



2004 Ombudsman Annual Report to the Public



January 1, – December 31, 2004

Prepared by: Thomas D. Getz
Date: February 1, 2005

TABLE of CONTENTS

- I. INTERNAL ACTIVITIES..... Page 1**
 - A. Program Permit Streamlining..... Page 1**
 - B. Expedited Permit Process.....Page 2**
 - C. Public Records Management..... Page 4**
 - D. Quality Manager..... Page 5**
 - E. Next Generation Work Plan.....Page 6**
 - F. Narragansett Bay and Watersheds Co-ordination Activities..... Page 7**

- II. EXTERNAL ACTIVITIES.....Page 7**
 - A. Public Outreach Activities..... Page 7**
 - 1. Business Roundtable.....Page 7**
 - 2. Public Meetings..... Page 8**
 - 3. DEM Customer Satisfaction SurveysPage 8**
 - a. Environmental Permitting.....Page 8**
 - b. Administrative Adjudication Division..... Page 10**
 - 4. Point of Contact for Complex Environmental Issues..... Page 10**
 - B. Ombudsman Website Development..... Page 11**
 - C. Complaint Tracking Reports.....Page 11**
 - D. Increasing Public Access to Environmental Information..... Page 12**

This document will report the work of the Department of Environmental Management's Ombudsman during January 1 to December 31, 2004. 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. The work effort of the Ombudsman can be broadly broken into two categories. Internal activities include work done to improve internal processes within the agency. External activities include projects that enhance communication opportunities with DEM's external stakeholders.

I. INTERNAL ACTIVITIES

The Ombudsman has been involved in a number of projects that impact internal DEM processes. Significant effort was expended on the following activities:

A. Program Permit Streamlining - Hazardous Waste Regulations Stakeholder Group

The Department of Environmental Management is committed to continuously improving its performance. In previous years DEM, through the assistance of the Ombudsman, reviewed the Wetlands, ISDS, Air Permitting and the Waste Site Remediation Programs.

In 2004 the Office of Waste Management proposed to revise its regulations to provide for a new regulatory process for managing used oil and convened a stakeholder group to work on this topic. The group was used to study the outstanding areas of concern in the program areas and include members of the regulated community staff members of DEM programs.

DEM met four times with stakeholders to discuss changes to the hazardous waste regulations. The group focused on used oil, formally regulated under the name waste oil. Used oil has been a major waste related issue in the context of the hazardous waste regulations since their inception. However, since used oil is subject to significant recycling efforts and may not always test positive as a hazardous waste, DEM has invested time and effort to develop used oil regulations that should reduce the regulatory burden in the management of used oil.

The following is a list the major changes that were recommended by the stakeholder group:

- Add language to allow a transporter with a hazardous waste transporter's permit to transport used oil as well.
- Clarify the regulations to define "significant concentrations of halogenated hazardous constituents" as being greater than 100 parts per million using approved analytical test methods.
- Clarifying the regulations to define appropriate test methods that can be used to characterize used oil. The footnote was revise to allow the use of other test methods approved by the USEPA.
- Change the allowance for onsite storage from 24 hrs to 72 hrs and indicate that the used oil shall remain on the truck/vehicle during this temporary storage period.

- Change the amount of required aisle space from 4 feet to 3 feet since this was considered the industry standard.

In 2002, DEM met with stakeholders to discuss a hazardous waste generation fee. A regulatory model was proposed that included charging a fee for waste oil (now called used oil). At the end of this process DEM indicated it would consider removing this waste stream from the fee at a later date. During the current stakeholder process DEM revisited this issue.

This group of stakeholders also thought that used oil should not be charged a fee. In addition, used oil that was required to be on a manifest (this is unique to Massachusetts) should be exempt from the fee. The fee, however, would be charged to Massachusetts's waste codes for hazardous waste that this state requires to be transported on a manifest. In order for this proposal to be revenue neutral, the stakeholders recommended the hazardous waste fee be increased from the existing \$0.02 /lb and 16 cents / gallon to \$0.023 /lb. or 19 cents / gallon.

It is DEM's intent to finalize the revisions of the regulation by the end of January 2005. It is anticipated the regulations will be effective in the March 2005 time-period.

Additional information concerning this stakeholder group can be located on the DEM website i.e., <http://www.state.ri.us/dem> then click on Program, then click on Ombudsman, then click on Environmental Stakeholder processes and finally Hazardous Waste Regulation Revisions.

B. Expedited Permit Process

The Ombudsman is assisting in the development and implementation of an expedited permit process. DEM with the assistance of the Ombudsman has evaluated a number of its permit programs to streamline the decision-making process of permit applications, while maintaining the environmental integrity of its program. As part of past streamlining efforts, DEM has changed some of the ways in which permits or approvals are handled. The Office of Air Resources has piloted a program that allows expedited reviews of certain Pre-construction Permits (Super Application) based on the quality and quantity of the information submitted in the application package. In addition, the Office of Waste Management has developed a policy that guarantees sites that pose a marginal risk to be reviewed in 42 days, provided all regulatory requirements are submitted to DEM in the application.

As a furtherance of the goal of providing a high level of customer service, DEM will be piloting a program that will allow a number of permits to be handled in an expedited manner utilizing staff in a managed overtime process. Assignment of overtime will be on a voluntary basis. This process will be in addition to the current Department of Economic Development effort that requires DEM to prioritize applications that are of Critical Economic Concern. This process is being proposed because DEM is required to process environmental permits at a time when resources are shrinking, or at best, maintaining an existing resource level.

This process will benefit applicants who want to pay for an expedited review; their applications will be processed first, based on the availability of personnel resources. Other applicants will also benefit since there are now less applications that need to be reviewed during normal working hours. This process should reduce permit-processing times for both groups of applicants.

This proposed program would be limited in scope due to the number of employees who are both available and eligible to work overtime on a long-term basis. DEM therefore has developed a number of criteria to maximize the goal of reducing permit review time. DEM will use the following criteria to determine the types of permits covered:

- **Employee Availability**

DEM has reviewed implementation of the program with staff and assessed the availability of permit staff that would be interested in working overtime and the number of hours a month they would be interested in working. The number of hours available to expedite permits will be dependent on the number of hours available in the pool of employees who work in a particular permitting program.

- **Permit Complexity**

In order for the program to be successful DEM will have to focus this process on applications that need minimal or limited supervisory review. Therefore the permits that best fit this description will be the less complex permits.

- **Number of Permits Processed**

Thousands of applications are reviewed by DEM annually. The number of permits issued by a permit program, e.g., Wetlands, ISDS, and Tanks etc. may be indicative of areas where permit backlogs may exist. Backlog reduction is one of the key reasons DEM will seek to implement this new process.

- **Application Turn-around Time**

One of the reasons for instituting this program is to reduce DEM application review times. An expedited process will be most effective in permits that take a considerable time to process. Shortening a permit review, for example, from six weeks to say three weeks will have a greater impact on the regulated community than reducing a permit review time from three days to two days.

Based on the above criteria, DEM has determined the following programs will be eligible for the program:

Office Of Waste Management - Underground Storage Tank Program's Dynamic Field Assessment
Site Remediation Program's Marginal Risk Submittals

Office of Water Resources -

ISDS Program - Subdivision Suitability, System Suitability Determinations, New Building Construction and Soil Evaluation applications

Wetlands - Edge Verifications and Presence of Wetlands

Regulations need to be revised to incorporate the proposed fees structure that will be used to fund this program. It is anticipated this program will be implemented in the early summer.

C. Public Records Management

The Ombudsman identified record management as an issue that needs to be addressed. Record management is an underlying administrative function that affects all phases of work being done in the agency. Most employees are in the position of creating, reviewing, processing or filing records. DEM needs to provide all employees with the tools needed to ensure records are being properly handled. Following good record management practices will help to meet legal requirements and will benefit the agency in many ways such as:

- Improving access to information;
- Reducing the amount of file space;
- Reducing operating costs;
- Minimizing litigation risks;
- Safeguarding vital information;
- Supporting management decision making; and,
- Preserving DEM history.

Records need to be available to assist DEM in achieving its mission of protecting and managing the environmental resources of the state. A document control system needs to be developed to track a document during its life cycle, i.e. creation / collection, record maintenance and use and record disposition i.e., archiving or destruction.

In this year, the Ombudsman focused on developing record retention schedules for each of the Bureaus, Offices and Divisions. Record retention schedules determine when records are no longer needed in the business practice of the group using this document. There are two types of records. The first are records that fit into the general record schedules that are set by the Department of Administration. These records are common to all state agencies and include records like human resource records, budgeting, purchasing etc. The second set of records is considered unique records of the Department. This is the area where the Ombudsman focused efforts.

In order for unique records to be destroyed, sent to long-term storage or sent to the State Archives, DEM must develop a record retention schedule. This schedule identifies the unique record, determines the method of final disposition and the time when the document is useful to the program. The Secretary of State, the Auditor General and the Attorney General must approve the record retention schedules that are developed. After this has been accomplished,

DEM will have an approved record retention schedule. Records will be able to be disposed after the Secretary of State approves a record destruction request.

At this point in time the Secretary of State has approved three DEM retention schedules. In the last year, the Ombudsman submitted twelve-second drafts and nine first drafts of record retention schedules to the Secretary of State. Ten more record retention schedules are currently in draft form undergoing internal review and two need to be developed.

The primary historical document in the agency has been paper records. Recently, DEM and other governmental bodies have been conducting more of their business practices using electronic documents. The Ombudsman, a member of an Electronic Content Management team, is developing a proposal that will define the electronic record management policy for the state. It is anticipated that a proposal will be developed in FY 2005. This policy will ultimately address the record retention procedures and management of electronic documents.

D. Quality Manager

The environmental regulatory programs have the responsibility to implement and enforce environmental programs. EPA provides grant funding to assist the state in implementing these programs. One condition of these grants is to develop a Quality Management Plan. The Quality Manager of an agency develops this plan. The Ombudsman is the Quality Manager for the agency and responsibilities include:

- Providing oversight of all quality assurance related field and laboratory functions;
- Ensuring that all contracts and agreements conform to accepted quality assurance / quality control procedures;
- Developing a staff training program to educate them on the requirements of the Quality Management Plan;
- Developing procedures to conduct Management Reviews and Project Audits. These processes are used to ensure that data is collected in a scientifically valid manner.

DEM needs data of known quality to enforce regulations and to develop environmental policy that can withstand scientific scrutiny. The DEM Quality Management Plan details the procedures that are used to ensure that data is collected in a scientifically valid manner. This plan is a living document and was revised to address some of the program gaps that were identified in the previous plan. EPA approved DEM's Quality Management Plan in July 2004.

Improvements to the plan include:

- Quality System Training Program section was updated to specify DEM training needs and priorities.
- The Documentation and Records section was updated to reflect DEM's development of its Records Management Policy.
- The Annual Management Systems Reviews section was revised to indicate that DEM has developed a draft protocol to conduct Management Systems Reviews. DEM staff will need to be trained in these procedures before this system can be implemented.

Management system reviews will enable DEM to determine if the environmental programs have systems in place that will meet the objectives of the Quality Management Plan.

- The index of Quality Assurance Project Plans used in DEM was updated. These plans are used to describe the performance criteria and quality assurance / quality control activities associated with any environmental investigation conducted by DEM.
- An index of Standard Operating Procedures (SOPs) used in DEM was developed. The SOPs are written policies, designed to present general guidelines for planning investigations and collecting and developing admissible and defensible evidence in support of the environmental programs. Each Office has procedures, and in some cases written policies, designed to present general guidelines for planning investigations and collecting and developing admissible and defensible evidence in support of the environmental programs. Last year the Ombudsman developed the first compendium of DEM SOP's. In addition, a format for new SOPs was developed.
- The electronic versions of these SOPs, when available, were posted on the DEM website at the following location: <http://www.state.ri.us/dem/pubs/data.htm> DEM works with many consultants who also use these SOPs. Posting this information on the website will provide them access to this information,

The Ombudsman also participated in three regional Quality Managers Roundtables. These roundtables are held to discuss issues with EPA and the other state quality managers concerning quality management issues in the region. One of the issues identified was the need for additional training for regional staff in the principles of quality management. Due to the group's efforts, EPA held its Quality Management Training in New Hampshire in September. The Ombudsman attended and was trained in conducting program management auditing procedures, which was identified as a DEM quality management gap or deficiency. The information collected at the training will be used to develop a DEM Program Assessment (audit) system.

E. Next Generation Work Plan

The Ombudsman is a member of a team that will be developing the next generation work plan. Since the year 2000, the Department of Environmental Management has developed and implemented a Strategic Work Plan for all divisions and offices in the agency that describes our mission, goals, policy priorities and challenges; the results we are trying to achieve; and the main strategies that we will implement. The work plan covers a two-year period and outlines the activities and tasks to be undertaken to move toward our long-term goals and objectives.

The work plan has been very successful in outlining DEM's planned activities, communicating those activities to the public, and aligning our actions with those of our partner agency, EPA. However, there are several areas that have posed challenges to implementation that will be addressed in the next work plan:

- Better Reporting: A goal of the next generation work plan should be to create a transparent reporting process that shows the status of the commitments in the plan.

That update should be available real time to DEM managers, EPA, and members of the public.

- Better Task Definition: A goal of the next generation work plan should be to include one set of tasks and activities clearly understood at all levels of the organization. Those tasks could then be filtered or reorganized, but not changed, depending on the audience of the person reading the document.
- Increased Accountability: A goal of the next generation work plan should be to consistently define individual responsibility, and accountability, for all tasks outlined in the plan.

It is anticipated that the development of the system should be completed by March 2005.

F. Narragansett Bay and Watersheds Co-ordination Activities

DEM is highly involved in the implementation of the Narragansett Bay and Watershed Commission. Ten different panels that worked on these issues concern a number of DEM Programs. The panel reports were then gathered recommendations were presented to the Governor. As a result of this process, DEM was assigned a number tasks that deal with nutrient reduction and bacteria reductions, beach pollution, habitat restoration, water monitoring, bay assessment and response, interstate coordination, fisheries and aquaculture and public access and recreation. The Ombudsman is responsible for tracking the implementation of these diverse issues.

II. EXTERNAL ACTIVITIES

The Ombudsman position listens to and communicates with members of the regulated and environmental community and the public. In order to be responsive to these groups the Ombudsman collects information about their concerns about the DEM. The following strategies are used to collect this information:

A. Public Outreach Activities

One of the Ombudsman's responsibilities is to assess public concerns about the operation of the Department. The Ombudsman responds to public concerns through phone calls or e-mails. Other outreach activities include coordinating the following activities:

1. Roundtable Meetings - Business Roundtable

The Business and Environmental Roundtables are important feedback mechanisms for DEM. They provide the regulated and environmental communities the opportunity to interact with the Director and provide input in the resolution of environmental issues. The Ombudsman, in the past has been responsible for developing the agendas and tracking the issues between the meetings. This responsibility was transferred to the Office of Strategic Planning and policy after the Winter Business Roundtable was held.

The February meeting of the Business Roundtable provided updates to the group on the following issues:

- Office of Waste Management's Marginal Risk Policy
- DEM Regulatory Agenda
- Environmental Legislative Proposals
- DEM Budget
- RIPDES Update
- 2003 Customer Satisfaction Report
- Supplemental Environmental Projects

For more information concerning the Business Roundtable click onto the DEM Website at: <http://www.state.ri.us/dem/programs/ombuds/bround/index.htm>

2. Public Meetings

- a. The Ombudsman worked with the Rhode Island Association of Environmental Managers and attended their 2004 RISEP Environmental Careers Night in February. The purpose of this meeting was to provide a brief overview of DEM's programs to graduating students and other people interested in environmental careers.
- b. The Ombudsman met with the Environmental Business Council in the fall. The purpose of the meeting was to review DEM's stakeholder processes with respect to permit streamlining activities. Special emphasis was given to the Air Permitting Task Force. The group was interested in determining which permit streamlining activities worked. The group was also briefed about the revision of the State Air Toxics regulations.

3. DEM Customer Satisfaction Surveys

The Ombudsman finalized two Customer Satisfaction Surveys last year. The first was the 2003 Permitting Customer Satisfaction Survey in January 2004 and the second was the Administrative Adjudication Survey that was completed in May 2004.

a. Environmental Permitting Customer Satisfaction Survey

In the summer of 2003, DEM completed its second customer satisfaction survey of its major permitting programs. Approximately 1200 individuals, consultants, municipalities and individuals who applied for permits in FY 2002 were surveyed.

The programs were rated using the evaluation criteria in Table 1. The survey requested responses to questions and had the option to respond: exceeded expectations, met expectations, did not meet expectations and does not apply. The responses exceeded expectations and met expectations were considered positive responses. This evaluation criterion is the same that were used in the previous surveys. Customer satisfaction is an important issue at DEM. As a result, this evaluation system is rigorous and the standard for meeting customer satisfaction

is set high. It is the goal of DEM to provide customer service at the very good to excellent level for all programs. This survey will allow DEM to conduct an evaluation of its permitting programs and to continue the process of continuous improvement in its service to the public.

Table 1 Proposed Program Evaluation Criteria	
Positive Response Rate	Service Provided
96-100%	Excellent Service
91-95%	Very Good Service
86-90%	Good Service
80-85%	Average Service
Less than 80%	Service needs improvement

The results of this survey showed that DEM was providing a good level of customer service with respect to its conduct in pre-application meetings, permit application review and overall effectiveness of the permit program. Table 2 below is a compilation of the survey results.

As can be seen below, customer satisfaction varied by program and DEM provided an average to excellent level of service in all programs. Although not all the program surveys represented a statistically valid sample, the survey results in 2003 show a general improvement trend from the previous years. The most typical negative response indicated that the timeliness of permit decisions some of the DEM permit programs could be improved. Even though concerns were raised about timeliness, there was strong support for the function of these programs. Responses from five of the six programs rated the role of the permitting process in protecting the environment at the excellent to good service level.

Table 2 Permitting Program Survey Results			
Program	Pre-application Meetings	Permit Application Review and Determinations	Overall Satisfaction
Air	Very Good Service	Good Service	Very Good Service
ISDS	Average Service	Average Service	Average Service
Pesticides	N/A	Excellent Service	Excellent Service
Waste	Excellent Service	Excellent Service	Excellent Service
Water	Good Service	Average Service	Average Service
Wetlands	Average Service	Average Service	Average Service
Average of all Programs	Good Service	Good Service	Good Service

It should be noted that there were improvements in the ISDS and Wetlands Program survey results. In 2003, both programs were rated as needing improvement in all three-program areas, i.e. pre-application meetings, permit application review and determinations and over-all satisfaction of the permitting process. The programs have improved to an average rating level. There was a

significant improvement in the Pesticides program and the Waste Program maintained its excellent level of service rating.

b. Administrative Adjudication Division Customer Survey

The Office of Administrative Adjudication (Office) is the administrative court for all environmental matters originating from DEM. The Office is responsible for ensuring that the regulated community (i.e.; individuals, business owners, builders, environmental groups) has an opportunity to contest actions taken by the department and to have such actions reviewed at the agency level.

The Office also adjudicates all appeals of enforcement actions taken by the many regulatory programs within the department and hears enforcement appeals for alleged violations of statutes and/or regulations under the jurisdiction of the DEM. The Office consists of three hearing officers and two support staff. The Office hears all appeals filed for denials of applications or permits issued by the various programs within the Department including, but not limited to, wetland permits, individual sewage disposal system permits, resource recovery facility permits, and landfill licenses.

The DEM's Ombudsman conducted a customer survey of 315 individuals, businesses and municipalities who have used the Administrative Adjudication Division (AAD) to contest DEM permit or enforcement decisions. The survey requested feedback from people whose cases were heard in the 2000 to 2003 time frame. The survey requested responses in three main areas, i.e., the level of service provided by the administrative staff, the prehearing process and the actual hearing process itself. Forty-nine people responded to the survey. In general the survey showed that approximately 88% of the questions had a strong positive response. There were only fourteen responses (2%) that indicated a "no" or strong negative response to a question. The remaining ten percent of the responses were neutral responses. The two percent negative response is significant in that the vast majority of the responders were very satisfied with the delivery of services of the AAD. This rate is lower than anticipated when one considers the adversarial nature of the venue. In general, the response to administrative assistance questions provided the highest "yes" response rate of the survey. The administrative staff should be commended for their work in providing excellent service. The survey results showed the AAD process is working well. This survey does not indicate the need for changes to the operations of the Division.

4. Point of Contact for Complex Environmental Issues

DEM is charged with enforcing environmental laws that impact the air we breathe, the water we drink and land that we use for housing, recreation and agricultural purposes. In a few complex cases, the Ombudsman serves as a point of contact with the public to assist in the smooth flow of information to the public from the agency. These complex cases often deal with multiple regulatory offices and people can be frustrated with the

communication from the agency. The Ombudsman served as a point of contact for two cases, i.e., the Bay Street Tiverton Study Area and the Charbert / NFA facility in Alton RI.

B. Ombudsman Website Development

The Ombudsman is responsible for developing the website content on the DEM homepage which tracks many activities of the office. Information concerning the Ombudsman policy, the status of the Program Permit Streamlining and other stakeholder group activities coordinated by the Ombudsman are regularly posted. Meeting notes, working group reports and meeting notices and agendas for Task Force and stakeholder activities are located on the website to keep the Task Force members and the public informed on these activities. In the last year the Ombudsman coordinated the development and / or the posting of material for the Rhode Island Litter Task Force, the Solid Waste Management Plan, DEM's Environmental Data, Standard Operating Procedures and Quality Assurance Project Plans Bay Street Study Area and the Hazardous Waste Regulation Revision Process.

Information on the Ombudsman's activities 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 who do not know whom 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 calls, thirty-three cases were received that needed further attention. Some cases were complex and had more than one environmental concern. 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
OWM Site Remediation	8
Compliance & Inspection	8
Water Resources	6
Air Permitting	6
ISDS Permitting	5
Wetlands Permitting	4
Parks and Recreation	3
Bay Issues	2
Agriculture – Animal Issues	1
Fish & Wildlife	1
AAD	1
Dredging	1
Total	46

In the past the most common concern was the timeliness of the DEM decisions. This was not the case this year. Only five of the issues concerned timeliness issues. A number of the cases involved multiple environmental concerns. The issues were usually resolved after a meeting was set up with the appropriate program personnel who assisted in the coordination of the DEM effort.

D. Increasing Public Access to Environmental Information

The Rhode Island Departments of Environmental Management (DEM) and The Department of Health (HEALTH), the Brown University Center of Environmental Studies (CES) and the South East Asian Development Corporation (SEDC)(Partners) joined together on a project. The Partners goal is to increase environmental and public health awareness of the Southeast Asian community on the issue of mercury and Polychlorinated Biphenyls (PCB) ingestion.

The partnership was formed to take advantage of the expertise of the four groups. DEM is responsible for enforcing fishing regulation in the state and also has ready access to environmental data that can identify contaminated waterways. HEALTH has expertise in providing health related messages to families and has experience in environmental health issues. CES is experiences in developing environmental policy and communication of environmental risk issues. SEDC has access to and experience in working with the Asian Community.

The primary target of this project is the Southeast Asian community in Providence County. Environmental awareness is not high in this community and this initiative allows the Partners to increase their awareness and perception of environmental chemicals. This increased awareness will give the Southeast Asian community the access to environmental information and provide them with tools to address their environmental health concerns. In addition, the state agencies will receive information that will increase their capability to deliver health risk communication messages in a manner that will be received by this community.

Immigrant populations, especially from the Southeast Asian community, fish in the freshwater rivers and streams throughout Rhode Island and the ocean. The per capita fish consumption of this group is high and Rhode Island coastal waters have an abundance of blue fish and striped bass that contain levels of PCB and mercury. In addition, due to the industrial nature of Rhode Island, a number of fresh water rivers are sources of mercury that accumulate in the tissues of these fish.

In the summer of 2004 the CES and SEDC worked together to conduct a survey using an environmental literacy tool. The purpose of the tool was to determine the communities understanding of the problem being studied and to determine the best method to provide information environmental health issues in this population. It is anticipated the results of the survey will be completed in the spring of 2005, with implementation activities to follow.