

## Responses to Comments

### Amendments to the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act

On April 11, 2001 DEM issued a public notice regarding proposed amendments to the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act. The amendments primarily clarify the DEM-CRMC freshwater wetland jurisdictional boundary, define and introduce new fee categories for wildlife habitat and water quality projects, and allow private property owners to seek permits to alter wetlands in an emergency.

To review the amendments and to receive comment DEM held an informational meeting on April 25, 2001 and a public hearing on May 15, 2001. This document presents DEM responses to comments received in writing during the public notice period through May 18, 2001. Comments were received from one party. The comments are quoted directly and a DEM response follows each comment.

Comments and responses:

1. Comment: In 2.03 D and E we believe it will be easier for clients to find their case when the conditional clause appears first (as you have written E.3.). "If the wetlands...., then."

Response: DEM revised Rules 2.03 D and E as suggested by the commenter and agrees that the new language will enable applicants to identify their case more readily. The new language does not change the content of the Rules.

2. Comment: In Section 8.04, Fees based on ECC: the cited examples seem to be transportation projects. Does it make sense to add ferry slips and bicycle paths to those projects charged on ECC basis?

Response: The entire Rule 8.04 is presently under review and revision. We will consider this comment fully in concert with other revisions to the fee categories and amounts.

3. Comment: In Section 9.02 you might better protect the Department by adding the words "certified mail" after "any" and before "notification" in line 2 of H.

Response: The Wetland Permitting Program sends many notices of deficiency to applicants for all application types. It would be costly in terms of staff time and mail fees if the notices were to be sent certified mail. The Program has not had a problem with delivery of notices via first class mail; therefore this recommendation was not adopted.

4. Comment: In Section 9.09, we disagree with the exemption for minor modifications in lawns or other developed areas. We are particularly opposed to the exemption for "other developed areas" because we believe that too much discretion for interpretation is left to the landowner, and that damages to wetlands and the public benefits they provide may result from that loose interpretation. We believe that in instances where lawns are maintained near water's edge or

other wetland buffer, that the exemption for minor modification in lawns is not sufficiently protective of the public welfare.

Response: The existing Rule 9.09 on Applications for Permit Modifications is very restrictive on the scope of changes that may be entertained under this application type. In all cases the scope of the proposed project modification must be minor in nature to be eligible for a permit. The amended rule retains the concept of minor changes, but will allow minor changes into already developed areas such as lawns and paved areas. The amended rule allows these changes to be considered as a modification of the approved permit. If altering the area in question would have adverse consequences, the proposed modification would not be approved under this application process.