

State of Rhode Island and Providence Plantations
Department of Environmental Management
Office of Water Resources

NOTICE OF PROPOSED RULE-MAKING & PUBLIC WORKSHOP

**PROPOSED AMENDMENTS TO THE RULES AND REGULATIONS GOVERNING THE
ADMINISTRATION AND ENFORCEMENT OF THE
FRESH WATER WETLANDS ACT**

The Director of the Rhode Island Department of Environmental Management (DEM) proposes amendments to the *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act*. In accordance with State law and pursuant to the provisions of the “Administrative Procedures Act” (Section 42-35-3 of the General Laws of Rhode Island), the proposed regulation would, upon adoption, supersede the existing *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act* dated June 2007. DEM also gives notice of intent to hold a public workshop to receive public comment on the proposed regulations and afford interested parties an opportunity to submit data, views, or arguments orally or in writing.

The purpose of the amendment is as follows:

- 1) Section 7.02 C proposed amendment streamlines the permitting process for certain project types by exempting applicants from the requirement of obtaining written notarized authorization from other owners of property within which freshwater wetlands will be directly altered as a result of the project, prior to applying for a freshwater wetlands application. The amendment pertains to only partial or full dam removal projects that are proposed for the purpose of habitat improvement, restoration or dam safety on dams where the surface water upstream of the dam is considered a flowing body of water.
- 2) Section 10.04 A.4 proposed amendment authorizes the Department to require, for certain project types, that the applicant place a public notice of the proposed project in a daily or weekly newspaper with circulation in the area of the project.

The proposed amendments are as follows:

RULE 7.00 – GENERAL APPLICATION REQUIREMENTS

Existing subsection 7.02 C amended:

- C. Except as noted below, applicants proposing projects on their own property that involve wetland alterations either partially or wholly on property owned or controlled by others must obtain written notarized authorization from the landowner of the property within which freshwater wetlands will be directly altered as a result of a proposed project. Such written, notarized authorizations must be provided to the Department as part of the application package and must expressly authorize the applicant to apply for the proposed site alterations as depicted on the site plans submitted with the application. The authorizing landowner does not become an “applicant” as described in Rule 7.01 (D) by granting such written notarized authorization to an applicant. Written notarized authorization shall not be required for freshwater wetland alterations associated with full or partial removal of a dam proposed for the purpose of habitat improvement, restoration or dam safety. The surface water (impounded) upstream of the dam must be considered a flowing body of water, and not a pond, both prior to and after completion of the project. This exemption applies subject to confirmation by the Department.

New subsection 4 added after subsection 3:

10.04 Public Notice and Participation – Public Hearings

A. Public Notice

- 1) Notice: An Application to Alter a Freshwater Wetland shall be publicly noticed in accordance with Section 2-1-22(a) of the *Act*.
- 2) Public Comment – Period of Time: Within fourteen (14) days after the receipt of an application that has been determined by the *Department* to be complete, the *Department* shall send a notice of the application to the appropriate parties, as defined in Section 2-1-22(a) of the *Act*. The public notice period shall commence upon the day of mailing of the notice and end forty-five (45) days thereafter.
- 3) Notice for Public Comment – Delivery: Notice of the application shall be made by first class mail. The *Department* will rely upon those names and addresses provided by the applicant to notify abutting property owners. Prior to the notice, the applicant must ensure that the list of abutters is current and accurate.
- 4) In the case of a full or partial removal of a dam as described in Rule 7.02C, impounding a flowing body of water, proposed for the purpose of habitat improvement, restoration, or dam safety, the Department may require the applicants to place, at their own expense, a public notice of the proposed project in a daily or weekly newspaper with circulation in the area of the project. This notice must allow at least a thirty (30) day period for comment to the Department, ending no later than the date for the notice specified in accordance with 10.04 (A) (2).

DEM has complied with the requirements of R.I. Gen. Law Section 42-35-3 by considering alternative approaches to the proposed regulations and has determined that there is no alternative approach that would be as effective and less burdensome. DEM has also determined that the proposed regulations do not overlap or duplicate any other state regulation. DEM has complied with the requirements of R.I. Gen. Laws Section 42-35-3.3 by submitting copies of the proposed regulations to the Governor's Office and the Economic Development Corporation (EDC).

Parties interested in or concerned with the above proposed changes are invited to submit written comments by May 30, 2009. All such comments should be directed to:

Russell J. Chateaufneuf, P.E., Chief
Groundwater and Wetlands Protection
Office of Water Resources
Department of Environmental Management
235 Promenade Street
Providence, RI 02908-5767

Questions concerning the above proposed changes can be addressed by email to Lisa.McGreavy@DEM.RI.GOV, or by calling 401-222-4700, Extension 7611 or by writing to the above address.

A public workshop has been scheduled for May 21, 2009 at 4:00PM in Conference Room 300 at the Department of Environmental Management, 235 Promenade Street, Providence, RI. The workshop will

include a brief presentation regarding the proposed changes and a question and answer session. Room 300 is accessible to the handicapped. DEM will provide interpreter services for the hearing impaired, provided such a request is made at least 48 hours prior to the hearing date. A request for interpreter service and for TDD can be made in writing or by calling (401) 222-4700, Extension 7611.

Signed this 30th day of April, 2009.

Russell J. Chateaufneuf, P.E., Chief
Groundwater & Wetlands Protection
Office of Water Resources
RI Department of Environmental Management