



Ombudsman Annual Report to the Public

January 1 to December 31, 2001

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Ombudsman

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The Ombudsman position was created in November 1999. This report will focus on the time January 1, 2001 to December 31, 2001 and details the work of the Ombudsman in two areas, i.e., activities that are internal to DEM and activities that have an external component.

The primary responsibility of the Ombudsman is to help the Department improve its effectiveness, efficiency and accountability, and to increase both external and internal support. Towards this goal, the Ombudsman is charged with authority to undertake independent, and in certain cases confidential, fact-finding in response to external or internal complaints or questions about the Department's performance. The Ombudsman will facilitate resolution of complaints in coordination with Department staff and management, and will make recommendations to the Director on matters that cannot be resolved through such coordination. The Ombudsman is responsible for ensuring that the fact-finding process is perceived and experienced as an independent, impartial, fair and credible process. All members of the Department's staff are responsible for cooperating with the Ombudsman towards this goal.

In addition to independently investigating internal and external complaints, the Ombudsman may assist Department managers in efforts to resolve problems or improve on programs, policies and regulations. The Ombudsman is expected to turn the results of his independent fact-finding into feedback for such efforts.

I. INTERNAL ACTIVITIES

During this time, the Ombudsman has been involved in six DEM internal projects. Significant effort was expended on the following activities:

- A. Program Permit Streamlining
- B. Morale Focus Group
- C. Quality Management Coordinator
- D. Public Policies, Permits and Grant Application Accessibility

A. Program Permit Streamlining

The Department of Environmental Management is committed to continuously improving its performance. The Department's goals include effectiveness in protecting environmental quality and public health, as well as efficiency and accountability in the way the Department develops and implements rules and regulations, policies and programs.

The Department, through the assistance of the Ombudsman, has reviewed Wetlands, ISDS, the Waste Programs, and began the analysis of the Air Pre-construction Permitting Program. Task Forces are used to study the outstanding areas of concern in each of the program areas. The Task Forces include members of the regulated community, impacted municipal, state and federal agencies and staff members of DEM programs. The Task Forces will focus on ways to improve

the program by suggesting administrative, policy and regulatory program changes, and if warranted, statutory changes.

1. Waste Task Force

The Waste Site Remediation Permit Streamlining Task Force and its working groups met sixteen times this year from February to July to review the manner in which the Office of Waste Management processes submissions for site remediation. The group also focussed on the Brownfields program and evaluated ways to encourage the remediation of these sites. As a result of these meetings and subsequent meetings at the working group level, a number of recommendations were made to improve the existing site remediation process. The major changes include:

- Revisions to the DEM Arsenic Policy - The Direct Exposure Criteria for arsenic for Industrial / Commercial will be raised from 3.8 mg/kg to 7.0 mg/kg. The existing arsenic policy will remain in place until the regulation is changed and be replaced by the revised arsenic policy after the regulation change is promulgated.
- Development of a Marginal Risk Policy - Implementation of the Marginal Risk Site policy will streamline the way DEM reviews projects that do not pose significant environmental or human health risks. The proposed policy encourages the removal of waste material and sets information requirements for the Site Investigation Report and presumptive remedies that should be used at the site. Applications that adequately address these requirements will be reviewed by DEM within 42 days.
- Development of a pilot program to clean up distressed properties that use a partnership of DEM, private environmental consultants and the attorneys working on distressed properties.
- Development of a Checklist that can be used to increase submission quality.
- Development of three model Settlement Agreements - The legal approval process should be streamlined by the use of the model Settlement Agreement. Three model Settlement agreements are being developed, i.e., for two parties, three parties and distressed properties. This document outlines the legal procedures and protections needed to move forward in the site remediation process.
- Issues relating to communication between staff and the stakeholders were discussed at length. DEM will meet with the stakeholder community to discuss issues of concern on a regular basis to improve communications between the groups.

Section V – Final Recommendations (page 21) of the Final Report details the listing of all the regulatory, policy, administrative and outreach recommendations of the Task Force (This report is also located on the DEM Ombudsman’s website located at:

<http://www.state.ri.us/dem/programs/ombuds/pstream/waste/pdfs/finrep01.pdf>

2. ISDS Task Force

The ISDS Permit Streamlining Task Force met four times from August to December 2000. Based on the discussions in the Task Force and the three working groups, a number of recommendations were made to improve the program. The Regulatory Working Group provided

the Task Force with the majority of recommendations and met twenty-four times over twelve months (10/3/00 to 10/9/01). For the most part, the issues were technically oriented and the group was able to gain tentative or conditional consensus on the majority of the issues discussed. The technical changes may not seem significant to the lay observer, but their impact will provide for improved tanks, systems that make better use of the treatment potential of native soils, assure longevity of leachfields and better protection of critical resources. These changes will accommodate system installation on sloping sites and allow for trench construction techniques that reduce fill and gravel requirements and thereby reduce cost. The following recommendations are the major results of this effort:

Regulatory Recommendations

The regulations will be revised to incorporate the recommendations of this Task Force. It is anticipated the regulation hearing will be held in November of 2002 and will be preceded by a series of workshops that will be used to inform the environmental and regulated communities of the proposed changes and receive comments from a broader audience. The major regulatory changes include the following:

- **Soil Based Design Criteria**

As of February 1, 2001, any new site tested for future ISDS installation requires a detailed soil evaluation by a DEM licensed soil evaluator. This method of sizing a system replaced the percolation test for sites requiring submission of the site evaluation report.

- **Cesspool Removal**

There are approximately fifty thousand (50,000) of cesspools still being used in the state. The group recommended a risk-based approach for removing cesspools that would have a final deadline for removal, but would allow for some accommodations for hardship cases. Success of the program will depend on financial support for homeowners such as low interest loans, grants or tax credits.

- **ISDS System Sizing – Sewage Design Flows**

Today's homes and businesses are designed differently and family sizes are significantly smaller than they were a generation ago. Future amendments to the ISDS regulations will consider these and other factors by reducing residential and commercial sewage flows. In addition, the procedure used to determine the number of rooms in a residence meeting the definition of a bedroom for sizing the system will be modified.

- **Wetlands / ISDS permit coordination**

ISDS regulations will be amended to require limits of disturbance and erosion controls to be shown on ISDS plans to improve wetland protection and to streamline the review process.

- **Effluent Filters**

ISDS systems will function more efficiently if solids are prevented from being released to the leachfield. Effluent filters are a cost-effective means of ensuring that solids are not introduced to this part of the system. The filters will be required for all new systems, when a new tank is installed and in repair applications when it is practical to install this device.

- **System Suitability Determinations (SSD)**

A system suitability determination (SSD) is required when any alteration, renovation or change of use of an existing structure is proposed. The SSD review process determines if an ISDS upgrade is necessary based on the proposed alteration, renovation or change of use.

Two specific proposals were recommended that impact SSDs. In the first instance a SSD will not be required where sewage flows are not increased. If, however, a home is using a disposal system that has not been approved by DEM or uses a cesspool, it will need to be upgraded if certain criteria are exceeded. In the second instance an upgrade will not be required if the homeowner is covered by the Imminent Sewer Exemption (ISE).

If these conditions were met, it would allow the homeowner, to undertake building renovations and other improvements and to continue to use the existing system until the sewer tie-in is available. Failure beforehand would, however, need to be remedied including tank and leachfield replacement where necessary.

- **De-nitrification**

In order to address the impacts of nitrogen in the surface or groundwater, DEM is considering requiring nitrogen-reducing technology in:

- (a) Densely populated areas which are served by septic systems and drinking water wells;
- (b) Wellhead protection areas;
- (c) Coastal areas where Special Area Management Plans (SAMPs) have identified a need for nitrogen controls from ISDS systems.

Policy Recommendations

There were a number of policy recommendations that would improve environmental protection and would improve program performance. One of the major concerns raised was the length of time it takes DEM to process variance applications. DEM will expedite denial of applications if they do not adequately demonstrate that the proposed system will be at least as protective of public health and the environment as one that meets the requirements of the regulations.

Currently, rather than reject these defective applications which do not satisfy this requirement (which is required in the regulations and requested on the Variance Request Form), DEM spends considerable time trying to help applicants correct their designs so as to meet this burden, which increases application decision time. Strictly enforcing this element of the variance request process will allow decisions to be made more expeditiously. DEM will propose new procedures to improve application quality, reduce review time and maintain environmental integrity.

Other issues recommended include:

- DEM should conduct (or contract for) studies to determine coastal embayments that are at risk from nitrogen loadings other than those which are included in the CRMC Special Area Management Plans and those for which TMDL's have been or are being conducted.
- DEM should conduct a Spring ISDS enforcement initiative going door-to-door in SAM Plan areas looking for signs of ISDS failure.
- Loading of phosphorous from septic systems needs to be evaluated for impacts to surface water resources.

- Issues relating to transport and survivability/viability of pathogens from septic systems needs to be evaluated.
- The issue of environmental and public health risks resulting from over-occupancy of rental homes overloading ISDSs requires additional discussion.

Administrative Recommendations

- The pink sheet, used by designers to determine administrative completeness, will be updated to reflect changes in the regulations.
- The ISDS program has developed a checklist that helps the designer perform installation inspections. In addition, the field guidance documents will be made available to licensees and will be posted on the web.
- DEM will initiate a review of ISDS applications and will concurrently process appropriate applications with the Wetlands, Water Quality and CRMC programs whenever possible.
- Inspection Reports will be sent to the designer. This process will be used when an inspector notes a problem. In this case a Request for Further Action notice will be sent to the designer.
- The Office of Technical and Customer Assistance and the ISDS program will work together to update the Frequently Asked Questions brochure that can be used to help citizens understand the ISDS application process.

Outreach and Training

- DEM will continue to support the municipalities with technical and other assistance concerning the creation of wastewater management districts.
- DEM should continue to make available the Septic System Checkup - The Rhode Island Handbook for Inspection and the Municipal Programs and Standards Reference Manual. These texts can be used to help inform homeowners, realtors, home inspectors, designers and municipal officials about ISDS issues.
- DEM proposed filling an existing position to work on Innovative / Alternative ISDSs. Due to budgetary concerns the filling of this position is questionable. If filled, this position could be used to inform DEM staff and appropriate municipal officials on the proper use and maintenance of these systems.
- DEM will conduct an annual meeting with licensed designers to review regulatory requirements, explain changes in procedures, accept comments and discuss emerging issues. DEM should look for an organization to sponsor this meeting, spreading out the administrative tasks to another organization, but providing the staff to explain program changes.

3. Air Pre-Construction Permit Streamlining Task Force

The Air Pre-construction Permitting Task Force was initiated in November 2001. It is anticipated that the Final Report of this Task Force will be completed by May 2002. Additional information on this Task Force can be viewed on the Ombudsman Website located at:
<http://www.state.ri.us/dem/programs/ombuds/pstream/air/index.htm>

B. Morale Focus Group

A number of issues were raised at Senior Staff retreats that required follow-up action. Focus groups comprising DEM employees were empowered to make recommendations to address issues raised at these retreats. One of the issues raised concerned agency morale.

In November, the Ombudsman initiated the first meeting of the Morale Working Group. The first two meetings were used to develop a list of concerns that impact morale. The majority of the issues concerned communications issues. The morale issues were grouped into the following categories: Enhancing Communications, Team Building, Encouragement of Feedback, and Employee Recognition. The group is expected to report its findings in the third quarter of third fiscal year.

C. Quality Management Manager

The regulatory programs within DEM have the responsibility to implement and enforce environmental programs within the state. DEM works closely with EPA on these issues. EPA provides the grant funding to assist the state in implementing these programs. One condition of these grants is to develop and implement a Quality Management Plan. This plan is designed to ensure the data that is collected and maintained by DEM is of known quality, well documented, and is verifiable and defensible.

In December, the Ombudsman was given the responsibility to of being the Quality Management Manager for the agency. Responsibilities include the following:

- Implementation of the Quality Management Plan;
- Supervision of the preparation of Quality Assurance documents used by the programs,
- Providing oversight, with assistance of program personnel of all QA related field and laboratory functions.
- Developing a system that ensures all contracts and agreements conform to the generally accepted QA/QC procedures and all QA/QC requirements mandated by cooperative agreements with federal agencies.
- Developing a training program with appropriate program staff to educate impacted staff on the Quality System and instruction of staff on proper QA and QC procedures.
- Developing a system of System Management Reviews and Project Audits that ensures that these procedures of the Quality Management Plan are carried out.

D. Regulation, Policies, Permits and Grant Application Accessibility

DEM's mission is to:

- Enhance the quality of life for current and future generations by protecting, restoring and managing the natural resources of the state; enhancing outdoor recreational opportunities; protecting public health; and preventing environmental degradation.
- Achieve a sustainable balance between economic activity and natural resource protection.

- Motivate citizens of the state to take responsibility for environmental protection and management, based on an understanding of their environment, their dependence on it, and the ways their actions affect it.

In order to achieve this mission, it is important that the public and the regulated community understand the rules and policies that govern DEM's authority to achieve its mission. Through an open and transparent government we will be better able to solicit the support we need to achieve our environmental goals.

One mechanism that is being used to make the operation of the agency more transparent is to post information concerning regulations, policies, permits and grant applications on the DEM Website. Throughout the year I have been working with the programs to enhance the information that was posted on the website. Through my efforts more than twenty additions permit and grant applications that were in electronic format were posted on the website.

Last year, the general assembly passed legislation that required all agencies to refile all regulations and post them on the Secretary of State's website. DEM's Office of Legal Services worked with all the DEM programs and successfully posted this information on the Website.

The one area where additional work needs to be done is in the area of policies. I will be working with the DEM programs next year to collect appropriate information and have this material organized for posting on the web

II. EXTERNAL ACTIVITIES

The Ombudsman position should be proactive and listen to and communicate with members of the regulated and environmental community and the general public. In order to be responsive to these groups the Ombudsman needs to collect information about their concerns about the DEM. The following strategies have used to collect this information:

- A. Public Outreach Activities
- B. Ombudsman Website Development
- C. Complaint Tracking Reports

A. Public Outreach Activities

One of my responsibilities is to assess public concerns about the operation of the Department. There is a passive component in this assessment where I respond to the public's concerns that are relayed to me through phone calls or e-mails. The active portion of the job entails meeting with and coordinating meeting with stakeholder groups. Outreach activities include the following:

1. Roundtable Meetings
2. Rhode Island Association of Environmental Managers Meeting
3. Governor's Pollution Prevention Awards
4. RISEP /DEM Training Seminars

1. Roundtable Meetings

The Business and Environmental Roundtables are an important feedback mechanism for DEM. They provide the Department with direct contact with the people who are impacted by our programs. They also offer the regulated and environmental communities with an opportunity to interact with the Director and help us frame some of the solutions to our statewide environmental issues. The Ombudsman is responsible for developing the agendas, in coordination with the roundtable participants, generating the Director's briefing book that details the issues to be discussed and tracking the issues between the meetings.

a. Business Roundtable

I coordinated four meeting of the Business Roundtable last year. The group provided feedback to the Director and discussed these following issues.

- ◆ Greenhouse Gas and Energy related issues,
- ◆ Waste Permit Streamlining Task Force updates i.e.,
 - DEM's revised Arsenic Policy,
 - Brownfields and
 - Marginal Risk Policy;
- ◆ DEM 2002 work plan,
- ◆ Budget and business-related legislative updates,
- ◆ Business participation in Pollution Prevention Week,
- ◆ Incentives for the Development of a RI XL Program,
- ◆ RI Society of Environmental Professionals/ DEM Training Effort,
- ◆ Dredge Regulations Update and
Open Space / Recreation Planning Update.

For more information concerning the Business Roundtable click onto the Ombudsman's Website and go to the Business Roundtable section, i.e.,
<http://www.state.ri.us/dem/programs/ombuds/bround/index.htm>

b. Environmental Roundtable

I coordinated four meeting of this group last year. The group provided feedback to the Director and discussed these following issues:

- ◆ West Nile Virus update,
- ◆ Open Space Bond Rulemaking,
- ◆ 2002 DEM budget, workplan and legislative updates;
- ◆ Ladd School,
- ◆ Childhood Lead Poisoning,
- ◆ Quonset Point, Watershed Discussion,
- ◆ Open Space / Rocky Point,

- ◆ Stormwater Regulation update,
- ◆ ISDS Regulation Update,

- ◆ Enforcement Issues,
- ◆ Forestry Issues and
- ◆ Greenhouse Gas Update.

For more information concerning the Environmental Roundtable click onto the Ombudsman's Website and go to the Environmental Roundtable section, i.e., <http://www.state.ri.us/dem/programs/ombuds/eround/index.htm>

2. Rhode Island Association of Environmental Managers Meeting

The Ombudsman coordinated a meeting on April 24, 2001, between the Rhode Island Association of Environmental Managers and DEM. The purpose of this meeting was to update the organization with DEM activities that affect the business community. Topics covered included future Business Roundtable meetings, the functions of the Ombudsman office, and a description of Ombudsman Activities, DEM Regulatory and Legislative Updates, a discussion of the Air Pollution General Duty Clause and a presentation of DEM efforts to develop an Environmental Leadership Program.

3. Governor's Pollution Prevention Awards

One of the issues raised at a Business Roundtable meeting was the reinstatement of the Governor's Pollution Prevention Awards. The Environmental Leadership Award was added this year to encourage and recognize the progressive environmental programs of businesses. The Ombudsman coordinated this event with DEM's Office of Technical and Customer Assistance, the Northern Rhode Chamber of Commerce, and The Rhode Island Association of Environmental Managers. Cosponsors of the meeting included the East Greenwich Chamber of Commerce, the North Kingstown Chamber of Commerce, the North Central Chamber of Commerce, and the Greater Providence Chamber of Commerce.

The six award recipients were:

Award for Excellence in Pollution Prevention

S&A/Paramount Printing, Lincoln

Awards for Outstanding Achievement in Pollution Prevention

General Dynamics/Electric Boat, North Kingstown, and
The Naval Undersea Warfare Center, Newport

Award for Excellence in Environmental Leadership

Mr. Harold Gadon, Cranston

Awards for Outstanding Achievement in Environmental Leadership

Tytex, Inc., Woonsocket, and
The Community College of Rhode Island, Lincoln/Warwick/Providence

The Governor's Awards were created in 1991 by the DEM, to recognize public and private organizations, businesses and individuals that have implemented pollution prevention within their facilities. Pollution prevention can be characterized by use of materials, processes, or practices that reduce or eliminate the creation of pollutants at a source before it reaches the environment.

A team of reviewers from DEM and the business community selected the award recipients. The event was presented during National Pollution Prevention Week, which was from September 17 through 23, 2001. Over 100 people attended this event on September 20, 2001.

4. RISEP /DEM Training Seminars

One of the recommendations of the Waste Site Remediation Permit Streamlining Task Force was to work with organizations to co-sponsor seminars on issues that were discussed at the Task Force. As a result of this recommendation, the Ombudsman is coordinating a series of professional seminars utilizing personnel from the DEM and the Rhode Island Society of Environmental Professionals (RISEP) as seminar trainers. The first seminar on the Marginal Risk Policy will be held on January 29, 2001 and is geared toward training all levels of the professional service community on this topic.

Implementation of the Marginal Risk Site Policy will streamline the way DEM reviews projects that do not pose significant environmental or human health risks. This will be a more efficient process and resources that are currently used to review "marginal risk sites" can be diverted to reviewing projects that have a significant environmental impact.

Other seminars are in the planning stage and include the following topics: Site Remediation Program Policies Update and Brownfields Update.

B. Ombudsman Website Development

The Ombudsman website on the DEM homepage tracks many of my activities. I am responsible for developing the website content. Information concerning the Ombudsman policy, the status of the Program Permit Streamlining activities and news about past and future meetings of the Environmental and Business Roundtables are regularly posted. Meeting notes, working group reports and meeting notices and agendas for Task Force activities are located on the website to keep the Task Force members and the public informed on these streamlining activities. The Business and Environmental Roundtables agendas, meeting notes and handouts, whenever possible, are also posted on the website. The Ombudsman homepage can be found at the following location:

<http://www.state.ri.us/dem/programs/ombuds/index.htm>

C. Complaint Tracking Reports

The ombudsman receives calls from the public concerning a range of environmental problems. Many of the calls are general questions from the public that want information on environmental issues but do not know who to contact in the agency for responses. These kinds of questions are either responded to immediately or are transferred to the appropriate program. In addition to these calls, I handled thirty-five cases that needed further attention. Only seven of the cases remain open. To date, none of the cases required a formal written finding from the Ombudsman.

Ombudsman Complaint Summary	
Program Issues	Number of Concerns Raised
ISDS Permitting	12
Wetlands Permitting	7
Contract Management	3
OWM Site Remediation	2
OWM- UST	2
Internal DEM Issues	2
Miscellaneous	2
Agriculture - Pesticides	1
Air Permitting	1
Office of Legal Services	1
Wastewater Treatment Plant	1
Hunting	1
Total	35

The majority of the concerns raised dealt with permit issuance / review time problems, especially in the ISDS and Wetlands program. These two programs account for the vast majority of all permits issued by DEM. Some of the issues will be eliminated when the Wetlands and ISDS regulations will be revised.