

Rhode Island Department of Environmental Management

Office of Administrative Adjudication

2 YEAR

FY 2002 - 2003 Workplan

July, 2001



Rhode Island Department of Environmental Management

**Office of Administrative Adjudication
2002 - 2003 Work Plan**

I. Program Description:

The Administrative Adjudication Division for Environmental Matters (AAD) was created by statute during the 1989 session of the General Assembly and is codified in Chapter 17.7 of Title 42 of the General Laws of Rhode Island. AAD is the administrative court for all environmental matters originating from DEM.

Permit and License Appeals

AAD conducts hearings on all appeals filed from the denial of applications for permits or licenses issued by the various divisions within the Department, including, but not limited to, wetlands permits, individual sewage disposal permits, resource recovery facility permits and solid waste licenses. AAD has worked successfully to streamline the license/permit hearing process since its inception in 1990. AAD successfully reduced the backlog and delays associated with permit and licensing appeals. In so doing, AAD established timelines for preliminary conferences, which have successfully resulted in resolution of permitting matters without the need for an adjudicatory hearing. When necessary, a prompt administrative hearing is provided. AAD plans to implement initiatives outlined below to further streamline the hearing process for permit appeals.

Absent a request by the appealing party for more time, permit appeals are currently heard within ninety (90) days of the filing of the hearing request. AAD intends to make the decision-making process more efficient and to further streamline the hearing process for permit appeals by establishing internal guidelines for the completion of recommended decisions on a more expedited basis. This initiative will reduce, by several weeks in some cases, the time required for issuance of a Recommended Decision by the hearing officer.

Enforcement Appeals

AAD plays an integral role in environmental protection and restoration by providing impartial and timely adjudication of administrative enforcement actions initiated by the Department. Efficient and uniform hearings and timely final administrative action contribute substantially to the Department's overall goal of fair and effective enforcement of environmental laws and regulations. Uniform rules of practice and procedure and even-handed adjudications serve to enhance

State of Rhode Island Department of Environmental Management
Administrative Adjudication Division 2002 - 2003 Workplan

environmental equity and provide a strong deterrent to potential violators. AAD has maintained internal targets for more expedited completion of recommended decisions in enforcement cases to reduce the overall time required from time of filing of an appeal to the time of final agency action.

II. Office Mission Statement:

To ensure that the regulated community may promptly contest actions taken by a division of the Department of Environmental Management and to have such actions reviewed and resolved at the agency level in a fair, impartial and timely manner in compliance with law and applicable environmental regulations; to provide a forum for non-adversarial resolution of violations and permit denials.

III. Office Highlights:

The following are major highlights and initiatives being implemented by the Administrative Adjudication Division in support of the Department's goals:

- **Investigation and Development of AAD Database and Consideration of E-Access for All AAD Casefiles:** In this Workplan, AAD will work with MIS staff to explore expansion of AAD's portion of the DEM website to include web access to all AAD docket sheets and case filings. Posting of this information on the website serves several of the Department's overall goals. Posting of docket sheets and case files provides efficient and convenient access to public actions taken by the Department and AAD concerning enforcement and permitting responsibilities under the jurisdiction of the Department; it makes the adjudicatory process more accessible and understandable to interested parties and saves time and resources for the Department, the regulated community and other interested persons.
- **Development of Public Education Materials:** AAD will undertake publication of outreach materials in English and other languages to educate and guide citizens concerning the adjudicatory process and opportunities for public participation in permit and enforcement hearings. AAD will expand its segment of the DEM website to include similar guidance on-line.
- **Continue and Expand Mediation of Non-Compliant Enforcement Cases:** AAD intends to continue and expand a voluntary mediation program which the Department resumed last year for freshwater wetland and ISDS enforcement cases awaiting enforcement action in Superior Court. The mediation program assists in resolving pending non-AAD enforcement matters. During FY 2001, AAD in collaboration with the Office of Compliance and Inspection and the Office of Legal Services, will expand the mediation program to include solid waste and underground storage tank enforcement cases. These are cases awaiting enforcement in Superior Court for non-compliance with existing consent agreements or compliance orders. Activities will include coordinating with the Office of Legal Services and Office of Compliance and Inspection to identify appropriate cases for mediation, assigning an AAD hearing officer trained in mediation to serve as mediator and conduct the mediation sessions and providing overall administration of the mediation program. Resolution of these cases through mediation will enhance restoration of altered wetlands and improve voluntary compliance with Department regulations.
- **Mediation of ISDS and Freshwater Wetlands Violations:** AAD will continue voluntary mediation of ISDS and Freshwater Wetland cases pending at AAD. Mediation will be conducted by AAD hearing officers trained in mediation techniques and will provide a non-adversarial means of resolving disputed enforcement cases in a manner that is more expeditious and less resource intensive for private parties and the Department.

IV. Key Objectives and Strategies:

To meet AAD's mission and concurrently contribute to the Department's goals and strategic plan, seven key objectives are identified below. These key objectives drive AAD's activities, priorities and initiatives.

- To ensure fair and effective environmental regulation and enforcement through impartial adjudication of contested agency actions,
- To adjudicate appeals in a timely fashion by maintaining reasonable guidelines for the timely processing of contested agency actions including reasonable timeframes for Recommended Decisions,
- To channel resources into creating optimal environmental outcomes by focusing on achieving solutions that assure compliance with existing regulations and include voluntary measures in excess of current environmental mandates,
- To speed the restoration and remediation of air, land and water by minimizing the expenditure of resources on procedural aspects of the appeal process and instead facilitating consensual resolutions through a voluntary alternate dispute resolution process.
- To provide the public with on-line access to final agency decisions applying and interpreting statutes and regulations under the jurisdiction of the Department.
- To provide on-line access to AAD Docket Sheets and Case Filings (2003), and
- To develop outreach materials as guidance for public participation in the AAD process. Printed materials will include Guides to Permitting and Enforcement initially in English and subsequently in non-English formats. AAD's portion of the DEM website will be expanded to include guidance to participation in the adjudicatory process in English and non-English languages.

State of Rhode Island Department of Environmental Management
 Administrative Adjudication Division 2002 - 2003 Workplan

<p>OBJECTIVE 1: Provide an efficient, timely and fair agency appeal process for appeals of agency license, permit and enforcement actions.</p>	<p>Environmental Indicators: Improvement in the quality of air, land and water.</p>	
<p>STRATEGIES</p>	<p>ACTIVITIES</p>	<p>PERFORMANCE MEASURES*</p>
<p>Handle permit/license appeals in an expeditious fashion</p>	<p>Schedule hearings within ninety (90) days of a request for hearing</p>	<p>100% of permit/license matters assigned hearing dates within ninety (90) days of receipt of the request.</p>
<p>Foster an agreed upon, and environmentally sound resolution of permit/license and enforcement matters at preliminary stages of the administrative process and to eliminate unnecessary proceedings where appropriate.</p>	<p>Weekly review of dockets</p> <p>Establish a control date—an agreed date before which AAD will stay further proceedings—in order to allow the parties to pursue settlement of the appeal before further expense of time and resources</p>	<ul style="list-style-type: none"> • 100% of permit/license appeals are scheduled for a status conference to be held no later than two weeks from receipt of the hearing request to bring opposing sides together to explore settlement. <p>100% of enforcement cases are scheduled for a status conference to be held no later than six weeks from receipt of the hearing request to bring opposing sides together to explore settlement.</p>
<p>Prompt assignment of tentative hearing dates and preliminary conferences on all permit/license matters to provide the parties with definitive timeframes and promote settlement.</p>	<p>Expedited scheduling of Permit/License appeals</p>	<p>Preliminary conference and hearing dates are established and mailed to the parties within 3-4 business days of receipt of the request for hearing in 100% of cases.</p>
<p>Establish reasonable amount of time between close of administrative hearing and issuance of Recommended Decision of hearing officer. (Anticipated cut of 1/3 hearing officer mandates this increase in timeframes)</p> <p>Coordinate and cooperate with Office of Compliance and Inspection and Office of Legal Services to ascertain and document improvement to air, land and water as a result of administrative orders.</p>	<ul style="list-style-type: none"> • For Permit/License appeals: Recommended Decision of hearing officer forwarded to the Director within (6) to (8) weeks of the receipt of briefs /transcript unless a shorter period is provided for by law. (actual timeframes will vary depending on caseload fluctuation and complexity of the matter) • For Enforcement appeals: Recommended Decision of hearing officer forwarded to the Director within (8) to (12) weeks of receipt of briefs/ transcript unless a shorter period is provided for by law. (actual timeframes will vary depending on caseload fluctuation and complexity of the matter) <p>Quarterly review with Office of Legal Services and Office of Compliance and Inspection for compliance with final administrative orders and to quantify the environmental results achieved.</p>	<p>100% of Decisions issued in timeframe</p> <p>100% of Decisions issued in timeframe</p>

State of Rhode Island Department of Environmental Management
 Administrative Adjudication Division 2002 - 2003 Workplan

OBJECTIVE 2: Expand existing mediation program within the department for non-adversarial resolution of contested agency actions to include additional media.	Environmental Indicators: Acceleration of restoration of altered wetlands and cleanups of solid waste and decrease of discharges of septic waste and overall improved compliance.	
STRATEGIES*	ACTIVITIES	Performance Measures*
Continue the mediation program to provide a less costly and less adversarial method by which freshwater wetland and ISDS enforcement appeals can be resolved.	Offer voluntary mediation on all ISDS and freshwater wetland administrative enforcement appeals prior to scheduling of a prehearing conference	% of voluntary mediation offered in ISDS and Freshwater wetland cases
Expand the existing mediation program to add non-AAD solid waste and UST enforcement matters awaiting Superior Court enforcement of consent agreements/compliance orders to more expeditiously resolve outstanding enforcement cases. Self-evaluate the mediation program in coordination with Office of Legal Services and Office of Compliance and Inspection to assess its effectiveness and cost/resource savings to both the department and the regulated community.	Upon referral from Legal Services, conduct mediation sessions for fifteen (15) non-AAD enforcement matters including freshwater wetlands, ISDS, solid waste and underground storage tanks. Meet quarterly with the Office of Legal Services and Office of Compliance and Inspection to evaluate/measure success of mediation program through review of case dispositions, staff time allocated/saved, and environmental results achieved through mediation.	# of non AAD enforcement matters included in mediation process. By 12/01 program expanded to include solid waste and UST cases. Review meetings to be held 10/01, 1/02, 4/02, 7/02, 10/02, 1/03, 4/03 and 7/03. Written summary prepared by AAD after each meeting.

OBJECTIVE 3: To develop a database program in conjunction with MIS staff to better manage and track AAD cases and to provide more prompt and detailed public access to AAD case information. The system will be compatible with Permit Streamlining Program.	Environmental Indicators	
STRATEGIES*	ACTIVITIES	Performance Measures*
To key all AAD case information into a database to electronically track case filings, aging and other pertinent information.	Meet with MIS staff to discuss design of database and exchange information.	1 st Meeting by 9/30/01 2 nd Meeting by 11/30/01
	Investigate Databases/Programs used by other N.E. States to track environmental cases.	Meet with N.E. Chief Environmental Hearing Officers to get information on their programs -Meet by 10/30/01.
	By April 30, 2002, in coordination with MIS have draft database ready to implement	100% of new cases filed after May 1, 2002 added to database.

State of Rhode Island Department of Environmental Management
 Administrative Adjudication Division 2002 - 2003 Workplan

OBJECTIVE 4: To implement internet and intranet access to AAD Docket Sheets and all case filings.	Environmental Indicators Greater public accessibility and understanding of the administrative process from beginning to end; opens the administrative process and public case files for easy review by public.	
STRATEGIES*	ACTIVITIES	Performance Measures*
To provide prompt electronic access to AAD Case Docket Sheets and all case filings for permitting and enforcement cases.	Meet with representatives of MIS & OTCA to investigate and develop a means to capture information on docket sheets and in case files and to scan documents into the system for access on the web.	1 st Meeting held by 9/30/02 2 nd Meeting held by 11/30/02
	Develop written proposal for MIS Grant or White Paper (if needed).	Proposal drafted and submitted to Assoc. Dir. By 1/15/03 (if needed)
	Purchase scanner and other necessary equipment to begin transitioning files for Web access.	Case files opened after 5/1/03 scanned for web access.

OBJECTIVE 5: To develop outreach materials as guidance for public participation in the AAD permit and enforcement process.	Environmental Indicators: This objective will heighten public awareness and understanding of the AAD process as it relates to permitting and enforcement. Increased opportunities for participation by all citizen groups in the process and assistance in empowering minority citizen groups to become active in the process.	
STRATEGIES*	ACTIVITIES	Performance Measures*
Publication of a “Guide to Permit Hearings” in English and non-English languages.	<ul style="list-style-type: none"> • Meet with SP&P staff to discuss general outline of “Guide to Permit Hearings” and involvement of other DEM offices in drafting the Guide • Coordinate with DEM offices including OTCA and SP&P f to develop first draft of English Guide • Final copy • Translate English copy to Spanish 	<ul style="list-style-type: none"> • Meeting held by 7/30/01 • First draft of Guide by 9/30/01 • Final copy by 3/1/02 • Non English copies by 9/30/02
Publication of a “Guide to Enforcement Hearings” in English and non-English languages.	<ul style="list-style-type: none"> • Meet with SP&P staff to discuss general outline of “Guide to Enforcement Hearings” and involvement of other DEM offices in drafting the Guide • Coordinate with DEM offices including OTCA and SP&P staff to develop first draft of English Guide • Final copy • Translate English copy to Spanish 	<ul style="list-style-type: none"> • Meeting held by 7/30/01 • First draft of Guide by 11/30/01 • Final copy by 5/1/02 • Non English copies by 11/30/02
STRATEGIES*	ACTIVITIES	Performance Measures*

State of Rhode Island Department of Environmental Management
 Administrative Adjudication Division 2002 - 2003 Workplan

<p>Expansion of DEM website (AAD's section) to include guidance to public concerning permit and licensing hearings before AAD, the adjudication process generally and answers to frequently asked questions.</p>	<ul style="list-style-type: none"> • Review/compare websites of comparable environmental adjudication tribunals in other states to assemble examples + ideas for discussion • Meet with SP&P staff to discuss/decide general outline of information to be posted on website in English and non-English languages. • Coordinate with DEM offices, SP&P staff to develop first draft of website information • Final draft of information in English ready for posting • Coordinate with OTCA for posting information • Translate English copy for non-English and post 	<ul style="list-style-type: none"> • Assemble information by 7/15/01 • Meeting held by 7/30/01 • First draft by 9/30/01 • Final draft by 4/1/02 • Posting on Website by 6/30/02 • Translated postings by 9/30/02
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