



Rhode Island Department of Environmental Management

Office of Water Resources – Groundwater and Freshwater Wetlands Protection

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Questions and Answers

Training Workshop January 26, 2022

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

Session 1. Questions on Terminology

Question Is the jurisdictional area measured from the top of bank?

Answer The measurement of the jurisdictional area is dependent upon the resource type. For a *drinking water supply reservoir* the contiguous jurisdictional area is measured from the edge of the water line or from the mean high water if the water level is variable. For a *freshwater wetland* it is measured from the wetland edge, and for a *river or stream* the contiguous jurisdictional area is measured from their scoured edges. (They are measured the same way the perimeter wetlands and riverbank wetlands are measured now.) See the Rule section 3.21 for more information about identifying resource edges.

Question Would/could a buffer extend across a road?

Answer Yes, let's use an example of where a river runs alongside a road and the river is designated a 150-foot buffer zone on each side. In this example, assume 50 feet of the buffer zone is not buffer because it is paved roadway. Immediately on the other side of the roadway is a forested area that is still within the 150-foot river buffer zone. The forested area is undeveloped vegetated land, i.e., buffer, and it is considered "adjacent" buffer because it is within the designated buffer zone. Therefore, the forested area across the road is "buffer."

Question: What is "adjacent" versus "contiguous"?

Answer: Adjacent refers to any undeveloped vegetated land located within a designated buffer zone. Such adjacent land within a buffer zone is considered buffer. Contiguous jurisdictional areas touch a wetland edge or bank. They are measured outward 100 feet or 200 feet from a freshwater wetland edge, depending upon the wetland type.

Question: Does the 100-foot jurisdictional area apply to areas subject to storm flowage?

Answer: No, the 100-foot jurisdictional area does not apply to areas subject to storm flowage. The 100-foot contiguous jurisdictional area applies to freshwater wetlands, including ponds and vernal pools. The 200-foot contiguous jurisdictional area applies to rivers, streams, and public drinking water supply reservoirs. Areas subject to storm flowage, areas subject to flooding, and floodplain are jurisdictional area themselves; however, they do not have

a 100-foot contiguous jurisdictional area.

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 in as long as it is not an unauthorized project or activity and therefore a violation.

Question: Does any project within a jurisdictional area need a permit, even if it is not within the buffer or buffer zone?

Answer: Yes, unless it is an “exempt activity” specified within the rules, any proposed project or activity within the jurisdictional area needs a permit.

Session 2: Questions on Determining Buffer Zone

Question: What will be the standard method to determine if a swamp is deciduous or evergreen for designating the buffer zone?

Answer: That will be fairly easy to determine. An evergreen swamp is one dominated by (more than 50% cover) of Atlantic white cedar or Eastern hemlock trees. This can be reviewed on aerial photographs, and the decisions will be made on-site. Wetland consultants should make the decision on site. The program will provide guidance on this.

Question: Can you comment on intermittent streams relative to the stream discussion and buffer criteria?

Answer: We do not differentiate between streams and intermittent streams now and will not in the new 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 Rule sections 3.23(H) and 3.23(I).

Question: What resources will DEM use to define a rare plant or animal?

Answer: DEM is discussing this now. The Rhode Island lists of rare plants and rare animals are referenced in the rules as “Incorporated materials.” We will rely on onsite information, i.e., finding it in the field. We will also rely on the RI Natural History database of known occurrences. The rare wetland types are listed in the rule definition of “rare.” There are references that describe them, and DEM will provide guidance about this.

Question: For wetland complexes, what if an interior pond is within 50 feet of the edge of a forested swamp only for a short distance?

Answer: The extra 25-feet is applied to the swamp buffer zone only where the pond is within 50 feet of the swamp edge. Where the pond is greater than 50 feet away, the extra buffer zone is not applied. The swamp buffer zone plus the extra 25-foot buffer zone should be radiused in, rather than squared off.

Question: What are the official lists of rare plants and rare animals that will be used?
Answer: The lists, named in the Rule section 3.3, are Native Animals Of Rhode Island 2006 and the Rhode Island Rare Plants 2016. These lists are available via the RI Natural History Survey web page and will be made available via the DEM new wetlands rules page.

Question: Are buffers applied to ephemeral streams?
Answer: No, ephemeral streams are considered “areas subject to storm flowage” in Rhode Island, and they do not have an associated buffer zone or buffer. Buffer zones and buffers are applicable to intermittent streams.

Session 3. Questions on the Buffer Standard

Question: With a residential infill lot, after a new project is permitted and constructed, is there a permanent protection or restriction in place for future projects within the remaining buffer?
Answer: Yes. After a new project is permitted and constructed on an infill lot it becomes “existing” as defined in the rules. If a new project or activity is proposed that is not an exempt activity, it will have to meet the new buffer standard.

Question: Could the creation of buffer be a loophole to get out of violations and to develop a cleared, disturbed lot without a permit?
Answer: We can assess when the lot was cleared and whether there was a permit. If we were to find there is not undeveloped vegetated land present where there should be, we can take enforcement action. DEM will be obtaining updated aerial photographs.

Question: Regarding the diagram, the paved areas were buffer zone, but not buffer, per the definition. Are there cases where this paved area could be required to become buffer?
Answer: Yes. Under Rule section 3.7.1(B), the “Freshwater Wetlands Buffer Standard,” Rule section 3.7.1(B)(4) sets forth the requirements for “Creation of New Buffer on Existing Developed Property.” This section also sets target buffer widths based on what region qualifying projects are located in.

Question: If a wetlands permit was approved under the old rules (the current Part 1), but construction was delayed, will the work be required to be in compliance with the new wetlands rules (Part 3)?
Answer: Any project that was permitted under the 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. There are limited

circumstances, outlined in Rule sections 3.19(A)(3) and (4) where a proposed project may still fall under the Part 1 Rules.

Question: if a project is designed to be outside the jurisdictional area, but the stormwater management areas discharge toward a wetland or stream, is a wetlands permit still required?

Answer: Yes, if stormwater discharges to a wetland or stream jurisdictional area, a permit is required. See Rule section 3.5.6. A major change to the rules is that, if a proposed project outside the jurisdictional area is to disturb greater than or equal to one acre, an applicant can seek a RIPDES permit rather than a DEM freshwater wetlands permit. The DEM will be developing guidance for projects outside jurisdictional areas.

Question: Can DEM presume a vernal pool to exist in the summer when it's dry, or does a study need to be done? Who will do such a study?

Answer: Even in the dry there are certain characteristics to identify the likely presence of a vernal pool, such as water marks on trees and water-stained leaves. A review of aerial photographs over multiple years may help to define a pool's hydrology. It behooves applicants to know their wetlands hydrology prior to preparing an application. The agencies will be providing guidance on vernal pools.

Question: To whom can a citizen go to report possible wetlands violations?

Answer: DEM's [Office of Compliance and Inspection](#) (OCI) investigates complaints and suspected violations of environmental laws and regulations relating to freshwater wetlands. Compliance with environmental laws, rules, regulations, permits, and licenses is enforced through both informal and formal enforcement. A citizen can report possible wetland violations to the DEM Office of Compliance @ 401-222-1360 or via email DEM.Compliance2@dem.ri.gov . If it is an emergency and after normal business hours, call 401-222-3070. If reporting complaints about a permitted project, a citizen should call the DEM wetlands permitting program @ (401) 222-6820 or via email at DEM.WaterResources@dem.ri.gov and provide the freshwater wetlands application number. Possible violations at coastal waters or freshwater wetlands in the vicinity of the coast can be reported to CRMC @ 401-783-3370 or via email @ cstaff1@crmc.ri.gov.

Question: Regarding floodplain, does this mean additions to existing structures along the coast not near water resources need a permit?

Answer: Changes to existing structures along the coast would need a permit from CRMC if they are within its regulatory jurisdiction, generally on the coastal feature or within the 200-foot contiguous area. In general, under the Freshwater Wetlands Rules, an area needs to be flooded by an adjacent river or stream to meet the definition of "floodplain," which would not include FEMA-designated floodplain along the coast that is not otherwise associated with a river or stream.