



FACT SHEET

Office of Water Resources / Fall 2007

WETLANDS # 3

EXEMPT ACTIVITIES FOR MUNICIPALITIES AND UTILITY COMPANIES

WHAT ARE EXEMPT ACTIVITIES?

“Exempt activities” are minor projects that DEM has determined have little or no impact on freshwater wetlands and therefore may be completed without obtaining a wetlands permit. *Rule 6.00* of the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* lists specific exempt activities as well as conditions and restrictions related to those activities. To fully qualify as an exempt activity, a project must be conducted in accordance with all the general conditions described in *Rule 6.01*, as well as all the specific conditions and restrictions described throughout the *Rule*. No part of *Rule 6.00* reduces DEM’s jurisdiction over wetlands, nor does it imply exemption from other state, local, or federal permits.

As a municipality or utility company planning repairs or maintenance to property in or near a freshwater wetland, you should consider whether or not the activity qualifies as exempt. Be sure to carefully read all the general and specific conditions and restrictions in *Rule 6.00*. If there is a question as to whether or not you need a permit, you may file a *Request for Regulatory Applicability* application for an official response from DEM about whether your project is indeed exempt. Some common exempt activities for municipalities and utility companies are described below.

Note below: According to the *Rules*, “existing” refers to those conditions which were present as of the enactment of the *Freshwater Wetlands Act* or its applicable amendments that have continually remained the same, conditions which were subsequently approved, or conditions that have occurred naturally.

CAN EXISTING DRAINAGE SYSTEMS BE REPLACED OR MAINTAINED?

Yes, functional drainage structures can be replaced without a wetlands permit (*Rule 6.03B*) under certain conditions:

- ✓ “Existing” culverts that are greater than 50 feet in length can be replaced with a culvert of the same type, size, capacity, and invert elevation as the original culvert.
- ✓ Culverts less than 50 feet long can be lengthened by no more than 5 feet on each end if the same slope, cross-sectional area, and invert elevation are maintained.
- ✓ The work must not result in sedimentation, filling, or impounding of any wetland.
- ✓ If erosion problems appear likely, a riprap pad no greater than 10 feet in length may be placed at the culvert outlet, as long as this will not prevent fish and wildlife passage.

Normal maintenance and cleaning of drainage structures such as pipes, culverts, catch basins, manholes, and drainage swales are also considered exempt activities, providing that all of the conditions of *Rules 6.01* and *6.03D* are satisfied.

WHAT ABOUT ROAD MAINTENANCE OR REPAVING?

Normal maintenance and repaving of public or private roads or bikeways are exempt activities per *Rule 6.03E*, including:

- ✓ Resurfacing or in-place recycling of paved surfaces.
- ✓ Repairs or replacements of curbs, berms, sidewalks, or guardrails.
- ✓ Addition of guardrails, signs, or signals.
- ✓ Repair or replacement of manholes, catch basins, or grates; or adjustment of these structures to grade.

Paving an “existing” oiled or dirt road, however, is **not** exempt and requires a permit.

ARE THERE SPECIAL EXEMPTIONS FOR REPAIR OR MAINTENANCE OF UTILITIES?

Yes, certain utility maintenance and repairs are exempt and can be completed without a wetlands permit under *Rule 6.00*, including:

- ✓ Clearing of a right-of-way in a wetland in order to access “existing” utility lines, poles, or other equipment for maintenance or inspection, if the right-of-way is not otherwise modified (*Rule 6.02F*).
- ✓ Repair and maintenance of “existing” utility poles, structures, equipment, and underground lines or pipes that provide service to the public (*Rule 6.03N*).
- ✓ Replacement of utility poles, including changes in size, without changing a cleared right-of-way (*Rule 6.03O*).
- ✓ Repair or replacement of utility lines associated with “existing” bridges, roads, or railways (*Rule 6.03P*).

CAN MODIFICATIONS BE MADE TO TOWN BUILDINGS WITHOUT A PERMIT?

Some minor changes can be made to non-residential buildings and accessory structures without a permit under *Rule 6.06*, if:

- ✓ All construction work is limited to “existing” cleared areas.
- ✓ The work is located outside floodplains, is no closer than 25 feet from any pond, marsh, swamp, or wetlands complex, and is at least 50 feet from a flowing body of water or bog.
- ✓ No artificial lighting, such as floodlights, faces toward wetland areas.
- ✓ Vertical additions are no more than two stories and do not change the building footprint.
- ✓ There is an addition of only one storage cooler, dumpster, equipment shed or garage per lot (no larger than 600 square feet in footprint).
- ✓ Any alteration to an approved septic system (OWTS) is in accordance with DEM’s OWTS Rules and Regulations.

Demolition of buildings, parking areas, or accessory structures is also exempt, according to *Rule 6.04*, if:

- ✓ The structure will not be rebuilt.
- ✓ The demolition material is disposed of properly outside of wetlands.
- ✓ All pre-demolition grades are restored.
- ✓ Disturbed soils are stabilized, loamed, and seeded.

CAN DAMS, BRIDGES, AND OTHER STRUCTURES BE MAINTAINED WITHOUT A PERMIT?

Maintenance and repair of **high hazard** and **significant hazard dams** are permissible (*Rule 6.19*), provided that such activities follow the requirements of DEM’s Rules and Regulations for Dam Safety (pending) and provided that the project will not result in a “substantial alteration of a dam” (*Rule 4.00*).

Maintenance activities for **low hazard dams** are permissible, in accordance with *Rules 6.01* and *6.20*, if:

- ✓ Limited cutting or clearing of vegetation is within 15 feet of the perimeter of the dam or is necessary to access the dam.
- ✓ The activities are limited to filling minor erosion areas, lubricating and exercising equipment, and re-pointing masonry areas.
- ✓ Inspection, maintenance, or repair of any water control structure within the dam is reported at least 10 days prior to initiation of the work via written notification to the Freshwater Wetlands Program, explaining the purpose of the activity and the estimated time for completion.
- ✓ The water surface elevation is only lowered if it is necessary to complete the activity, and temporary cofferdams are used where possible.

Bridge repair is exempt if work is conducted from the deck of the bridge or roadway, if no equipment is placed in any watercourse or wetland, and if material removed from the site is disposed of properly (*Rule 6.03I*).

Maintenance, repair, or in-kind replacement of stream crossings, docks, footbridges, boat ramps, beaches, or shoreline stabilization structures is also exempt, provided the structures are not enlarged or expanded. Please refer to *Rule 6.03* for more detail.

CAN DRINKING WATER IMPOUNDMENTS BE MAINTAINED WITHOUT A PERMIT?

Yes, however, 20 days advance written notice must be made to DEM's Freshwater Wetlands Program if a municipality must perform maintenance to a drinking water impoundment. The maintenance must be limited to occur only within the existing boundary perimeters of the impoundment (*Rule 6.03Q*).

HOW DOES DEM HANDLE EMERGENCY SITUATIONS?

Emergency utility repairs that result from storm damage, vandalism, or equipment failure are exempt under *Rule 6.07*. However, wetlands must be restored and grades stabilized upon completion of the activity. Water withdrawal from a pond or river for fighting fires is also an exempt activity if other water sources are inaccessible or unavailable.

DEM may grant verbal approval of other emergency alterations that a municipality or utility company may need to undertake. A verbal or written request for approval must be made to the DEM Freshwater Wetlands Program by an official who is responsible for correcting the emergency. Please refer to *Rule 11.01* for requirements of the emergency approval process.

HOW CAN I OBTAIN A COPY OF DEM'S WETLAND REGULATIONS?

A complete copy of DEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* can be obtained from DEM's Office of Technical and Customer Assistance located at the Foundry Office Complex at 235 Promenade Street, Providence (401 222-6822). You may also find this information on the DEM website at <http://www.dem.ri.gov>.

Disclaimer: This Fact Sheet is for general information purposes only and is not meant to be used as a substitute for the Freshwater Wetlands Act or the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.