described here. As a result of an Application for a Significant Alteration, after public comment, DEM will either grant a "Permit for a Significant Alteration" for the proposed project or may deny the application. A Permit for a Significant Alteration is valid for 1 year and can be renewed for three additional, consecutive 1-year periods.

Application for Permit Modification (Rule 3.8.1(A)(9))

An Application for Permit Modification must be submitted to DEM if you have a valid wetlands permit and you propose minor changes to your project (Rule 3.14.3). You may have received a permit for a project only to find that it cannot be built exactly as you proposed. Perhaps the septic system cannot be installed where planned, or you may want your house located in a different area. You would represent the changes on a plan and submit it to DEM for review as an Application for Permit Modification. It is important to keep in mind that the project modifications cannot result in an increase in impacts beyond what has already been permitted. If there are additional impacts, a new permit will be required through a new Application for Freshwater Wetlands Permit or an Application for Significant Alteration.

Application for Emergency Alterations (Rule 3.8.1(A)(7))

Emergency alterations that meet specific criteria as noted in the Rules may be authorized by DEM to protect the public from imminent harm to health or safety. In such cases, an oral or written request for permission to proceed must be made to the DEM Freshwater Wetlands Program by the property owner or an appropriate public official. The request must explain the problem and threat, identify the location, proposed actions, and person responsible and describe follow-up actions. Emergency alterations must be performed within 10 days of initial DEM approval. Once the corrective action has been made, the applicant has 45 days to submit an as-built site plan or a plan of restoration, if required by DEM.

III. Applications Related to Administration of Permits

Application for Permit Renewal (Rule 3.8.1(A)(8))

An Application for Permit Renewal must be submitted to DEM if your project will not be completed before the permit expires (Rule 3.14.2). The length of time a permit is valid is specified in the permit letter. The Application for Permit Renewal is easy to prepare and should be submitted to DEM 60 days prior to the permit expiration date. If construction work has started on the project, DEM will conduct a field inspection to confirm compliance with the permit conditions and the approved site plans before issuing a permit renewal.

Application for Permit Transfer (Rule 3.8.1(A)(10))

Valid wetland permits recorded in the land evidence records automatically transfer upon the sale of the property to a new owner (Rule 3.14(4)(A)). A new property owner may submit an Application for Permit Transfer if he/she desires that the valid permit be transferred to his/her name. Submission of this application type is voluntary and is at the discretion of the new property owner. Any such applicant must submit an application form, fee check, a certified copy of the deed of property transfer, and a notarized statement agreeing to adhere to the permit conditions and approved plans. There is, however, a mandatory requirement established under

state law requiring that any new property owner subject to a “Permit for a Significant Alteration” notify DEM within 10 days of the property sale by providing a certified copy of the deed of transfer (Rule 3.14(4)(C)). This is for DEM record-keeping purposes and submission of the certified deed by itself does not result in a permit transfer to the new owner’s name.

Application Relating to Farmers (Rule 3.13)

Any applications relating to new farm ponds, new farm roads or new drainage structures that may affect “freshwater wetlands for farmers conducting normal farming and ranching activities” (Rule 3.4(A)(33)) proposed by qualifying “farmers” must be submitted directly by the farmer to DEM’s Division of Agriculture, using the Division’s prescribed forms. To be eligible for this process, farmers must meet the criteria in definition Rule 3.4(A)(26); "Farmer" means an individual, partnership or corporation that operates a farm and has filed a Form 1040F or comparable instrument with the U.S. Internal Revenue Service, has a State of Rhode Island farm tax number, and has earned ten thousand dollars (\$10,000.00) gross income on farm products in each of the preceding four (4) years. In response, the Division of Agriculture will determine whether the proposal is 1) an insignificant alteration and issue a permit; or 2) a significant alteration, requiring the applicant to submit an Application for a Significant Alteration to the Freshwater Wetlands Program.

How Can I Obtain a Copy of the DEM Rules?

A complete copy of the DEM Freshwater Wetlands Rules, fully effective on July 1, 2022, can be found at the RIDEM website at <http://www.dem.ri.gov/newwetlandrules>. They may also be obtained from the RIDEM Office of Customer and Technical Assistance located at the Foundry Corporate Office Complex at 235 Promenade Street, Providence (401 222-6822).

Disclaimer: This Fact Sheet is for general information purposes and is not meant to be used as a substitute for the Freshwater Wetlands Act (R.I. Gen. Laws §§ 2-1-18 et. seq.) or the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-3).