Wetland Rules Workshop
Focus: The Rules in Practice

Groundwater & Freshwater Wetlands Protection
RIDEM Office of Water Resources
May 4th, 2022
Presentation Outline

• Rule Applicability
• Permitting Pathways and Application Types
• Jurisdictional Areas, Buffer Zones and Buffers
• Examples of “Buffer” Case Studies
• Next Steps & Questions

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Which Rules Apply When

State Programs: What happens as of July 1, 2022? See Rule 3.19

• What if I have already filed an application with DEM before 7/1/2022?
  Freshwater Wetland applications accepted for filing prior to 7/1/2022 will be governed by the rules in effect at the time (DEM 250-RICR-150-15-1 or “Part 1 Rules”). Application needs to be reasonably complete and will be assigned an application number.

• What if I filed a DEM application before 7/1/2022 and I need to make changes to it to address comments after July 1?
  The application would still be processed under the Part 1 rules. The new Part 3 rules would not apply unless the changes resulted in a determination that a new application is required.
Which Rules Apply When

State Programs: What happens as of July 1, 2022? See Rule 3.19

- What if I am planning on filing a new DEM application soon?
  Applicants prepared to file a complete application with the State before 7/1/2022 are advised to follow the Part 1 Rules.

  All new Freshwater Wetland permit applications filed on or after 7/1/2022 need to follow the new Part 3 rules with one exception related to Master Planning.

- Do the new rules affect my existing state Freshwater Wetland permit?
  Existing state permits remain valid for their authorized period and may be renewed in accordance with the rules under which the permit was issued. All specified permit conditions remain applicable.
Projects that obtained Master Plan Approval from a municipality on or before 7/1/2022 may elect to follow the Part 1 Rules provided a complete Freshwater Wetlands Application is submitted to DEM on or before August 30, 2022.

This 60-day additional period is provided to facilitate the transition for those projects that may obtain Master Plan approval in May or June 2022.
Coordination with Master Plan Approvals

Rule 3.8.11 Municipal Coordination and Rule 3.11.2 (4) Application Submittal Requirements now requires that applicants for major land development or major subdivision projects must submit documentation of one of the following with their application to the Freshwater Wetlands Program:

1) Local Master Plan Approval

2) Local conditional approval of a combined Master Plan and Preliminary Plan; or

3) Letter from municipal authority certifying compliance with low impact development site planning and design requirements as contained in local ordinances or regulations.
Master Planning Permitting Pathway

- Site Planning/Wetland Edge Verification as needed
- Local Master Plan Approval Process
- State permit applications filed
- Local Preliminary Approval Process
- Combined Master Plan/preliminary Plan Municipal Approval Process
  State permitting proceeds in parallel
- State permits issued
- Final Local Approval
Relationship to Issued Building Permits
"Grandfathered Permits"

I have a valid build permit for my project? Do I now need a wetland permit too?

As part of the transition, the Part 3 rules allow projects to proceed when:

* A valid building permit issued **before 7/1/2022** is in place; and
* The project was not previously required to obtain a Freshwater Wetlands permit under Part 1 Rules.

This situation applies to the additional land area that will be newly regulated under the new Freshwater Wetland Rules (Part 3).
Rule Applicability Outside of Jurisdictional Area ("JA")

Reminder: There are situations when the Freshwater Wetland Rules apply to locations outside the defined JA. Per Rule 3.5.6 (B) Regulatory Applicability these include:

1. Result in a change in the normal surface runoff characteristics which increases the rate or volume of water flowing into, or draining or diverting water away from, freshwater wetlands or buffers.

2. Result in the diversion of groundwater into or away from the freshwater wetlands or buffers.

3. Result in the modification of the quality of water reaching freshwater wetlands or buffers that could alter their natural character.

Examples: Large new water wells, large excavations affecting water tables, various types of hydromodifications.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Municipal Coordination

• State Agencies will be notifying municipal contacts by email of new Freshwater Wetland permit applications under part 3 Rules;

• Municipalities have 15 days to provide input;

• DEM encourages pre-application meetings as a means of fostering coordination;

• Process for formal notice of Applications for Significant Alterations has not changed (involves public comment, etc.)
Applicability Fact Sheet

• Developing a Factsheet that answers commonly asked questions about the Part 3 Rules.
• Available on the DEM FWW website soon (www.dem.ri.gov/newwetlandsrules)
Questions on Rule Applicability?

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
New Guidance - Summary of Rules

• This nine (9) page document provides an illustrated summary of the new FWW Rules.
• History of the law and rule-making.
• An overview of each of the major sections of the Rules.
• Available on the DEM FWW website soon.
New Guidance
Permitting Pathways

- Process flow chart of the FWW Permitting process
- Identifies which application should be filed based on common scenarios.
- Available on the DEM FWW website soon.
New Guidance  Application Types

• Updated Factsheet describing different types of applications and when to use them.

  • NEW Request to Determine the Presence of Jurisdictional Area
  • Request to Verify Freshwater Wetland Edges
  • Request for Regulatory Applicability
  • NEW Application for a Freshwater Wetlands General Permit
  • NEW Application for a Freshwater Wetlands Permit
  • Application for a Significant Alteration
  • Application for Emergency Alterations
  • Application for Permit Renewal
  • Application for Permit Modification
  • Application for Permit Transfer
Update on General Permit

✓ Small group stakeholder meetings in May 2022

✓ Public Workshop mid-June 2022

✓ Public Notice July 1, 2022

✓ Public Comment Period July 1 – August 15th, 2022

✓ Effective Date Projected to be September 1, 2022.

3.10 General Permits

A. The Department may issue a general permit in accordance with the following:

1. Scope. The general permit shall cover projects and activities as described in the permit within a jurisdictional area, as defined herein;

2. Sources. The general permit shall regulate, within the scope described in § 3.10(A)(1) of this Part, projects or activities that:

   a. Involve the same or substantially similar types and areas of alteration and impacts;
   b. Occur only within the jurisdictional area identified in the general permit;
   c. Involve similar land uses; and
   d. In the opinion of the Department, are more appropriately authorized under a general permit than under individual Freshwater Wetlands Permits;

3. The general permit shall define, identify and regulate specific eligible projects or activities that may be proposed within a jurisdictional area;

4. General permits may be issued, modified, revoked, and reissued or terminated by the Department in accordance with applicable requirements of these Rules...

6. The contents of the application shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the applicant, the location of the project site, and such other information the Director may reasonably require under § 3.8 of this Part.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
New Application Forms

Updated Forms for all Application Types will provide instruction with links to applicable Rules and Submission Requirements.

Highlights:

• New Fillable PDF format for most forms
• New Online Form format for General Permit
• Process
  • Submit FWW signed paper forms, fee, required plans and documents.
  • DIGITAL SIGNATURES will be accepted! Detailed instructions to follow.
  • Concurrent submission of Stormwater, WQC or OWTS forms, plans and documents, as needed.

Timeline:

• Finalize draft forms and internal review - May 18, 2022.
• Close small group stakeholder review & comment period - May 30, 2022.
• Forms available online by June 1, 2022.
Streamlining of Application Forms

• Companion Application Instructions will be created to supplement the application forms. These separate documents will include guidance and instructions to assist application preparers while minimizing the text on the application forms themselves.

• Separate application forms will be created for:
  • Administrative permits (permit renewal and transfer)
  • Pre-application determinations (request to determine presence of jurisdictional area, request to verify freshwater wetland edges)

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Access
New Application Forms
at: www.dem.ri.gov

Select
1. Online Services
2. Applications & Forms
3. Wetlands

Or http://www.dem.ri.gov/documents/forms/index.php#wetlands

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
New Forms Available June 1st

Access New Application Forms from New Freshwater Wetlands Rules webpage at: www.dem.ri.gov/Newwetlandsrules

Video tutorials will be also be added to the website to provide instructions on how to fill out the new forms.
Questions on Permitting Pathways, Application Types, or the General Permit?

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Jurisdictional Areas, Buffer Zones and Buffers

A brief review of the definitions followed by an introduction to some new available tools and real-world case studies.
• **Jurisdictional Area** – area to be regulated includes - freshwater wetlands, buffers, floodplains, areas subject to storm flowage (ASSF), areas subject to flooding (ASF), and contiguous areas that extend outward:
  - Two hundred feet (200’) from the edge of a river or stream;
  - Two hundred feet (200’) from the edge of a drinking water supply reservoir; and
  - One hundred feet (100’) from the edge of all other freshwater wetlands (including ponds).
New Regulated Area: Jurisdictional Area (JA) Designated in Law
As Defined Below

Freshwater Wetland
(Any Size)

Buffer Zone Width Established in Proposed Regulation - Varies 25' to 100'

Rivers & Streams, Any Width

Buffer Zone Width Established in Proposed Regulation at 200'

JA=100'

JA=200'

Buffer Zone Width Established in Proposed Regulation-Varies 50' to 200'

JA Includes Floodplain Boundary, May Extend Beyond 200' from River/Stream Edge

Floodplain Boundary

100' Contiguous areas from edge of all Freshwater Wetlands

200' Contiguous areas to rivers/streams and drinking water reservoirs

200' Floodplains and Areas Subject to Flooding and Storm Flowage

Buffers (Law requires Agency to establish standards in regulation, may be equal to or less than JA)

Freshwater Wetland (includes all marshes, swamps, bogs, ponds, streams, rivers, vernal pools)

Jurisdictional Area Includes:

Note: Freshwater Wetlands, Buffers, Floodplains are to be protected as directed by Law.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Buffer Zone

• Established in rule and designated for all freshwater wetland resources.
• Variable width that may include all of, but cannot extend further than, the “Jurisdictional Area” limit.
• A Buffer Zone does not always consist entirely of “buffer”.
• Buffer standard (Rule 3.7.1) refers to avoiding alteration of “buffer” within the buffer zone and in some cases requiring creation of buffers.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
“Buffer” vs. “Buffer Zone” (As defined in the RI Freshwater Wetlands Regulations)

Green = “Undeveloped vegetated land” which is an area of land that does not consist of buildings, impervious surfaces, bare gravel, lawn, or landscaped areas.

All Buffer is in the Buffer Zone but not all area in the Buffer Zone is Buffer.
Determining Buffer Zone

• **Step 1:** Determine what **Region** the property or project is in, as well as whether or not it is within the Watershed of a Drinking Water Supply Reservoir.

• **Step 2:** Determine presence of rare animal or plant species, or rare wetland type. This may affect size of buffer zone.

• **Step 3:** Determine wetland type, and applicable buffer zone – Rule 3.23(H) & (I) including Tables.
  • May require determining size (for vegetated wetlands and ponds)
  • May require identification of specific segments (for rivers)

• **Step 4:** For vegetated wetland types only - Determine if a different wetland type or sub-type is present 50 feet or less inward of the upland/wetland edge. This may affect size of buffer zone.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Online Tool to Assist in Identifying Buffer Zone Region

- Interactive Map of Freshwater Wetland Buffer Regions is available at:

https://ridemgis.maps.arcgis.com/apps/webappviewer/index.html?id=9a067e507b514a5397cd1ea041f9ba0f

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Buffer Zones for Rare Species or Rare Wetland Type

• Applicants advised to submit a “Request to Determine Presence of Jurisdictional Area” or “Request to Verify Freshwater Wetland Edges” – Let DEM make the call up front.

• Propose a Buffer Zone based on the needs of the identified species or wetland type (will require supporting documentation from a consulting biologist)...this may be adjusted by RIDEM.

• Design the project to remain outside of Jurisdictional Area limit...or at least outside of all “buffer”.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Additional 25’ added to Buffer Zone

• Rule 3.23(F)(2): An additional 25’ will be added to the buffer zone width when one or more differing FWW types or subtypes are present within 50’ inward of the FWW edge, but in no case will a buffer zone exceed the jurisdictional area.
Guidelines for Determining Wetland Connections Across Barriers for Purposes of Determining Size of Wetland units

• To identify the appropriate buffer designation, the size of the wetland in question must be determined.

• Straight-forward for unfragmented wetland units.

• For fragmented wetlands, must determine if wetland units on either side of a barrier are considered one wetland unit or two independent units.

• Barriers may be physical/manmade (e.g. roadway crossings) or natural (watercourse channels or narrow upland areas)

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Man-Made Barriers

1. Wetland units separated by barriers such as four-lane highways, Interstate highways or other similar barriers of 50 feet or greater in width (measured toe-of-slope to toe-of-slope) will be considered connected if the barrier spans the entirety of the wetland with a bridge.

2. Wetland units separated by barriers less than 50-feet wide such as two-lane roadways, railways, driveways, bike paths or buildings will be considered connected if the wetland units are connected by bridges and/or culverts of any size, with wetlands on either side of the road exhibiting similar hydrological characteristics.

3. Wetland units separated by unpaved cart paths, fire lanes, farm lanes, forestry roads, utility access roads, stone walls or similar features equal or less than 10-feet in width will be considered connected regardless of whether a culvert is present.

4. Wetland units separated by a man-made dam will not be considered connected.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Natural Barriers

1. Wetland units separated by upland areas with no surface water connection will not be considered connected as the same unit, regardless of the distance of separation.

2. Wetland units connected only by an Area Subject to Storm Flowage will be considered connected if separated by a distance of 10 feet or less.

3. Wetland units connected only by an open water body, river or stream channel will be considered connected as one unit if separated by a distance of less than 50 feet.

4. Wetland units separated by beaver dams will be considered connected.

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Questions on Jurisdictional Area, Buffer Zones or Buffers?

QUESTIONS? Visit dem.ri.gov/newwetlandsrules
Online Tool Demo and Case Studies
Questions?

Please see the chat for a link to submit a question on the Rules and a link to a short survey for feedback on this presentation.

http://www.dem.ri.gov/newwetlandsrules