



# Rhode Island Department of Environmental Management

Office of Water Resources – Groundwater and Freshwater Wetlands Protection

235 Promenade Street | Providence, RI 02908 | 401.222.6820 | [www.dem.ri.gov](http://www.dem.ri.gov) | @RhodeIslandDEM

## Questions and Answers

Training Workshop May 4, 2022

DEM Freshwater Wetlands Rules (250-RICR-150-15-3)

### **Session 1. Applicability**

Question What if a Master Plan is not required from the Town/City?

Answer If no Master Plan is required, and that applies to many smaller projects, the deadline is July 1<sup>st</sup>, after which you would be following the part 3 Rules. If you can file a full application before July 1<sup>st</sup>, you could do so under the part 1 Rules, on new applications

Question Hypothetical scenario: Ongoing construction is occurring near a wetland for a project that did not require an application under the Part 1 regulations (and for which a building permit was not required). If the work near the wetland has not been completed by July 1<sup>st</sup>, and the work falls within jurisdictional area and buffer zone under the Part 3 regulations, is the work okay to continue to completion, or will it be in violation?

Answer The intent is that activities that are authorized to proceed before July 1<sup>st</sup> and did not require a Wetlands permit under the Part 1 regulations, should be able to proceed after July 1<sup>st</sup> without having to come in for a permit, particularly if it is under construction. That being said, it would depend on the activity...any activity within the Jurisdictional Area that did not require a permit under the Part 1 Rules but DOES require a permit under the Part 3 Rules would need to seek a permit to continue unless the activity is taking place under a previously approved building permit or other municipal or State approval.

Question Can a minor modification to a permit issued before July be filed after July 1<sup>st</sup>?

Answer Yes it can. If you were issued a permit before July 1<sup>st</sup>, and you want to modify that permit after July 1<sup>st</sup>, you submit the same usual application for a Permit Modification and we review that, and the Part 3 Rules and jurisdictional areas don't apply. We basically review the modifications based on the Rules that were in place at the time the permit was issued.

Question CRMC does not act until after local approvals - would the August 30<sup>st</sup> date allowance apply to small project (non-Master plan) wetlands applications to be submitted to CRMC?

Answer That provision only applies to those projects that under state law qualify for the Master Plan approval. It's not available to small projects that are not going through that process with local government.

**Session 2:**     **Permitting Pathways and Application Types**

Question     Will there be changes to the number of hard copies needed for submission?

Answer       We are working through this right now in order to standardize the process as much as possible. We will certainly want to take any opportunity we can to eliminate any waste. So, we will not be asking for any unnecessary copies. We only ask for as many copies that we need to complete the review (which is done at several different levels concurrently). When we implement the new digital permit application system, it will be much easier because we will have the tools to receive and review the plans electronically within a platform that allows us to see the history of those changes to the plans and the response to comments. For now, the next thing you will see from us is guidance on the submission requirements, both for probably first the general permit and second for our other application types and that will be posted in the same place as our other guidance documents.

Question     Will there be guidance on how a project’s stormwater management may trigger wetlands review? For example, a discharge point toward a jurisdictional wetland but the project and all disturbance is outside buffer areas?

Answer       Yes, RIDEM will be providing additional guidance. Projects or activities as specified in §§ 3.5.6(B)(1) through (3) of the Part 3 Rules that are proposed outside of a jurisdictional area which in all likelihood, because of their close proximity to freshwater wetlands or buffers, or because the size or nature of the project or activity will result in an alteration of the natural character of any freshwater wetland or buffer, may not be undertaken without approval from CRMC or RIDEM, respectively, in accordance with these Rules. Such projects or activities generally are those that will result in a change to the normal surface run-off characteristics which increases the rate or volume of water flowing into, or draining or diverting water away from, freshwater wetlands or buffers. For any such project or activity that involves land disturbance of one (1) acre or more of land area, approval may be obtained under the Department’s General Permit for Stormwater Discharge Associated with Construction Activity without a separate application to the Freshwater Wetlands Program. Applicants will be covered under the RIDEM General Permit for Stormwater Discharge Associated with Construction Activity where land disturbance of one (1) acre or more occurs within the CRMC freshwater wetlands in the vicinity of the coast jurisdiction and subject to CRMC permitting authority.

**Session 3.**     **Jurisdictional Areas, Buffer Zones, and Buffers**

Question     Does the definition of “stream” include intermittent streams?

Answer       "Stream" means any flowing body of water or watercourse other than a river that flows long enough each year to develop and maintain a channel and that may carry groundwater discharge or surface runoff. Such watercourses may not have flowing water during extended dry periods but

may contain isolated pools or standing water. Under the Part 1 Rules, RIDEM and CRMC do not differentiate between streams and intermittent streams now and will not under the Part 3 Rules. They will be treated like they are currently. The buffer zone for all streams in River Protection Regions 1 and 2 is 100 feet. The buffer zone for all streams in the urban region is 50 feet. Buffer zones for rivers are designated in §§ 3.23(H) and 3.23(I) of the Part 3 Rules.

Question Does DEM Planning know that they will be subject to a number of requests to determine if a rare wetland species is present in wetlands in order to determine buffer zone requirements due to the current geographic information system (GIS) setup?

Answer They may be aware of that. We are also seeking other pathways on how to do that, so that it doesn't all fall on one individual. But yes, for now those kinds of inquiries will be going to DEM Planning because they are the only entity currently equipped to review the natural heritage information.

Question With the example given for the additional 25-feet added to the buffer zone, would the delineator have to flag 2 lines - one along the outer swamp edge and one along the interior marsh edge?

Answer No, and the Part 3 Rules actually state that we don't expect you to flag interior wetland sub-units, but you would at least have to identify physically whether or not you have a differing wetland unit type interior to the wetland edge. This could be a little bit complicated in the case of a vegetated wetland but should be fairly straightforward if you're talking about the interior edge of a pond, river, or a stream.

Question Pertaining to Item #3 of the Natural Barrier slide [*Wetland units connected only by an open water body, river, or stream channel will be considered connected as one unit if separated by a distance of less than 50 feet*], would a bridge separate wetland units? for instance, if a fringe wetland exists around a pond but does not connect at the point of the bridge?

Answer Assuming that you're talking about a manmade bridge, and most pedestrian bridges are so narrow that we could just connect those two across. If it's a wetland fringe of a pond, it only becomes relevant if there's another fringe on the other side of the bridge. Then yes because the pond itself would be considered part of the wetland as well, we would probably connect those two wetland units on either side of bridge, if the bridge was less than 50 feet wide.

Question Is the area between two "connected" wetlands considered buffer zone? Or wetland?

Answer The connecting area would be considered wetland if it's in fact wetland, if it meets the definition of a wetland, if that connection is a wetland connection. If that connection is an area subject to storm flowage (ASSF), then it's that area subject to storm flowage. An ASSF doesn't have any buffer zone associated with it, but wetland units themselves would have a buffer zone associated with them. Any upland area adjacent to those wetland areas would be considered buffer zone.

Question When will the outward-facing interactive map have these river and lake layers?

Answer At the moment, we do not know the exact time frame for that, but we are close to being able to put it live on the website. The river region map is live and that is available on the website, but we

are still making changes to this interactive map and are making sure it's as correct as we can get it, but we anticipate that probably within the next month or sooner, we should be able to get that live on the website.

Question Will this map eventually have the buffer zone layers?

Answer No, probably not because then the map will end up fairly complicated and due to the digital nature of those things, those aren't exact edges, so if we are going to show a buffer zone off of those, that buffer zone itself would also not be exact. It's really a tool to tell you what the buffer zone is going to be, once you identify the limit of the actual resource on site.

**Session 4. Examples of "Buffer" - Case Studies**

Question Do you have guidance on how much Atlantic white cedar coverage needs to be present in a swamp to be considered an Atlantic white cedar swamp or rare wetland type? For example, would just a few individual trees in a 1.5-acre swamp merit such classification?

Answer For that particular example, no. Just a couple trees do not an evergreen forest make. There is some guidance in the Part 3 Rules. We do have some guidance in Rule 3.23(E), in order to be an evergreen forested swamp, it has to be at least 50% coverage over that wetland, crown cover over that wetland of either Atlantic White Cedar or Eastern Hemlock to be considered Evergreen Swamp. As far as size, yes that is something we will be developing guidance on because we don't want a case where, for example you had a 100 square foot patch in a wetland of a dense evergreen forested area being considered an evergreen forested swamp which would give a 100-foot buffer zone. So we are going to have some guidance on how large these units have to be before they influence either what they are called or whether you have to take into account if it's a different subtype within that 50' zone from the wetland edge to get that bump out.

Question 1. Will the lawn or developed areas have to be designated by biologist or surveyor / designer? 2. If lawn is NOT associated with an existing residence or structure is it still non-buffer area...and how far back do we look at these areas as being grandfathered?

Answer 1. When you are preparing an application, you would want to delineate those areas on your site plans, so we know if they are in the buffer zones, that those areas are not considered to be buffer. Typically, when an applicant shows existing conditions on the site plan, they will depict those features. That may have to be a little more refined because a "tree line" is not typically well-defined. An applicant would need to show those features on the site plan, to show that they are meeting the buffer standard. It does not need to be delineated by any professional per se, except that the person drawing the plans should be a surveyor or someone along those lines. More than likely it would be a surveyor or an engineer.

2. If it's lawn, something that is frequently mowed, even if it is not associated with the structure, it would not be considered buffer. How far we go back, that depends on the individual

circumstance. If it was part of an approved project, then it doesn't really matter because it would have been an approved feature. If it wasn't approved and it only became lawn a few years ago then that might be something we take an enforcement action on, or maybe at the very least consider the conditions to be whatever they were before prior to the installation of that lawn for purposes of determining what is buffer. Existing or approved lawn would not be considered buffer.

Question In situations like the last example, will we need to depict both the buffer zone associated with the swamp and buffer zone associated with the stream on the plans submitted to DEM or just the furthest reaching buffer zone and depict all of the buffer within?

Answer Similar to what our current practice is, you would show just the outer-most limit of the buffer zone. You might also want to show the edge of the jurisdictional area.

Question In the third example [*the Warwick Dollar Tree example*], why was the extra 25' buffer bump-out taken from the swamp edge and not from the outer buffer from the stream?

Answer The swamp edge is the one that determines what the buffer zone is going to be. That is covered in Rule F-2, "The buffer zone associated with vegetated freshwater wetlands [*only vegetated wetlands can get those bump outs, not rivers, not ponds*] shall be designated based upon the wetland type or subtype identified at the edge in accordance with section 3.23 of this part [*the Part 3 Rules*]. An additional twenty-five feet (25') will be added to the buffer zone width when one (1) or more differing freshwater wetland types or subtypes are present within fifty feet (50') inward of the freshwater wetland edge."