

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

FY 2004 - 2005 WORK PLAN - OFFICE OF LEGAL SERVICES

- I. Program Name and Description:** The Office of Legal Services, through nine attorneys and two support staff, provides a wide range of legal services to the Department. The Office provides general legal advice both to the Director and to all offices within the Department in a variety of areas including administrative law, statutory construction, and interpretation, scope of administrative and statutory authority and responsibilities, specific departmental program development and procedures, scope of legal duties, liability, and application of all laws to the work of the staff of the department in regulatory, natural resource, human resource, land acquisition, property management, environmental equity, and other legal issues, relating to various factual situations arising from agency actions. The Office prepares and assists the divisions in promulgating rules, regulations, policies, and guidance documents. The Office reviews and assists in the preparation of necessary legal materials for all formal enforcement actions, and permit review procedures. The Office provides advice to departmental staff on compliance with the state public records law, the open meetings law, and the ethics laws as applied to state employees. The Office provides legal advice and commentary on pending and proposed legislation, and assists in the development and drafting of Department sponsored legislative proposals.
- The Office provides legal representation at all hearings held at the Department's Administrative Adjudication Division for permitting, licensing and enforcement matters relating to the agency's enforcement of environmental statutes through strategies of negotiation, mediation and litigation. The Office provides legal representation to enforce and defend environmental laws and decisions of the agency, including both appearances in Federal and State courts on behalf of the Department, in coordination with other agencies such as the Department of Attorney General, as well as federal counterparts.
- The overall objective is to continue to provide legal services and representation to further the mission of the Department and its bureaus and divisions. The Office will continue to work diligently to promote effective and timely administrative enforcement, and to assist in resolving enforcement and permitting backlogs, in conjunction with "permit streamlining" and to use other alternative resolution procedures, if available, to reduce and conserve litigation costs and resources of the Department and the public, to achieve compliance with environmental laws and regulations. The office will continue to explore ways to improve internal operations, to streamline procedures, to improve the quality of its legal services to the various bureaus and divisions, within the Department as a whole.
- II. Mission of Program, Office and Division:** As the attorneys and staff advocating on behalf of the Department, our mission is to assist in the departmental mission of preserving, protecting, and restoring the environment. We do this in our daily advocacy in all the matters where we represent our constituent clients within the Department. This advocacy takes many forms. In the context of environmental enforcement actions, through our joint efforts with staff, we advocate for early and effective resolution of cases to secure environmental benefits and compliance with environmental laws and regulations. Many of these matters are resolved through negotiation, including cases that provide other environmentally beneficial "supplemental projects" beyond the traditional penalties assessed. We also play a key role in the restoration of the urban environment as attorneys advising and helping with the negotiating the terms of brownsfields agreements, and assisting in the drafting and implementation of environmental equity guidelines for stakeholder participation. As an integral part of the environmental equity team, we anticipate crafting programs that reach identifiable stakeholder groups for training and orientation in environmental rights, regulations, access, and permitting. We play a key role in obtaining greater outdoor recreational and commercial resources for all Rhode Islanders by representing the Department in negotiations over the terms of leases and agreements governing the use of these recreational and commercial facilities. We act as attorneys and advocates promoting sustainable use of resources as the attorneys for the Department's natural resource, marine, and

freshwater fisheries programs. We actively promote the preservation of important natural resource habitat, and the protection of valuable watersheds when we act as legal counsel for the Department in all its various land acquisition programs, from document preparation through closings. In these land acquisition and conservation efforts we partner with key stakeholder groups devoted to the protection and perpetual preservation of valuable and environmentally important properties. We also provide legal advice and representation to guide the Department’s administration, business affairs, environmental equity, and human resource efforts that provide the background of support to many of the Department’s programs and operations. In short, in all these activities, we speak and advocate for the Department of Environmental Management as agency counsel, and will continue to do so to the best of our abilities in carrying out the shared responsibility of the current work-plan.

III. Program highlights: Some of the highlights and initiatives being implemented by the Office of Legal Services include the following:

A. Recognizing and Responding to High Priority Environmental Risk and Improving Communication: During the course of the next two years, the Office intends to continue the regular coordination meetings with key managers from the Office of Compliance and Inspection to jointly identify and prioritize actions that require formal enforcement of laws and regulations, and to work closely with staff in OC & I, and other media specific program offices, to ensure that timely and appropriate actions are taken when and where necessary. The Office will also solicit feedback on the quality of legal services provided, on a semi-annual basis from the Chief and enforcement personnel of that Office, with the goal of both streamlining the delivery of services, and strengthening the existing avenues of communication.

B. Ensuring Fair and Effective Environmental Regulation and Enforcement: The Office will continue to devote staff time and resources to the Bureau of Environmental Protection and the Office of Compliance and Inspection, in the carrying out of the newly developed regulations for inspection based upon the Administrative Warrant authority enacted in 2002, enforcement response policies, and revised administrative penalty regulations ensuring assessment of appropriate, fair, and effective penalties in all cases.

C. Investing in Our People and Streamlining: The Office will continue to help staff respond to questions from the public on accessing public records from the Department in a timely manner. The Office will continue to streamline and improve turn-around times for requests for legal opinions, research, the review of proposed enforcement actions, proposed consent agreements, and proposed rules and regulations, in responding to needs of the Department’s management and administration. The Office will continue to maximize the use of computerized legal research services, and upgrade skills in the use of the case management system, and alternate on-line research tools. The Office will also work towards better and more effective integration and coordination of legal services with various program staff through the regular and semi-annual feedback from the key personnel in the bureaus, offices and divisions of the Department. Major initiatives include continued team-shared responsibility among attorneys to increase depth of expertise, and providing appropriate training of Department staff in commonly faced legal issues and problems.

D. Working with Partnerships: The Office will continue working with the various committees of state agencies and professional associations to facilitate training on environmental issues. The Office will also reach out to the appropriate committees to garner input on legislative proposals and solicit commentary. The Office will also continue to work with other state agencies such as the Department of The Attorney General, in training of Department inspectors and enforcement personnel on the “trriage” of cases, in coordination with the Environmental Advocate on joint civil litigation and criminal prosecution, with municipalities, local land trusts, and conservation organizations such as The Nature Conservancy to leverage resources towards greater recreational, open space and other forms of valuable resource and land protection.

During the second year of the Work Plan, the Office will provide direct staff assistance to the Rhode Island Water Resources Board, in that body's regulatory efforts in drinking water supply management and allocation.

E. Continuing Creative Use of Laws and Procedures to Obtain and Enhance Environmental Benefits: Together with the Office of Administrative Adjudication and the Office of Compliance and Inspection, the Office will continue to target specific pending enforcement cases in the court system for mediation, through an alternative dispute resolution process (ADR). Together with the Office of Compliance and Inspection and other offices, the Office will continue to employ the so-called Supplemental Environmental Projects (SEP), where appropriate, and available for inclusion as part of settlement of pending environmental enforcement cases to complement the traditional monetary and restoration penalties assessed in such matters.

F. Staff Training and Outreach: Together with the Department's designated Training and Development Committee, and the Department of the Attorney General, the Office will continue to produce attorney assisted training programs, and sessions such as the current "Administrative Warrants" presentation, "Access to Public Records" workshop, and other topical and informative seminars. Projected during the period covered by this Work Plan are the continuing A.G. triage of cases for investigative personnel, direct and cross examination of Department witnesses, environmental prosecution for attorneys, environmental crimes, a training session on the organization and operation of the EPA, a Super fund seminar, natural resource damage assessment, and basic administrative law and procedure as practiced before our own AAD.

IV. KEY OBJECTIVES AND STRATEGIES

<p>OBJECTIVE 1: Improve the quality of legal services to the department.</p>	<p>Environmental Indicators: Improved quality of legal services leading to greater internal efficiencies and resolution of matters</p>	
<p>STRATEGIES</p>	<p>ACTIVITIES</p>	<p>Performance Measures</p>
<p>Continue and maintain structured strategy meetings between attorneys and staff to discuss issues of priority and to work towards common departmental goals.</p>	<p>Formal bi-monthly and monthly meetings with OC & I managers to discuss and coordinate cases of priority. Informal media specific conferences between assigned attorneys and program counterparts on enforcement issues.</p>	<p>Greatest threats to environment and public health receive priority action and critical cases are brought forward for administrative or adjudicative resolution</p>
<p>Continuation of response to public records requests, enforcement response procedures, utilizing administrative warrants for inspection and search, coordinating joint enforcement efforts between DEM and the Attorney General’s office; continued use of uniform consent agreements; fully implementing revised administrative penalty regulations</p>	<p>Work with staff to assist in the continued refinement and use of the documents prepared for the strategic purposes, including the maintenance of a witness register, CV bank, and other strategic program specific pleadings.</p>	<p>Contiue to implement and improve enforcement and litigation documents, developed earlier in conjunction with OC&I</p>
<p>Maximize use of case tracking and reporting software to effectively manage regulatory and enforcement cases within the Office, including the prioritizing of cases and referral of matters to the State collection contractor after final agency action and resolution of environmental issues. Add cases to developed data fields for priority scheduling according to environmental harm.</p>	<p>Track cases through the legal process to focus and prioritize actions to address environmental threats, and collection of outstanding penalties. Put cases into software developed spread sheet of data fields for comprehensive and strategic management</p>	<p>Continued use and implementation of Time Matters program selected for case tracking and management with continuous entry of new assigned cases into the system, along with tracking of prioritized cases for agency resolution.</p>
<p>Protection of fisheries resource as an important, sustainable environmental and economic natural resource.</p>	<p>Continued review and participation in regional fisheries litigation that impacts RI. Continued participation in the restructured Rhode Island commercial fisheries license process. Advise and counsel the Rhode Island Marine Fisheries Council, in support capacity.</p>	<p>Review of litigation in all fisheries and related resource areas. Continued consultation on case screening w/AG, and Environmental Advocate’s office. Attend meetings and render legal advice as necessary</p>

Continue links with partners in NEEP, NAAG, EPA, and local Agencies, including representative legal groups to conduct training on environmental issues for DEM personnel and interested non-government parties.	Assist as requested in R. I. Bar, university, DOA, A. G., or other State sponsored training sessions.	AG continue Case triage for OC&I Personnel. Update sessions on Superfund, Prosecuting Environmental crimes, interrogation, etc.
Continue Work with Watershed Groups to address legal issues necessary to implement goals established (such as flexible zoning and planned growth issues)	Respond as requested to coordinate on notice and standing issues regarding watershed groups.	Legal issues of watershed goals And watershed development addressed on an ongoing basis

Partners: Rhode Island Bar Association, The Department of Attorney General, The Federal Government and Agencies such as the Environmental Protection Agency, the U.S. Dept. of Fish and Wildlife, the U.S. Department of Interior, the U.S. Dept. of Commerce, the U.S. Attorneys Office, the U.S. Justice Department, other State boards, and commissions such as the Department of Health, the Coastal Resources Council, the Water Resources Board, and local municipal government.

<p>OBJECTIVE 2: Apply creative methods (such as ADR) to obtain compliance with environmental laws and regulations to successfully resolve disputes earlier than through traditional legal forums.</p>	<p>Environmental Indicators: Environmental protection achieved earlier than through traditional legal means</p>	
STRATEGIES	Performance Measures*	
Continue utilizing ADR services, such as mediation on appropriate controversies to settle, resolve matters more quickly. Continue work and coordinate these issues with Administrative Adjudication Hearing Officers.	Continue to expand selection of appropriate cases for resolution within targeted media specific areas, while coordinating with the media having the highest backlog in the administrative process.	Continue cases in the mediation process in ISDS and Wetlands Programs .Expand the case type . To include other media specific matters. Use the developed criteria for selecting appropriate mediation cases.
Review Legal Issues for in-the-field cease and desist orders for lead paint and other toxic threats – work with OC & I to implement if legal issues addressed.	Continue to address threats caused by lead paint and other toxics	Continue issues and document development for use by OC & I
Survey pending Superior Court cases for possible inclusion in Court sponsored mediation program in coordination with OC & I. Prioritize cases for resolution in conjunction with OC&I	Obtain environmental protection/restoration earlier than through traditional litigation. Process cases for collection and/or final disposition in Superior Court	Continue review on a quarterly basis of files in Superior Court for annual mediation calendar, and Court annexed arbitration program. Prioritize cases for Superior Court Action in conjunction with OC&I

In conjunction with other Bureaus, Offices such as Compliance and Inspection create a bank of worthy supplemental environmental projects for possible inclusion in settlements of enforcement cases.	Select projects for inclusion, and develop a model for SEPs	Continued assessment of projects for inclusion in bank to be updated quarterly
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OBJECTIVE 3: Provide necessary legal services to assist the Department’s implementation of open space land acquisition programs and to support the Department’s properties management programs	Environmental Indicators: Drinking water and watersheds, as well as available green areas protected from development pressures by protecting lands.	
STRATEGIES*	ACTIVITIES	Performance Measures
Work with partners such as The Nature Conservancy, and local land trusts and municipalities to increase the number of land preservation transactions in conjunction with Offices of Planning and Development, F & W, Forestry, Agriculture, Parks and Recreation.	Protect valuable habitat, farms and forest resources, as well as subterranean aquifers from environmental degradation.	Close 20 transactions per year under Farmlands, Fish and Wildlife, Forest Legacy and Joint State/TNC, Open Space Bond Issue .
Work with Municipalities on increasing open space and recreation acquisitions and applying Green-ways grants in coordination with Offices of Planning and Development.	Preserve valuable properties for open space and recreational uses.	Close 20 transactions under these programs in FY 2004 –2005, or 10 per year at the minimum.
Provide legal advice and assistance to Planning, Forestry, Agriculture in preparing federal grants applications to access federal monies as available	Protect valuable properties and resources	Subject to federal budget approval. As approved, complete competitive grant applications
Provide land acquisition assistance to the R. I. Water Resources Board in the implementation of Phase III of the Public Drinking Water Protection Program.	Preserve lands to protect public drinking water supplies.	Close 20 transactions under this program in Fiscal Years 2004 – 2005, or 10 per year e minimum.

Partners: The Governor’s Office, State Agencies, Municipalities, Water Resources Board, municipalities, land trusts, The Nature Conservancy and other Land Preservation Organizations, Other Recreational User Groups, Commercial Fisherman.