

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

FY2000 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 ranging menu 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 and 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, and other legal issues relating to various factual situation arising from agency actions. We prepare and assist the divisions in promulgating rules, regulations, policies and guidance documents. We review and assist in the preparation of necessary legal materials for all formal enforcement actions. We provide advice to staff on compliance with the state public records law, the open meetings law, and the ethics laws as applied to state employees. We provide legal advice on pending and proposed legislation.

We provide 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 up to and including negotiation, mediation and litigation. We provide 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, and in coordination with other agencies such as the Department of Attorney General.

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Our overall objective is to continue to provide legal services and representation at or above the current level of operation. The Office will continue to work diligently to promote effective and timely administrative enforcement and to assist in resolving enforcement and permitting backlogs, and to use other alternative dispute resolution procedures, if available, to reduce and conserve litigation costs and resources of the Department and the public, and to achieve compliance with environmental laws and regulations. The office will continue to explore ways to improve internal operations, and to improve the quality of its legal services to the department as a whole

II. Mission of Program, Office or Division: As the attorneys and staff advocating on behalf of the department, our mission is to assist the departmental mission of preserving, protecting and restoring the environment. We do this in our daily advocacy in all the matters where we represent 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 cases are settled through negotiations, including cases that provide other environmentally beneficial supplemental projects beyond the traditional penalties assessed. We also play a key role in the restoring of the urban environment as attorneys advising and helping with the negotiating the terms of brownsfields agreements. We play a key role in obtaining greater outdoor recreational resources for all Rhode Islanders by representing the department in negotiations over the terms of leases and agreements governing the use of these facilities. We act as attorneys and advocates promoting sustainable use of resources as the attorney for the department's marine and freshwater fisheries programs. We actively promote the preservation of important natural resource habitats, 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 preservation of valuable properties. We also provide legal advice and representation to guide the department's administration, business affairs and human resources efforts that provide the background 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, and will continue to do so to the best of our abilities.

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 Risks and Improving Communications: This year the office intends to step up 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 to ensure that timely and appropriate actions are taken where necessary.

B. Ensuring Fair and Effective Environmental Regulation and Enforcement: The Office will devote staff time and resources to assist the Bureau of Environmental Protection and the Office of Compliance and Inspection in the preparation of new guidelines such as a department wide enforcement response policy to help guide staff in preparing formal enforcement cases, and in the revisions of administrative penalty regulations to ensure that the assessment of appropriate penalties is fair and effective in all cases. We will also assist OC & I and other programs in the development of an inspection and search manual to ensure that field inspections and searches are conducted fairly, efficiently, and with appropriate regard for the rights of citizens.

B. Investing in Our People and Streamlining: The Office will develop key guidelines 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 explore ways 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, and responding to needs of the department's management and administration. The Office will explore ways to maximize the use of newly acquired computerized legal research services. The Office will also work towards better and more effective integration and coordination of legal services with various program staff. Major initiatives include more cross training of attorneys to increase depth of expertise, and providing appropriate training of staff in commonly faced legal issues and problems.

D. Working with Partnerships: The Office will be working with the Environmental Law Committee of the Rhode Island Bar Association to prepare and conduct a conference for attorneys on key issues of environmental law. The Office will also reach out to members of this Committee to assess the current state of the department's regulations, and seek suggestions for improvement. The Office will also continue to work with other state agencies, municipalities, land trusts and conservation organizations such as The Nature Conservancy to partner and link where possible to leverage resources towards greater recreational, open space and other forms of land protection.

E. Using Laws and Procedures Creatively to Obtain Environmental Benefits: Together with the Office of Administrative Adjudication and the Office of Compliance and Inspection, the legal office intends to target select pending wetlands 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 Legal Services Office will explore the creation of a bank of so-called Supplemental Environmental Projects (SEPs) available for inclusion as part of the settlement of pending environmental enforcement cases to complement the traditional monetary and restoration penalties assessed in such cases.

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</p>	
<p>STRATEGIES</p>	<p>ACTIVITIES</p>	<p>Performance Measures</p>
<p>More structured strategy meetings between attorneys and staff to discuss issues of priority and to work towards common departmental goals.</p>	<p>Weekly meetings with OC & I managers to discuss and coordinate cases of priority. (1st quarter—implement)</p>	<p>Greatest threats to environment and public health receive priority action</p>
<p>Preparation of internal guidance documents (with training as needed) in key areas of need such as: responding to public records requests, enforcement response procedures, inspection and search manual, coordinating joint enforcement efforts between DEM and the Attorney General’s office; uniforming consent agreements; revising administrative penalty regulations</p>	<p>Work with staff to assist in the completion of the documents:</p>	<p>Public Records: 1st qtr (DG/BW) ERP/Insp. Manual: 3/2000 (AMS/KH) MOU AG-DEM: 1st qtr (AMS/CC/KH) Consent Agree.: 12/99 (BW) Penalty Regs: 12/99 (AMS/KH/BW)</p>
<p>Develop better case tracking and reporting software to maximize use of new computers.</p>	<p>Track cases through the legal process to focus and prioritize actions to address environmental threats.</p>	<p>Review proposals: Nov. 1 (BW/DG) Select best program: Dec. 1 (AMS/BW/DG) Implement: Mar. 2000 (Staff)</p>

<p>Protection of fisheries y of as an important, sustainable environmental and economic resource.</p>	<p>Establish proactive review and/or participation in regional fisheries litigation that impacts RI</p>	<p>Prepare list of cases: 1st qtr – (GP) Regular case screening w/AG (2nd qtr, and quarterly thereafter (AMS/GP)</p>
<p>Link with partners at environmental bar groups to conduct training sessions and seminars</p>	<p>Assist as requested in R.I. Bar, university or State sponsored training sessions.</p>	<p>Do seminar on env. permitting (JL): 1/2000 Training on enforcement cases (JL): 1/2000</p>
<p>Work with Watershed Groups to address legal issues necessary to implement goals established (such as flexible zoning and planned growth issues)</p>	<p>Respond as requested by Strategic Planning and coordinate with their work plan</p>	<p>Legal issues of watershed goals addressed.</p>

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 agencies such as the Department of Health, the Coastal Resources Council, the Water Resources Board, and other boards, commissions and agencies of state and local 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>	
<p>STRATEGIES</p>	<p>Performance Measures*</p>	

Utilize ADR services, such as mediation on appropriate controversies to settle, resolve matters more quickly. Work and coordinate these issues with Administrative Adjudication Hearing Officers.	Select appropriate cases for resolution	Select first cases for mediation in ISDS and Wetlands Programs: (1/2000) (KH/PY) Develop criteria for selecting appropriate cases: (1 st qtr) – (KH)
Review Legal Issues for in-the-field cease and desist orders for lead paint threats – work with OC & I to implement if legal issues addressed.	Prevent threats caused by lead paint	Research issues and if appropriate, develop documents for use by OC & I staff (1 st qtr – PY)
Survey pending Superior Court cases for possible inclusion in Court sponsored mediation program in coordination with OC & I.	Obtain environmental protection/restoration earlier than through traditional litigation.	Complete review by November; file with Superior Court for December calendar (Staff)
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	Assess projects for inclusion in bank by 1/2000 and update quarterly.

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 protected from development pressures by protecting lands	
STRATEGIES*	ACTIVITIES	Performance Measures *
In coordination with Office of Planing and Development staff, carry out terms of MOU with Water Resources Board’s Public Drinking Water Protection Program and the 30 Water Suppliers participating with the program		Close 20 transactions by 9/2000 (MK)

<p>Work with partners such as The Nature Conservancy, and local land trusts to increase the number of land preservation transactions in conjunction with Offices of Planning, F & W, Forestry, Agriculture, Parks</p>	<p>Protect valuable habitat, farms and forest resources</p>	<p>Close 20 transactions under Farmlands, Fish and Wildlife, Forest Legacy and Joint State/TNC Champlain Projects in FY 2000 (MK)</p>
<p>Work with Municipalities on increasing open space acquisitions and applying Greenways grants in coordination with Offices of Planning and Parks</p>	<p>Preserve valuable properties for open space and recreational uses.</p>	<p>Close 15 transactions under these programs in FY 2000 (MK)</p>
<p>Provide legal advice and assistance to Planning, Forestry, Agriculture in preparing federal grants applications to access federal monies as available</p>	<p>Protect valuable properties and resources</p>	<p>Subject to federal budget approval. If approved, complete competitive grant applications (MK/DG)</p>
<p>In coordination with Division of Coastal Resources, Work with EDC and Town of Narragansett on Master Plan's Special Use District for Port of Galilee</p>	<p>Use the Port of Galilee in an environmentally sensitive manner</p>	<p>Implement Special Use District Plan in Coordination with timelines of Division of Coastal Resources (MK)</p>
<p>Work with RIDOT to negotiate terms for acquisition and management of Segments 6 and 7 of the Blackstone Bikeway</p>	<p>Preserve the linear path along Blackstone river, improve health and quality of air through increased commuting and recreation by bikes.</p>	<p>Close the deal/complete transactions if possible by 1/2000 (MK)</p>

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

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