

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WATER RESOURCES

Amendments to

**Rules and Regulations Governing the Administration and Enforcement
of the Freshwater Wetlands Act**



Amendments of

August 2001

Authority: These Regulations are adopted pursuant to Chapters 2-1-20.1, 42-17.1, 42-17.6, and 42-35 of the General Laws of Rhode Island, 1956, as amended.

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RULES AND REGULATIONS GOVERNING THE ADMINISTRATION AND ENFORCEMENT
OF THE FRESHWATER WETLANDS ACT

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The Rules and Regulations have been amended as follows: Rule 2.03 has been added to describe and clarify interagency procedures for freshwater wetlands in the vicinity of the coast; new definitions have been added in Rule 5.96; and new fee categories have been added in revised Rules 8.04 E6 (l) and (m). Rule 8.04E6 has been revised so airport fees are calculated based upon Estimated Construction Costs. Rule 9.01 A and B have been revised and Rule 7.04C has been deleted to allow for entities other than government and public utilities to pursue emergency permits. Rules 8.02C, 8.05C, 9.02, 9.05G2. and 9.09 have been revised for clarification purposes.

RULE 2.00 – AUTHORITY AND GENERAL ADMINISTRATION

- 2.03 Pursuant to R.I. Gen. Laws 46–23– 6 as amended, freshwater wetlands located in the vicinity of the coast are under the exclusive jurisdiction of the Coastal Resources Management Council (CRMC) except that the Department shall maintain jurisdiction over farming-related activities involving freshwater wetlands located in the vicinity of the coast. That area of Rhode Island containing freshwater wetlands located in the vicinity of the coast is depicted on maps maintained on file at the offices of the Department and the CRMC.
- A. Any application for a project involving freshwater wetlands in the vicinity of the coast that was submitted to the Department and was assigned an application number prior to August 18, 1999, shall be subject to the Department’s authority and governed by the Rules that were in effect at the time the application was filed. Any determination or permit, including any terms and conditions, issued by the Department prior to August 18, 1999 shall remain valid for the time period specified in such determination or permit.
- B. All permits issued by the Department involving freshwater wetlands in the vicinity of the coast shall continue to be administered by the Department through December 31, 2001. The Department’s authority over these permits shall include, but not be limited to, the ability to renew, transfer, modify and enforce these permits in accordance with Rules 9.07, 9.08, 9.09 and 15.00. Effective January 1, 2002, CRMC shall become the sole authority for all permits involving freshwater wetlands in the vicinity of the coast (including the renewal, transfer, modification and enforcement of permits originally issued by the Department), except that:
- 1) Permits issued by the Department for projects that lie on or that straddle the jurisdictional boundary shall be administered by the Department in accordance with paragraphs D, E, and F below;

- 2) The Department shall retain jurisdiction over any permits that are the subject of an outstanding compliance order or other formal administrative, civil, or criminal legal action initiated by the Department for the purpose of litigating and or settling that action; and
 - 3) The Department shall retain sufficient jurisdiction over any permits or permit applications acted upon by the Department prior to January 1, 2002 to permit the Department to defend or settle any legal proceedings brought against the Department as a result of those actions.
- C. Any compliance order issued, or administrative, enforcement, civil or criminal action taken by the Department prior to August 18, 1999 shall continue to be subject to the Department's authority and to be governed by the Rules and Regulations in effect at the time the order was issued or action taken.
- D. Applications for linear projects (e.g. road or utility projects) that lie on the jurisdictional boundary established pursuant to the R.I. Gen. Laws 46-23-6 will be reviewed as follows:
- 1) if the project is located entirely or partially within either a CRMC Special Area Management Plan or within 200 feet of a coastal feature, as defined by CRMC, then the CRMC shall be the freshwater wetland review agency according to the *Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast*.
 - 2) if the project is located entirely outside the limits of any CRMC Special Area Management Plan and is not within 200 feet of a coastal feature as defined by CRMC, then the Department shall be the freshwater wetland review agency according to Rule 7.00.
- E. Applications for projects that cross or fall on both sides of the jurisdictional boundary established pursuant to the R.I. Gen. Laws 46-23-6 will be reviewed as follows:
- 1) if all of the freshwater wetlands are located seaward of the boundary, then the CRMC shall be the freshwater wetland review agency;
 - 2) if all of the freshwater wetlands are located inland of the boundary, then the Department shall be the freshwater wetland review agency;
 - 3) if the wetlands are on both sides of the jurisdictional boundary and the project is non-linear in character, then:
 - (a) where the project is located entirely or partially within either a CRMC Special Area Management Plan or within 200 feet of a coastal feature, as defined by CRMC, the CRMC shall be the freshwater wetland review agency;
 - (b) where the project is entirely outside the limits of any Special Area Management Plan and is not within 200 feet of a coastal feature, as defined by CRMC, the Department shall be the freshwater wetland review agency;
 - 4) For linear projects that are on both sides of the jurisdictional boundary, the agencies shall jointly determine the freshwater wetland review agency on a case-by-case basis in response to a written request from an applicant to CRMC. CRMC and the Department

shall mutually determine the appropriate review agency considering the extent and the location of freshwater wetland, the area and proximity of potential land disturbance, and the guidelines of a watershed plan. Within 10 business days of the receipt of a request for clarification from an applicant, the agency that retains jurisdiction will inform the applicant. Upon written notice to the applicant, the agency may extend the 10-day deadline for up to an additional 10 business days for any reason. While the intent is to designate a single review agency, in the event that a project includes potential freshwater wetland alteration in both jurisdictional areas, the agencies reserve the right to jointly exercise their jurisdiction.

- F. The permitting agency for a project that is on the boundary or on both sides of the boundary shall renew, modify, transfer and enforce the permit according to the Rules and Regulations that were in effect at the time the permit was issued.

Rule 5.00 – DEFINITIONS

5.96 A. DEM Regulations means the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* adopted by the Department pursuant to Chapter 2-1-20.1, 42-17.1, 42-17.6, and 42-35 of the General Laws of Rhode Island, as amended.

5.96 B. CRMC Regulations means the *Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast* adopted by the Coastal Resources Management Council pursuant to Chapter 46-23-6 of the General Laws of Rhode Island.

5.96 C. Freshwater wetlands in the vicinity of the coast means those freshwater wetlands seaward of the jurisdictional boundary that are regulated by the Coastal Resources Management Council according to the *Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast*.

5.96 D. Jurisdictional boundary means that line determined by the Department and the Coastal Resources Management Council, pursuant to Chapter 46-23-6 of the General Laws of Rhode Island, that designates areas of freshwater wetland jurisdiction. The jurisdictional boundary is depicted on original maps dated June 1997, revised April 2001, and maintained on file at the Department and the Coastal Resources Management Council.

5.96 E. Water quality improvement project means a project whose sole purpose is to eliminate or correct one or more specific, ongoing activities or problems that cause or contribute to water quality degradation.

5.96 F. Wildlife habitat project means a project whose sole purpose is to create, restore or enhance wildlife habitat.

Rule 8.00 – GENERAL REQUIREMENTS FOR ALL APPLICATIONS

8.02 Signatories to Applications

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” under Rule 5.06 by granting such written notarized authorization to an applicant.

8.04 Fee schedule

E. Request For Preliminary Determination and Application to Alter Freshwater Wetlands

6) *Miscellaneous separate proposed projects:*

(l) Land redevelopment/reuse projects limited to conversion of sand and gravel banks, mill sites, or urban waterfront to public recreational facilities.

(i) Prelim. Det. = \$350.00.

(ii) App. to Alt. = \$450.00.

(m) Wildlife habitat projects, water quality improvement projects:

(i) Prelim. Det. = \$100.00.

(ii) App. to Alt. = \$200.00.

Fees based on ECC (see Rule 8.03 for explanation of how ECC is computed):

(n) *Reconstruction of existing or approved roads, railways, or airport facilities including all associated clearing and disturbance, drainage systems/facilities, bridges, utilities, and other structures:*

(o) *New road, railway or airport facility construction, including: all associated clearing and disturbance, drainage systems/facilities, bridges, utilities, and other structures:*

8.05 Application Processing

C. All complete applications will be processed as closely as practicable in the order received. The Director will process applications submitted with a Certificate of Critical Economic Concern in accordance with Rhode Island General Laws Section 42-117 *et seq.* Requests for Emergency Alterations (see Rule 9.01) will be processed immediately upon receipt.

RULE 9.00 – APPLICATION TYPES – SPECIFIC REQUIREMENTS AND CONDITIONS

9.01 Request for Emergency Alterations

Verbal approval of an emergency alteration, other than those alterations specified in Rule 6.07, may be granted by the Director consistent with the following requirements:

A. Verbal or written request for permission to proceed with an emergency alteration must be made to the Freshwater Wetlands Program, Office of Water Resources, by the owner of the property or easement where the emergency alteration is proposed or by an appropriate official of a town, city, state or federal agency or public utility responsible for correcting

problems which arise on an emergency basis and pose an imminent threat to health and safety;

- B. The request must inform the Department of at least the following:
- 1) An explanation of the problem necessitating an emergency alteration;
 - 2) The reason why the problem represents an imminent threat to health and safety;
 - 3) The location of the area in which corrective activity is required;
 - 4) The proposed actions necessary to correct the problems;
 - 5) The person responsible for overseeing the activity including means of contact; and
 - 6) The means proposed to restore the wetland area following the emergency alteration, as appropriate;

9.02 Request to Determine the Presence of Wetlands

- H. A Request to Verify the Delineated Edge of Wetlands file shall be considered closed if the applicant fails to answer any notification of application deficiency or request for additional information by the Department within a period of two (2) years from the date the deficiency letter is issued.

9.05 Application to Alter a Freshwater Wetland

- G. Closing of an Application

An application to Alter a Freshwater Wetland shall be considered closed under the following circumstances:

- 2) A permit or a letter of denial is issued and the applicant fails to appeal the decision within thirty (30) days of receipt of the decision.

9.09 Application for Permit Modification

- A. Prior to the expiration of a valid permit, a permittee may apply to the Department requesting approval to incorporate minor modification(s) to the originally permitted project. Such modification(s) in all cases may not change the primary intent of the original permitted project and may not increase the limits of wetland disturbance previously permitted unless such increases occur in existing paved, lawn, or otherwise developed areas, or increase the anticipated impacts from that previously permitted by the Department. Any modifications must be minor in nature in relation to the originally permitted project.
- D. An Application for Permit Modification will not be approved if, in the opinion of the Director, the modification(s): are not minor in nature in relation to the originally permitted project; change the intent of the original project; involve increases of wetland disturbance into vegetated areas not previously evaluated by the Department; or increase the anticipated impacts from that previously permitted by the Department.

EFFECTIVE DATE

The foregoing amendments to the “Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act,” after due notice, are hereby adopted and filed with the Secretary of State this 30th day of August 2001, to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 2-1-20.1, 42-17.1, 42-17.6, and 42-35 of the General Laws of Rhode Island, 1956, as amended.

Jan H. Reitsma, Director
Department of Environmental Management

Notice Given On: April 11, 2001

Public Hearing Held: May 15, 2001

Filing Date: August 30, 2001

Effective Date: September 19, 2001