



FACT SHEET

Office of Water Resources / April 2022 – Applicability and Timeline

FRESHWATER WETLANDS QUESTIONS: APPLICABILITY AND TIMELINE

The following questions and responses are compiled from the online RIDEM Freshwater Wetlands Question & Answer system that was created to facilitate and organize questions about the “new” Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, referenced as 250-RICR-150-15-3 or Part 3. Where mentioned, the “current” rules are the Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act, 250-RICR-150-15-1 or Part 1.

- Question **Could you please confirm the effective date for the implementation of the new wetlands Rules?**
Answer The new effective date for the New Freshwater Wetlands Rules (250-RICR-150-15-3) is July 1, 2022
- Question **To be reviewed under the current Rules (250-RICR-150-15-1), would applications need to be filed, or deemed administratively complete, prior to July 1, 2022?**
Answer With a couple of exceptions, yes, an application will need to be filed prior to July 1, 2022, the effective date of the new Rules. See Rule 3.19 "Superseded Rules."
- Question: **If you have a Formal application in prior to July 1, but you decide to downgrade it to a Preliminary Determination application and you re-apply after July 1, are you then locked into the new Rules?**
Answer: No. DEM’s decision to downgrade a Formal application to a Preliminary Determination would not require a re-application. Once the applicant agrees to the downgrade (if the Program offers it) we would just issue an Insignificant Alteration under the Part 1 Rules in effect at the time of the original Formal application.
- Question: **I file a Preliminary Determination application prior to July 1, and DEM says I should submit an Application for a Significant Alteration. If the application is submitted after July 1, am I locked into the new Rules?**
Answer: Yes, in that case the new Rules would apply, unless any of the scenarios described under Rule 3.19 (Superseded Rules) apply to the project.
- Question: **If a permit is issued under the current Rules, do the expiration periods under the new Rules apply?**
Answer: For permits issued under the current Rules prior to July 1, 2022, the expiration date from the current Rules applies. The new expiration dates will only take effect on the permits that are issued under the new Rules effective on July 1, 2022.

- Question: **If a wetlands permit was approved under the current Rules, but construction was delayed, will the work be required to be in compliance with the new Rules?**
- Answer: Any project that was permitted under the current Part 1 Rules can proceed as permitted so long as the permit remains valid, including any eligible renewals. If a project is delayed beyond the life of the permit and the eligible renewals, a new permit will be required at which time, assuming a new application would be received after July 1, 2022, the proposed project would be required to comply with the new Part 3 Rules.
- Question: **Would pre-existing construction in the buffer zone effectively be grandfathered in?**
- Answer: Yes, pre-existing development in the buffer zone would be grandfathered as long as it is not an unauthorized project or activity and therefore a violation.
- Question: **If an application (that proposes a project) is submitted under the current Rules, is there a need to reapply after the new Rules go into effect?**
- Answer: No. If someone applies prior to July 1, 2022, the current Rules in effect apply to that project. Any application submitted to the Department or CRMC prior to July 1, 2022 shall be governed by the current Rules. The new Rules will only apply to projects with applications that are filed on or after July 1, 2022.
- Question: **What are the submission requirements if I have local Master Plan Approval issued before July 1, 2022?**
- Answer: Applicants for projects that have obtained a valid Master Plan Approval from a municipality on or before July 1, 2022 may elect to comply with the current Freshwater Wetlands Rules, provided that a complete application for the project is submitted to the Department or CRMC on or within sixty (60) days from the effective date of the new Rules, that is, it is submitted no later than on August 30, 2022.
- Question: **If I have a local building permit issued before July 1, 2022 for a project that did not require DEM review under the current Rules, do I have to comply with the new Rules if I submit it to DEM after July 1, 2022?**
- Answer: No. A project within a jurisdictional area for which a valid building permit has been issued prior to July 1, 2022 and that was not required to obtain a DEM Wetlands permit under the current Rules, may be constructed in accordance with the building permit without a requirement to obtain a freshwater wetlands permit.
- Question: **Permit holders seeking Permit Renewals for permits expiring after July 1, 2022 must be certain to submit their renewal request prior to their 60-day permit renewal deadline to remain valid under the current Rules. If I miss the 60-day permit renewal window after July 1, 2022, should I assume I would need to submit a new application for a new permit under the new Rules?**
- Answer: Actually, no, we have been more flexible in that regard and do not plan to change our practice. The operative phrase in Rule 3.14.2 is, "Any Application for Renewal should be submitted no later than sixty (60) days before the permit or renewal permit expiration date." This is basically there to allow DEM time to sufficiently review the application prior to the expiration date of the permit, so that there is less risk of a permit expiring during ongoing construction, which would interrupt construction until a permit is renewed.

Question: **If a permit is issued under the current Rules, will any potential permit modification after the new Rules take effect be subject to the Rules in effect at the time of the issued permit?**

Answer: The requirements in Rule 3.14.3, Application for Permit Modification in the new Rules, remains consistent with the current Rule for Application for Permit Modification. If the permit is still valid and has not expired, the owner can submit an Application for a Modification as long as these modifications are determined to be minor modifications to the originally permitted project. Such modifications in all cases may not increase the limits of disturbance of freshwater wetlands, buffers, floodplains, areas subject to flooding or areas subject to storm flowage previously permitted unless such increases occur in existing pavement, lawn, or otherwise developed areas, or increase the anticipated impacts from those previously permitted by the Department. Any modifications must be minor in nature in relation to the originally permitted project. If the permit is expired or the modifications are not minor in nature, the owner would have to submit a new application and comply with the Rules effective at that time.

Question: **If a project obtains Zoning Approval by July 1, 2022, is there any grace period before having to comply with the new Freshwater Wetlands Rules if we cannot submit for the DEM wetlands permit prior to July 1st?**

Answer: Rule 3.19(A) states that in cases where Master Plan Approval is not required, a project within a jurisdictional area for which a valid building permit has been issued prior to July 1, 2022 and that was not required to obtain a DEM permit under the old Rules, may be constructed in accordance with the building permit without a requirement to obtain a freshwater wetlands permit for the subject project. If the project would have required a permit under the current Rules, the new Rules would apply to it even if a Building permit is issued by July 1, 2022.

Question: **For a development project that does not need Master Plan Approval from a municipality to proceed, would a Development Plan Review Approval from the municipality meet the requirements of Section 3.19(A)(3) (Superseded Rules)?**

Answer: No, that accommodation would only be available for projects needing, and obtaining, Master Plan Approval.

Question: **Do current local wetland regulations remain in effect until the new DEM and CRMC Freshwater Wetlands Rules become effective July 1, 2022?**

Answer: Yes. Pursuant to state law, municipalities retain the authority to administer and apply local requirements for buffers or setbacks related to freshwater wetlands and septic systems until the new state Freshwater Wetlands Rules take full effect on July 1, 2022. After that date, local governments would no longer be authorized to apply those specific local requirements to new applications. Decisions on how to address local requirements for applications that were filed with DEM before July 1, 2022 and are under local review, but for which a local decision is still pending as of July 1, 2022, would be made by the municipality.

Question: **Please provide direction on the process of municipal coordination with respect to existing wetlands permits under the current Rules, e.g., if a permit was issued prior to July 1, 2022, then the municipal jurisdiction for approval also still applies. Also, CRMC and DEM processes are different. DEM will issue a permit prior to Town approval, and CRMC requires Town approval prior to Assent application. Please comment if any changes are expected with these processes.**

Answer: Regarding the reference to current permits, DEM and CRMC Freshwater Wetlands permits issued before July 1, 2022 will not be affected by the new Rules. The Agencies would expect the approved site plans and associated limits of disturbance would be adhered to as approved in the permit regardless of the change that may occur with municipal ordinances. Once state regulations take effect 7/1/2022, pursuant to state law, communities that have existing local ordinances with requirements for freshwater wetlands buffers and setbacks will no longer be authorized to apply those requirements to new applications. With respect to coordination with municipal processes, existing practices at DEM and CRMC are expected to remain largely the same. One exception will be the requirement for applicants to provide Master Plan Approval or related local documentation as specified in DEM Rule 3.12.2 and CRMC Rule 9.12.2 in order to submit a complete application to the state agencies.