

**GOVERNOR'S
ADVISORY COMMITTEE ON
WETLANDS AND SEPTIC SYSTEMS**



**FINAL REPORT
DECEMBER 1995**

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GOVERNOR'S ADVISORY COMMITTEE ON WETLANDS AND SEPTIC SYSTEMS

Report to the Governor December 18, 1995

Executive Summary

On March, 29, 1995, Governor Lincoln Almond initiated a major reform project designed to streamline permitting practices of the Division of Freshwater Wetlands and the Division of Groundwater and ISDS (Individual Sewage Disposal Systems) at the R.I. Department of Environmental Management (DEM). Supported and encouraged by DEM Director Timothy R.E. Keeney, Governor Almond issued *Executive Order No. 95-12*, which established the Governor's Advisory Committee on Wetlands and Septic Systems.

The Committee was asked to examine ways to improve the regulation of septic systems and the protection of wetlands. The Committee also was asked to examine timetables, staffing, funding, licensing and the process for dispute resolution as they relate to wetlands and septic systems. As envisioned by Governor Almond and Director Keeney, the process would yield an objective analysis of the operation of the two divisions, with an eye toward implementing organizational and legislative improvements that would strike the appropriate balance between protecting the environment and supporting economic development in suitable areas.

The 17-member Committee was formed May 4, 1995, with Anthony J. Santoro, President of Roger Williams University, as chairman. Representing a broad range of constituencies, including builders, legislators and environmentalists, the Committee decided at the outset to develop its recommendations by consensus.

The following report is the culmination of seven months of intensive and extensive review and discussion of existing practices and policies. The Committee itself held 24 sessions, ranging in duration from two to five hours. In addition, each Committee member was assigned to at least one work group to study specific issues related to a Committee task. Each group met for many lengthy sessions.

The Committee recognized at the outset that the task of reforming the practices and policies of Freshwater Wetlands and ISDS would be an arduous one. Not only would disparate views held by Committee members have to be reconciled in achieving consensus, reforms would also have to help restore public confidence in the two divisions.

Both divisions have been criticized in recent years for the length of time they take to process permits and enforcement actions. The regulated community has long complained that the permit applications process is arcane, time consuming, and unnecessarily expensive, all of which undermine appropriate economic development. That same community has also contended that DEM has generally extended its regulatory reach beyond its legislative authority.

Correspondingly, the environmental community, and the government regulators contend that DEM has confined its regulatory reach within its broad legislative and constitutional authority to protect the human and natural environment. Also, in fairness, it should be noted that much of the criticism heard in Rhode Island resonates among regulated parties throughout the United States, prompting reform initiatives in other states. Financial constraints of the past few years have limited DEM's ability to

efficiently carry out its legislative mandates. Clearly, budget cuts have left the department understaffed and technologically unprepared to absorb the loss of staff.

The 60 recommendations that have emerged from the Committee's deliberations are partially the result of an in-house review that DEM initiated before the appointment of the Committee. It is important to keep in mind, however, that this report is the result of a consensus-building process among all Committee members. Recommendations where consensus was not achieved are presented with dissenting opinions.

The recommendations, which include legislative proposals and substantive program changes, are designed to restore the agency's credibility and to improve its efficiency within the context of today's economy. The changes do not, however, compromise environmental protection.

The recommendations fall into five categories: Wetlands, ISDS, Enforcement, Funding, and General. As might be expected, recommendations which fall under Enforcement, Funding, and General apply to both divisions. Those under Wetlands and ISDS are division-specific. The major recommendations include the following:

1. WETLANDS

Licensing Program: Present laws and rules require that the existence and locations of wetlands on any site must be determined and verified only by DEM. This requirement is exceedingly burdensome to DEM and consumes substantial resources that could otherwise be applied to processing permits and monitoring compliance. The Committee recommends that DEM establish a licensing program for private professionals whose expertise would be thoroughly examined, qualified and regulated to perform these activities under the authority of DEM. The proposed change would reduce review time for edge-determination applications, which affect one-third of the application volume at DEM/Wetlands, by 50 percent or more.

Modify Application/Permitting Procedures: This recommendation proposes to modify application and permitting procedures by establishing a hierarchy of applications types which would include edge determinations, general permits, and higher-level permits.

The first modification, contingent on approval of the recommendation to license professionals to determine wetland edges, is to establish a procedure so that wetland edge determinations can simply be filed at DEM as opposed to requiring that DEM visit sites to verify the edge work.

A second level of applications is recommended for low-impact activities. Under this category, a general permit would be instituted for projects identified by rules as having low-level impacts on regulated wetland areas. Applications for such projects would be reviewed by the Division and a general permit letter, with conditions if necessary, could be prepared.

As a result of these modifications, DEM would be better able to handle the third category of applications, complex projects that have a greater probability of negative impacts on wetlands. Such projects would receive a more-detailed review under the recommendations, including pre-application meetings.

2. ISDS

Licensing Program: This recommendation calls for establishing a licensing program within DEM to provide for qualifying and regulating private professionals engaged in ISDS design activities.

Presently, the ISDS Section practices a high degree of oversight over various steps in the design and installation process of individual septic systems. These include verification of field data and strict compliance with procedural and regulatory requirements. This has resulted in a cumbersome process filled with suspicion and distrust between designers and regulators, with the regulated public caught in the middle. Last year, for example, more than 2,500 applications were returned to applicants due to errors and deficiencies. The Committee's recommendation is to establish a licensing program for septic-system designers, to be administered under the authority of DEM. It is expected this would reduce the average approval time for most applications from the current eight to twelve weeks, to two to four weeks.

Installation Inspections: Present rules and procedures require that DEM inspect the installation of approved ISDS designs. Such work consumes 30 percent of the technical staff's time. This recommendation would make designers responsible for the proper installation of septic systems they design by requiring that they supervise each installation and certify that the system conforms with design plans. This proposal is expected to cut the number of system inspections by DEM in half.

3. ENFORCEMENT

Septic System Repairs: It is estimated that between 20 to 30 percent of the state's 140,000 septic systems are failing, some of which endanger public health. Such systems should be replaced immediately, but the cost to homeowners is often prohibitive. The typical replacement cost is \$5,000. To protect public health and mitigate the financial impact to homeowners, the Committee recommends that the state look toward the creation of a program to offer low-interest loans to help defray the cost of repairing and replacing septic systems. Such a program would significantly reduce the need to seek legal orders to force homeowners to upgrade failed systems. It also would provide a quicker solution for dealing with failed systems.

Modify Wetlands Penalties: Penalties associated with the state's wetlands laws are inadequate to deter major wetlands violations. Under the current statute, the maximum penalty for major violations is \$1,000. The Committee recommends that the wetlands statute be modified to allow for a maximum penalty of up to \$25,000 for Notices of Violation involving major unauthorized wetlands alterations. It is expected that the increased penalty would provide a strong disincentive to violate the statute and will reduce the number of enforcement cases.

Criminal Penalties: The wetlands statute and corresponding statute for ISDS do not have a criminal penalty for actions such as knowingly and willfully altering wetlands; for installing an ISDS system without a permit; or for submitting false data on an application for a permit. The recommendation is to modify the wetlands and ISDS statutes to create criminal penalties for such violations.

4. FUNDING

The Committee recognizes that "restricted receipt" accounts are no longer authorized. Currently, the fees collected by the permitting programs are added to the general revenues of the state. Funds remaining in these accounts at the end of a state fiscal year may be used for the general obligations of the state.

The Committee feels strongly that environmental protection activities benefitting the general public should be supported from the general fund and that specific services, such as permitting, should be funded from the fees paid by individuals receiving these services.

5. GENERAL

Policy: Generally, the findings of the 1990 Environmental Quality Study Commission as they relate to planning and policy needs of the Department are reiterated by this Committee. Most of the Environmental Quality Study Commission's recommendations were not implemented due to funding constraints, but the needs still exist. Specific attention was given to where a policy function might best be introduced for greatest effectiveness in the context of this Committee's work. A recommendation is made herein to establish a position of policy specialist under the Director and responsible for both the Wetlands and ISDS programs. See Recommendation G.3 in Section V.

Land-Use Permitting Procedure: ISDS rules and regulations require that projects occurring near wetlands be reviewed by the Wetlands Division before being scrutinized by the ISDS Section. This sequential permitting process results in duplication of work by applicants, significant additional expense and delayed permitting. Under this recommendation, a joint permit submittal process would be established for wetlands and ISDS permits. It is expected that a four-person team would be formed with the authority to issue joint permits. This program would avoid duplication and economize on staff resources. It would also result in a permitting process that is more comprehensive and consistent.

Regulatory-Related Public Information: DEM currently does not have a central office to handle general information questions concerning its regulatory programs and enforcement procedures. Each call is referred to the program that best fits the subject matter at hand. Often, it takes several calls to get the information the caller wants. This recommendation calls for establishing a public information function within the regulatory branch to provide assistance to individuals and business owners concerning the department's permitting requirements and enforcement matters. Regulations, guidance documents, fact sheets, and public statements would also be made available.

Computerized Master File: DEM has been working on computer capabilities since the mid-1980s, but the department still lacks an integrated computer system for maintaining records of permit and compliance activities. As an example, wetlands information is not available to ISDS personnel electronically, nor is ISDS information available to Wetlands personnel. Also, little computerized information is available to the public. This recommendation calls for establishing a computerized master file and indexing system that would enable the two divisions to be linked. About \$150,000 would be needed in additional software programming and hardware to fund the initiative.

Following the Executive Summary are a series of preliminary documents followed by the reports and associated appendices. Part 1 discusses the methodology utilized in preparing this report; Part 2

describes the resources and highest level of action needed to implement the recommendations, Part 3 is a listing of the recommendations and the pages in the body of the report where the discussion and benefits may be found.

These recommendations must not be viewed as separate items, but must be considered as a whole package whose parts are all inter-connected. It would not be in the public's interest to approve some recommendations and not others. As an example, the recommendations reflect a philosophy, given the tight economic times, that the regulated community must bear more of the burden in terms of preparing applications and overseeing actual work. Yet, in giving the regulated community more responsibilities, it is critical that appropriate safeguards also be put in place, including tougher penalties, to ensure the environment is not being compromised.

The Committee also believes its life should be extended so it can help in implementing the recommendations, whether through DEM or through legislative change. Specifically, the Committee could help in developing language for legislation and in making revisions to specific programs. The recommendations represent a broad-based, but delicate consensus reached through compromise. Attempts to implement these recommendations without this core group of support run the risk of failure, consigning the report to the dustbin or, worse, creating even more controversy than exists today. Simply put, the identification of reform items is only the first step in the process of reform. The second step should not be taken without the deliberations leading to that first step as a prologue.

Respectfully yours,



Anthony J. Santoro, Chairman

I. METHODOLOGY

The Committee, consisting of seventeen members appointed by the Governor with staff support from the Department of Environmental Management, has met regularly since May 24. The main goal of the group was to streamline the permitting process. Several major issues that affect permitting times were studied intensely. The Committee has examined the current permitting practices, policies, and procedures; enforcement practices, policies and procedures; current policy and planning activities; levels of staffing, and staff training; the role of public education in permitting; and program funding levels and sources. The Committee has developed recommendations for staff reorganization within the two programs, for delegation of authority to private professionals, clarifying policies, coordinating reviews, and other ways to speed the permitting process.

The Committee agreed early in its deliberations that four work groups would be assigned to study specific issues in detail. Each member of the full committee participated on at least one of the work groups. Two of these groups had the bulk of the responsibility and met once or twice per week through the process outside the full committee meetings. A list of major issues to be addressed was generated in June.

The Chiefs of the Division of Freshwater Wetlands and the Division of Groundwater and ISDS presented information orally with documentation in the form of legislation, regulations, application forms, charts showing staffing, budgets, funding sources and constraints, and various other elements that affect the operation of the divisions. The Committee requested the chiefs to identify where they perceived the choke points to be in their respective programs and to suggest solutions. Copies of relevant written materials were distributed to members. Representatives from several communities and from the State Planning Office attended work group meetings to provide additional perspectives.

Recommendations from the work groups were presented to the full committee for review and revision. The recommendations in the report have received a great deal of deliberation and many have been revised several times.

II. MISSION STATEMENTS AND GOALS

The committee reviewed the mission statements and goals for the two divisions and made some modifications. The Declaration of Intent (Sect. 2-1-18) and Public Policy Statement (Sect. 2-1-19) in the Freshwater Wetlands Act, as well as the Administrative Findings (Rule 3.00) in the Freshwater Wetlands Rules and Regulations were reviewed to determine if the Department's current practices are inconsistent with either the Act or the Rules. It was determined that the Department has generally acted in a manner consistent with both the legislation and the regulations. The following statements are what the Committee feels are appropriate missions and goals for the divisions.

a. WETLANDS MISSION STATEMENT AND GOALS

Mission Statement

As set forth in R.I. Gen. Laws § 2-1-19 the mission of the freshwater wetlands division is to preserve the purity and integrity of the swamps, marshes, and other freshwater wetlands of this state. The health, welfare, and general well being of the populace and the protection of life and property require that the state restrict the uses of wetlands and, therefore, in the exercise of the police power those wetlands are to be so regulated.

PROGRAM GOALS

- Demonstrate to the regulated community and the public at large the need for freshwater wetland regulations.
- Establish standards to prevent random or unnecessary alterations and to minimize or otherwise mitigate the impact of undesirable alterations to freshwater wetlands.
- Provide clear guidance on procedures to be followed during preparation of wetland applications.
- Review innovative approaches to wetland management that have been used elsewhere in order to assess their applicability to Rhode Island.
- Enforce the law and the regulations developed thereunder.
- Respond in a timely fashion to applicants and to public requests for information.
- Coordinate activities with other divisions of the department and with other federal, state, and local agencies as needed.
- Encourage continuing education within the division and the professional community.

b.

ISDS MISSION STATEMENT AND GOALS

Mission Statement

The mission of the individual sewage disposal system (ISDS) section is to protect the public from disease and nuisance conditions and to prevent the degradation of land, surface water, and groundwater resources by regulating the design, installation, and operation of on-site sewage disposal systems.

PROGRAM GOALS

- Establish standards relating to the location, design, construction, and maintenance of all sewage disposal systems within its jurisdiction.
- Explain the need for sewage disposal regulations to the regulated community and the public at large and the procedures that must be followed to obtain a decision on an application.
- Review and encourage, where appropriate, the use of new technology to satisfy the standards adopted.
- Enforce the standards developed hereunder while maintaining an expeditious process.
- Respond in a timely fashion to applicants and public requests for information.
- Coordinate activities with other sections and divisions of the department and with other federal, state, and local agencies as needed.
- Protect sensitive areas and require rehabilitation of areas degraded by failing ISDS systems through the use of best management practices.
- Provide information concerning the proper use of septic systems, including water use and conservation, and disposal of toxic chemicals and other materials that cause system dysfunction or failure.
- Encourage continuing education within the division and the professional community.

III. LIST OF RECOMMENDATIONS

The following is a complete listing of the recommendations, with page numbers. See the individual recommendation for an explanation of the basis for the recommendation and the benefits anticipated from implementation. Recommendations marked with an asterisk are presented with a dissenting opinion from a Committee member.

WETLANDS RECOMMENDATIONS

W.1 Establish a licensing program within DEM to enable private professionals to certify or delineate the location of wetlands. 16

W.2* Develop specific criteria to identify those wetlands that are capable, even with sound management, of performing only limited wetland functions so that proposed activities in such areas can be permitted without undergoing an extensive review process. 16

W.3 Clarify and simplify the definitions of various wetlands as contained in the law and rule based on current scientific understanding. 17

W.4 Redefine what are now considered perimeter wetlands and riverbank wetlands to regulate them as buffer zones and transition zones. 17

W.5 Develop standards to allow or facilitate restoration, enhancement, and replacement of wetlands where appropriate and feasible. 18

W.6* Modify the application and permitting procedures to establish a hierarchy of application types to include:

- a) edge determinations or exempt activities which require or involve a cataloguing and filling only;
- b) general permits for low-impact activities identified by rules, which would receive minimal review and handling prior to approval; and
- c) higher level permits for projects of greater complexity or potential impact which would receive more thorough evaluation and review. 18

W.7 Expand the number of exempt activities; provide as many concrete examples of non-impact and exempt activities as possible by guidance or rule for clarification. 20

W.8 Establish a permitting priority system for processing applications based on size and potential environmental impact of projects. 20

W.9 Revise the wetland rules to enable more expeditious handling of emergencies on private property. 21

W.10 Modify the current application and public hearing process for applications to alter freshwater wetlands (formal applications) so as to: provide for greater interaction amongst interested parties; facilitate discussion with local officials and the applicant; allow for consideration of modified plans or proposals which may develop from input by DEM or any other interested party without having to repeat the permitting process; encourage the adoption of "best" design alternative. 22

W.11 Develop a procedure which would enable the recertification of previous "presence of wetlands" and "edge" determinations where site conditions are essentially unchanged. 23

W.12 Change the permit-life of formal approvals from 1 year to 4 years. 23

W.13* The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee shall review the existing rules and practices regarding farming activities related to Chapter 2-1-22(i) of the General Laws to determine if any amendments need to be made. 23

W.14 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee should review and determine the need for a specific application form for farming projects which would request more precise project information so as to enable more streamlined handling of various farming projects 25

W.15 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee shall review the definition in the statute qualifying persons as farmers and recommend changes so as to encourage new farming activities in the state. 26

W.16 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee should review the definition of normal farming and ranching activities under Chapter 2-1-22(i)(2) to determine if the building of a barn constitutes a farming ranching activity; if so, the regulations should be revised accordingly. 26

ISDS RECOMMENDATIONS

SD.1 Establish a licensing program within DEM to provide for qualifying and regulating private professionals engaged in ISDS design activities. 30

SD.2 Delegate the installation inspections of new ISDS systems to DEM licensed professionals, subject to DEM oversight. 31

SD.3 Develop thorough site-suitability criteria and alternative system types to address the design needs appropriate to the site conditions. 32

SD.4 Develop a procedure for systematically approving proven alternative technologies and products for use in place of or in conjunction with conventional systems. 33

SD.5 Develop and implement alternative water table determination methodologies - namely soils-based methods and comparison well methods - to enable year-round water table design depth determinations where feasible 33

SD.6 Provide procedures to enable concurrent submittal of site-suitability and design approval applications. 34

SD.7 Extend the life of approved ISDS permit applications wherein the use of an off-site drinking water supply is proposed (i.e. no private wells use). 35

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| SD.8 Streamline the ISDS alteration or upgrade rules and procedures to provide an incentive for users to replace failing septic systems. | 35 |
| SD.9 Establish clear objectives and standards for ISDS repairs which will foster expeditious processing of applications and protection of the environment | 36 |
| SD.10 Redefine the unit of sizing (i.e. number of bedrooms) of ISDS systems for residential uses to facilitate evaluation of system suitability under the upgrade policy | 36 |
| SD.11 Establish and publish a more flexible variance procedure for alteration or upgrade applications without compromising public health or environmental protection. | 37 |
| SD.12 Modify the rules for departmental review and approval of variance applications to eliminate current bottlenecks | 38 |
| SD.13 Establish a dual-tier variance procedure by rule which would allow a simplified procedure for some minor variances and not involve a public notice requirement; other variances would require full notification. | 38 |
| SD.14 Develop an ISDS permit guide that targets both applicants and designers to include: a) Instructions for completing forms b) Application submittal requirements, including fees c) Process flow chart detailing steps in the processed, products, mailings, etc d) Addresses and telephone numbers for assistance e) Sample design types and design notes f) Review sheet checklist | 38 |
| The guide should be reviewed annually and updated as needed. | |
| SD.15 Conduct an informational seminar mandatory for licensed designers at least once annually to review regulatory requirements, explain changes in procedures, accept comments, and provide for discussion of emerging issues. | 39 |
| SD.16 Educate ISDS owners about the benefits of proper maintenance and water conservation and what not to put into an ISDS; use the application approval process as an opportunity to convey this information. | 40 |

ENFORCEMENT RECOMMENDATIONS

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|---|----|
| E.1 Promote the creation of a program to offer low-interest loans to help defray the costs for either repair or replacement of failed septic systems | 43 |
| E.2 Expand the Department's practice of requiring that permit holders use consultants to ensure compliance with permit terms and conditions. These consultants should be licensed by DEM. The role of the consultant as an environmental monitor should be strengthened. Concomitantly, sanctions against permittees who do not comply with consultant's requirements should be strengthened. . . | 44 |
| E.3 Both programs should continue to issue and improve upon Notices of Intent to Enforce (NOIs). a) ISDS Program should modify its initial letter to be less intimidating and more | |

informative. This letter should be firm in its message that a problem exists and should make clear that the recipient has the opportunity to meet with DEM staff to discuss issues and means to resolve the problem short of the formal Notice of Violation and ensuing enforcement process.

b) Develop a second NOI letter for each of the programs to ensure the recipient the opportunity to resolve the violation informally before an NOV is issued. 44

E.4 Revise the wetlands statute to require disclosure of an enforcement letter and other correspondence concerning wetlands on the property to the potential buyer when enforcement actions involving the property are outstanding. 45

E.5 Develop a program that authorizes municipalities, under DEM authority, to assist DEM by providing pre-enforcement compliance functions. These functions would be supplementary in nature. 45

E.6 Create a process to:

- a) allow for after-the-fact applications under carefully defined circumstances, and;
- b) charge a higher fee for after-the-fact applications than for those applications submitted prior to initiation of any construction activity.

The agency should have the discretion to still require restoration where necessary. 46

E.7 Develop a guideline for internal use, available to the public, for the Division of Freshwater Wetlands to focus its resources on the most egregious violations. 47

E.8 Modify the process followed by DEM for administrative adjudication hearings that allow a time period for opposing parties to correct any obvious errors contained within a recommended decision before submission to the Director. 47

E.9 Revise the wetlands statute to allow the DEM to cite the responsible party, the property owner, or both for unauthorized wetlands alterations. 48

E.10 Revise the wetlands statute to improve the ability to gain restoration and reduce the permanent loss of wetlands as a result of unauthorized alterations, including : a) the result of the sale of property to innocent buyers when an unauthorized wetland alteration has occurred on the property; and b) the impacts of "migrating" wetlands alterations onto adjacent, neighboring, or downstream parcels of land owned by individuals not responsible for the alteration. 48

E.11* Modify the wetlands statute to allow for a maximum penalty of up to \$25,000 for Notices of violation involving major unauthorized wetland alterations, but in no event shall an NOV contain an assessed penalty in excess of \$25,000. Any additional violations occurring after receipt of an NOV are subject to an additional penalty of up to \$25,000. 49

E.12 Make greater use, to the extent resources permit, of the Attorney General's Office in the prosecution of violators for civil matters. 52

E.13 Modify the wetlands statute and the appropriate statute covering ISDS to create criminal proceedings and penalties, or to allow an increase in existing criminal penalties. 53

FUNDING RECOMMENDATION

F.1 Establish a trust account or revolving fund for holding fee receipts derived from wetlands and ISDS permit applications; use funds for the purposes of meeting expenses associated with applicant-driven request for services. 55

GENERAL RECOMMENDATIONS

G.1 Establish a Land-Use permitting procedure within DEM to receive and process joint applications for projects involving both wetlands and ISDS permitting. Begin with subdivision suitability applications and expand to individual site applications and other permits as warranted. . . 58

G.2 Establish a public information function within the regulatory branch of DEM to provide assistance to individuals and businesses concerning the regulatory requirements of the agency, and to develop and disseminate educational and guidance material on permitting and enforcement. . . 58

G.3 Establish a policy and planning function under the Director charged with the responsibility of identifying overlaps in regulation and inconsistencies in policies or program practices, and guiding the permitting activities. Initially the duties would be related to the ISDS and Freshwater Wetlands programs, but should expand towards a clear unified objective for all of DEM's programs. 59

G.4 Establish a mechanism to eliminate the overlap and conflict in policies between DEM and CRMC which cause significant project delays. 60

G.5 Develop a computerized master file and indexing system for key DEM programs to facilitate cross-referencing and due diligence searches. 61

G.6 Develop a tracking system for the application process which would make information available to the public and the local communities; remote access to computerized permit file information should be pursued. 61

G.7 Enhance computer capabilities and change administrative procedures to enable increased utilization of computers to expedite routine tasks, minimize handwritten reports, and facilitate consistent, thorough, and speedy reviews. 62

G.8 Use the collective-bargaining process to negotiate with the unions to:

- a) establish a 40 hour standard work week, for the purpose of increasing the productivity of the current work force;**
- b) broaden job duties within classifications to enable greater flexibility in assigning personnel and facilitate restructuring when needed;**
- c) place restrictions on the bumping process to avoid or minimize the displacement of trained personnel and the obligation to hire unqualified persons 63**

G.9 Upgrade technician positions to Environmental Scientist grade and ensure that all technical staff have an appropriate career path to attract and retain qualified employees. 63

G.10 Establish a state policy whereby all personnel actions requested by DEM to fill fully-funded vacancies for Wetlands and ISDS personnel are processed promptly by the Department of Administration. 65

G.11 Make continuing training of staff a high priority. 65

G.12 Maintain and supplement existing staff resources. 66

G.13 Make sufficient numbers of vehicles available for staff. 66

G.14 The Committee on ISDS & Wetlands should be continued after the submission of the final report in order to assist in the implementation of the recommendations. 66

IV. RESOURCES AND IMPLEMENTATION

In order to implement and carry forward the recommendations contained in this report, significant resources will be needed. Legislation must be drafted, new or amended regulations must be developed, and many policies and procedures must be changed. Personnel will need to be assigned to implementation activities in the short-term and to new tasks in the long-term. The purpose of this section is to summarize the resource implications and implementation needs of the recommendations.

A summary of the recommendations, including estimated resource needs, implementation dates, effects on permitting times and benefits, is given in appendix C. All resource considerations are estimates only and are based on the collective opinions of the DEM staff assigned to the Committee.

Of the sixty recommendations listed, twenty-one will require legislation, another twenty-one will require regulatory rule changes, and eighteen will require changes in procedures or policies. Generally, those that require legislation will also require amendment of the regulations and may also require changes in process. Accordingly, those with the higher implementation levels will take longer to implement. Conversely, those requiring only a procedural change can be implemented relatively quickly. A summary of the recommendations by category and required action is shown in Table 1. The implementation level indicates the highest action required to implement the recommendation.

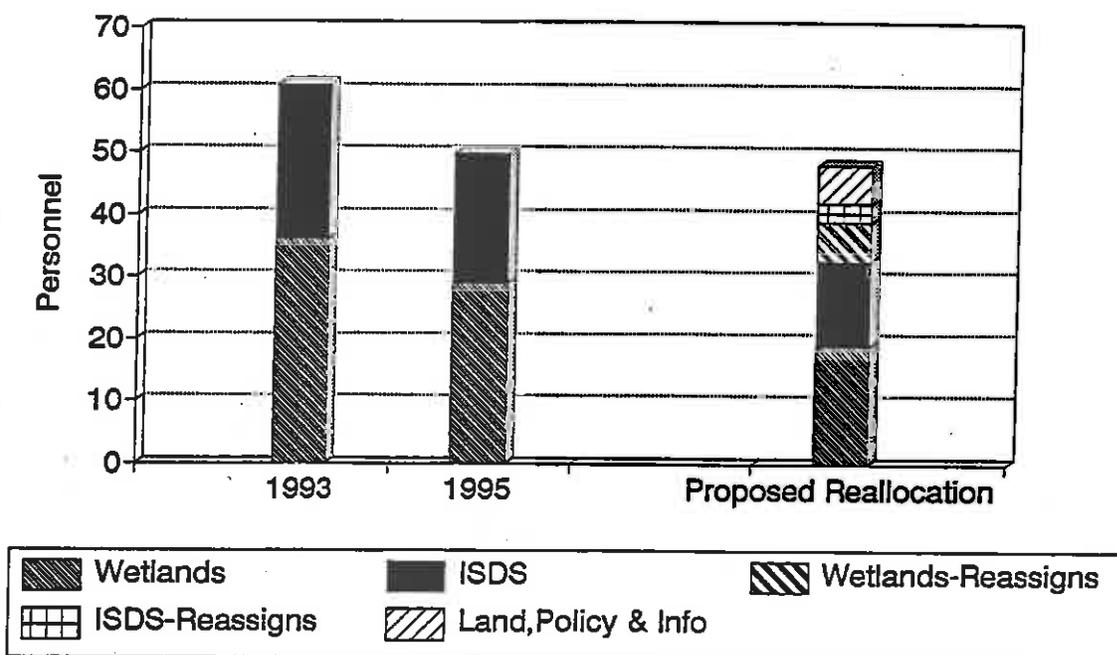
Table 1. Level of Action Required to Implement Recommendations.

| Action | Wetland | Septic Systems | Enforcement | Funding | General | Total |
|------------------|---------|----------------|-------------|---------|---------|-------|
| Legislation | 9 | 1 | 10 | 1 | 0 | 21 |
| Regulation | 7 | 14 | 0 | 0 | 0 | 21 |
| Policy/Procedure | 0 | 1 | 3 | 0 | 14 | 18 |
| Total | 16 | 16 | 13 | 1 | 14 | 60 |

The estimated dates by which each recommendation is scheduled to be implemented are detailed in the summary tables in Appendix C. It is assumed that all legislation will be prepared and introduced in the 1996 legislative session.

Importantly, all staffing needs will be met using current levels of funding. Although the number of personnel in both the Wetlands and ISDS programs has been reduced in recent years, existing funding should be adequate to fulfill the needs. Figure 1 summarizes the major permanent resource shifts expected to occur to accomplish these objectives. A total of 15.75 full-time equivalent (FTE) staff will be reallocated or reassigned. Some personnel will be reassigned to new tasks not now being performed. Some recommendations will free up staff who can then be reallocated to shore-up staff assigned to other activities which will need more resources pursuant to these recommendations. The land-use permitting team will also be staffed through reallocation. A net reduction of 1.5 FTE personnel is projected.

Figure 1. Wetlands and ISDS Programs Personnel Allocation



Explanation of Figure 1

The personnel allocation for Wetlands and ISDS for 1993 and 1995 represent the numbers of personnel assigned to current activities. Under these recommendations, the personnel assigned to certain current activities will decrease, which is depicted by the change in the two bottom bars. In turn, these personnel will be reassigned to other activities according to the demands of the recommendations. The personnel reassignments for Wetlands are: to administer the licensing program for delineators, to implement the standards for restoration and replacement of wetlands, to establish and implement changes in types of permit applications, to administer special procedures to expedite small projects, and to institute a more effective process for permits involving significant wetland impacts. The reassignments for ISDS include personnel to: administer the licensing program for designers, develop procedures for evaluating and encouraging the use of alternative technologies, implement year-round water table determination processes, and enable concurrent submittal of site-suitability and design applications. The reassignments grouped under "Land, Policy and Information" are for personnel needed to establish a joint application process for projects involving both programs, and a public information officer, a policy specialist and a computer systems support person specifically for the Wetlands and ISDS programs.

Most of the reallocation savings in personnel time stems from shifting responsibilities to the private sector (See recommendations W.1, SD.1 and SD.2). Other alternatives to reduce costs or reliance on DEM personnel to perform regulatory functions in the two areas were considered.

It had been thought that local communities might be receptive to cooperating with state regulators on permitting matters. However, during a special meeting of local officials organized by the DEM and the Department of Administration, the communities voiced an unwillingness or inability to assume additional responsibilities in the permitting process or undertake the work itself. In some other states these functions are performed by duly a authorized and trained local conservation commission, but in Rhode Island not every community has a conservation commission, leaving the question of what other entity would be qualified to do the job. Additionally, RIGL 43-13-7 through 43-15-10 provides that any state mandate which requires a local government to carry out activities that necessitate additional expenditures from the local revenue sources is reimbursable by the state. In a state this size it is more cost effective to have a centralized program than to create thirty-nine separate entities for each of the thirty -nine communities in the state. Some of these communities would require more than one person to accomplish the tasks. In addition to the economic advantage of centralized oversight, there is also the benefit of consistency in the programs across the state.

The Committee determined that another means of reducing costs is by raising efficiency through computerization. Some of the savings in personnel time (the equivalent of four FTEs) needed to enable reallocation assignments will come from efficiencies resulting from computerizing the permit handling, review and approval process. This will require a substantial initial capital investment.

All additional costs relate to computerization needs (See G.5 through G.7) total \$670,000. This is a one-time capital cost for hardware, software and programming services needed to implement the applicable recommendations.

The implementation of the Committee's recommendations will require the acceptance and support of DEM staff and broad sectors of the regulated public. The continuation of the Committee is essential as it represents a coalition of stakeholders critically affected by the proposals.

V. RECOMMENDATIONS/BACKGROUND/BENEFITS

WETLANDS RECOMMENDATIONS

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| W.11 Develop a procedure which would enable the recertification of previous "presence of wetlands" and "edge" determinations where site conditions are essentially unchanged. | 23 |

W.12 Change the permit-life of formal approvals from 1 year to 4 years. 23

W.13* The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee shall review the existing rules and practices regarding farming activities related to Chapter 2-1-22(i) of the General Laws to determine if any amendments need to be made. 23

W.14 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee should review and determine the need for a specific application form for farming projects which would request more precise project information so as to enable more streamlined handling of various farming projects 25

W.15 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee shall review the definition in the statute qualifying persons as farmers and recommend changes so as to encourage new farming activities in the state. 26

W.16 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee should review the definition of normal farming and ranching activities under Chapter 2-1-22(i)(2) to determine if the building of a barn constitutes a farming ranching activity; if so, the regulations should be revised accordingly. 26

* Recommendations with an asterisk are presented with a dissenting opinion from a Committee member.

RECOMMENDATIONS/BACKGROUND & BENEFITS

WETLANDS

- W.1 Establish a licensing program within DEM to enable private professionals to certify or delineate the location of wetlands.**

BACKGROUND Present statutes and regulations require that the existence and location of wetlands on any site may be determined or verified only by DEM. Although private professionals are presently engaged by property owners and developers in the identification and flagging of wetlands, all work is subject to field verification by DEM staff. This requirement is exceedingly burdensome on DEM and consumes substantial resources which could otherwise be applied to processing permits and monitoring compliance.

The recommendation would establish a licensing program for private professionals whose expertise would be thoroughly examined, qualified, and regulated to perform these activities under the authority of DEM. The Committee feels strongly that there should be no grandfather clause in the licensing program. The Department envisions a collaborative process involving academia, professional groups and DEM personnel to promote clear understanding of wetland definition, characteristics, issues, regulations, and procedures. Education, training, DEM sponsored instructional seminars, professional development, and strict sanctions for non-compliance are important elements of the licensing initiative.

BENEFITS This is an important recommendation of the committee and is key to several other recommendations contained in this section. It will cut review times for edge determination applications, which affect one-third of the application volume in DEM-Wetlands, by 50% or more. Also, the work of licensed professionals will apply to other wetlands applications and will directly reduce their review times as well. Personnel resources can then be applied to other permitting needs, such as pre-application meetings, to significantly improve overall permit responsiveness.

- W.2 Develop specific criteria to identify those wetlands that are capable, even with sound management, of performing only limited wetland functions so that proposed activities in such areas can be permitted without undergoing an extensive review process.**

BACKGROUND All wetlands are entitled to protection under the wetlands statute. However, not all wetlands serve the same functions or have the same values. Present DEM rules interpret the statute broadly and require extensive study, classification, and evaluation of potential impacts of many projects where the loss of very insignificant isolated wetlands or impacts to wetland values already lost or degraded is of little significance. These projects are ordinarily approved but may be wasteful of time and money. The objective of this recommendation is to streamline the permitting process for such areas without compromising loss of valuable wetlands or those with real potential for enhancement of environmentally degraded areas.

BENEFITS The implementation of this recommendation is expected to significantly streamline the permitting of approximately 100 projects per year that involve alteration of

wetlands having limited functions and values. The cost of preparing such applications and complying with the permitting procedures should decrease.

DISSENTING OPINION Presented by Alison Walsh, representing Save The Bay. The Executive Order that guides this committee states that it "shall examine ways to improve the regulation of septic systems and the PROTECTION of wetlands (emphasis added)." W.2 diminishes the protection afforded degraded wetlands that may play a keystone role in protecting safe drinking water and preventing degradation and rehabilitating degraded portions of the Bay. We agree that common sense must be used in eliminating the extreme cases where processing is overly burdensome. But until and unless a statewide wetlands restoration plan is developed and made part of wetlands practice and policy, we do not subscribe to any classification system.

W.3 Clarify and simplify the definitions of various wetlands as contained in the law and rule based on current scientific understanding.

BACKGROUND The wetlands statute contains many archaic and inaccurate definitions for various wetlands. Some definitions overlap others. This causes confusion in identifying and classifying wetlands. It places undue emphasis on determining the type of wetland in existence for legal purposes rather than simply determining whether or not a wetland is present. The difference in time between making these separate distinctions can be significant. This time could be better spent simply locating and evaluating impacts on wetlands. Considerable scientific studies and debate have taken place since the definitions were enacted in the statute almost 25 years ago. Revising these definitions based upon current scientific knowledge and practice is recognized as an important step not only in R.I. but in local, state, and national forums.

BENEFITS Changing the definitions in the law will significantly help to streamline the permit process by minimizing instances where applications are returned to the applicant to clarify basic information or where the interpretation of wetland type or jurisdictional edge is challenged. It will eliminate or greatly reduce the difference of opinions now experienced between professionals regarding the delineation of wetland edges based upon legal and scientific criteria.

W.4 Redefine what are now considered perimeter wetlands and riverbank wetlands to regulate them as buffer zones and transition zones.

BACKGROUND The current wetlands statute defines "the area of land within 50 feet of the edge of any bog, marsh, swamp or pond" as well as the "area of land within two hundred feet (200') of the edge of any flowing body of water having a width of ten feet (10') or more and that area of land within one hundred feet (100') of the edge of any flowing body of water having a width of less than ten feet (10') during normal flow as wetlands. While these areas provide an important function in protecting values associated with wetlands and watercourses, and provide important values of their own, it is confusing to refer to these areas as wetland, especially if they are characteristically upland in nature. This confusion plagues property owners, consultants, municipalities, and others, causing problems in qualifying regulatory procedures and practices. Currently there is no legal distinction between areas regulated as true wetlands and adjacent areas that are regulated as wetlands but may often be character-

istically upland in nature. The definition for riverbank wetlands, however, needs to be carefully crafted to acknowledge that portions of these areas may include true wetlands.

BENEFITS Amending the wetlands statute to define such areas as buffer zones, transition zones or some other appropriate characterizing term will qualify the legal distinction between true wetlands and those adjacent upland areas that need to be regulated to protect important wetland functions and values. It will help eliminate confusion in a number of areas, thus making the process much more efficient. It will eliminate confusion in other regulatory processes such as zoning and planning at the local level and will clarify issues involving permitting decisions.

W.5 Develop standards to allow or facilitate restoration, enhancement, and replacement of wetlands where appropriate and feasible.

BACKGROUND In many instances, projects are proposed involving a disturbance to wetlands already degraded. Some projects may be for the purpose of enhancing such wetlands. Present regulatory procedures do not have provisions that set forth clear guidelines for restoring, enhancing or replacing wetlands. Enhancement projects such as the implementation of non-point pollution abatement measures are treated as significant alterations, with their attendant delays, even though they may improve wetland habitats and values.

Wetland replacement projects to offset unavoidable but necessary wetland alterations are complicated, expensive, and seldom 100 percent successful. Measures to ensure compliance and success with replacement plans are important elements of this initiative.

BENEFITS The permitting of environmentally beneficial projects and projects proposing various forms of wetland mitigation would be streamlined by as much as 50%. Some projects would be reclassified as insignificant alterations and may not require intensive evaluation or formal hearings. Unavoidable but necessary wetland alterations could be permitted with no overall net loss of wetlands resulting. Presently, wetland loss is permitted without replacement, resulting in a net loss of wetland resources.

W.6 Modify the application and permitting procedures to establish a hierarchy of application types to include:

- a) edge determinations or exempt activities which require or involve a cataloguing and filing only;
- b) general permits for low-impact activities identified by rules, which would receive minimal review and handling prior to approval; and
- c) higher level permits for projects of greater complexity or potential impact which would receive more thorough evaluation and review.

BACKGROUND As a result of the other recommendations designed to streamline permitting at DEM Division of Freshwater Wetlands, modifications to the application and permitting

procedures for certain types of projects would be beneficial. Three main areas have been identified for modification.

In the area of wetland edge determinations and verifications, it has already been recommended that DEM license qualified professionals to determine wetland edges. Assuming this recommendation goes forward and licensed professionals carry out this function, a procedure should be developed for filing these edge determinations with DEM for future use, reference and field checking. DEM programs and outside agencies can refer to or utilize this edge when reviewing projects. Other types of projects which could be filed with DEM could be notices by property owners that they intend to proceed with exempt activities. These application "filings" will be available for information and future reference by the agency and by members of the public when inquiring to DEM.

A second level of application is recommended for low-impact activities. A general permit would be instituted for those projects which will be pre-identified by rules as low-impact. Such activities or projects do not merit exempt status since they present a potential for some low-level impacts in regulated wetland areas. Applications for a general permit would require a plan which shows an identified wetland edge certified by the DEM-licensed professional and includes proposed best management practices to protect wetlands. Such applications would be reviewed at the DEM Division and a general permit letter, with conditions if necessary, could be prepared and issued. Such a letter would be of value to the property owner to confirm acceptance by DEM for obtaining permits from other agencies (e.g. Building Official, ISDS, etc.), or to show lending institutions that authorization has been obtained. Minimal review of these types of projects will raise the comfort level of both the applicant and the DEM.

A more detailed review would be required for more complex projects and certainly those with greater probability of negative impact. The length of the review process for such projects would depend upon the wetlands involved, the project type, the extent of potential impacts and the concerns raised by the public.

BENEFITS Establishing a hierarchy of application types will allow DEM to streamline its process. Filing of edge-determinations will benefit DEM and others reviewing proposed projects. This will eliminate the need for extensive site visits and will allow DEM to develop streamlined permitting for many low impact projects. By identifying low-impact projects by rule along with the required use of best management practices to protect wetlands, a general permit application can be reviewed and approved very quickly for applicants seeking written authorization by DEM. This increases their comfort level that the project is authorized in writing and may help them to obtain authorization from local agencies and lending institutions. Under the general permit procedure, DEM would also have a registered copy of the plan and could check compliance with limits of disturbance and protection of wetland values. Higher level applications will receive more attention from DEM as a result of the reallocated staff. Significant impact projects will be handled more effectively through a more interactive process amongst DEM, the applicant, the public and the municipality. Applicants will have a more predictable process to follow throughout this hierarchy of application types/projects.

DISSENTING OPINION Presented by Alison Walsh, representing Save The Bay. Save The Bay is in agreement with modifying the application and permitting procedures to

establish a hierarchy of application types. We do not agree that a general permit for low-impact activities is in the best interest of wetlands protection; until and unless we can agree on what a general permit is and what low-impact activities are. Other recommendations have taken care of most of these concerns, including expansion of exempt activities (W.7), and prioritizing permits by project size (W.8). Degraded wetlands have been decimated by general permits in other states although they play a major role in the rehabilitation of Narragansett Bay.

W.7 Expand the number of exempt activities; provide as many concrete examples of non-impact and exempt activities as possible by guidance or rule for clarification.

BACKGROUND In 1994, DEM promulgated rules under the Freshwater Wetlands Act which designated a number of activities in regulated wetlands areas exempt from permitting. This meant that no application and no written permit was required for these activities. Specific criteria were set forth to identify such exempted activities. In the same rules, DEM provided numerous examples of insignificant alterations that would likely receive a permit if the applicants showed DEM, through submission of an application and plan, that their proposed projects met the criteria set forth in the example. Since the promulgation of the 1994 rules, additional activities have been identified which should be added to the exempt category. Specific guidelines and clarification need to be provided to property owners and others to alleviate their fear that if an exempt activity is carried out, future enforcement will be forthcoming. A number of examples of insignificant alterations provided in the rules could be designated as exempt activities provided they are carried out using best management practices to protect wetland values.

BENEFITS The exempt activities incorporated in the 1994 rules relating to freshwater wetlands have helped to streamline DEM's permitting process by eliminating many unnecessary applications. Expanding the number of exempt activities will enable an even greater number of non-impact activities to take place without application or a written permit. Written guidance in proposed rule changes should help to alleviate fears by many property owners that such activities may take place without a permit and not result in an enforcement action.

W.8 Establish a permitting priority system for processing applications based on size and potential environmental impact of projects.

BACKGROUND Under the current wetlands statute, projects involving wetland alterations fall into two general application categories: Requests for Preliminary Determination or Applications to Alter a Freshwater Wetland. DEM has created a process whereby projects submitted under Requests for Preliminary Determination can receive a decision which finds: 1) the project is not under DEM's jurisdiction since no wetlands are being altered; 2) the project is altering wetlands; however, such alterations are of minor impact and may be approved as an insignificant alteration; or 3) the alterations appear to be significant in nature which necessitate the filing of an Application to Alter a Freshwater Wetland. The problem with this process is that the statute requires all Requests for Preliminary Determinations to be handled within thirty (30) calendar days. This requirement automatically makes each application and project equal by setting a deadline based upon the time or date submitted and not the complexity of the project. Inasmuch as DEM has a finite number of staff assigned to review these projects and must follow, to the degree that it can, the mandate set forth in the

statute for handling such applications within 30 days, action on many small projects is delayed while attempts are made to permit larger complicated projects as insignificant alterations. This is often frustrating to many citizens who can't understand why such small projects require what seems to be an inordinate amount of review time.

DEM has made attempts to improve this process. Since 1992, approximately 99.5% of all Requests for Preliminary Determinations have been answered within forty-five (45) days. However, for small projects, this still seems excessive. Also, in order to accomplish this, DEM has prioritized Requests for Preliminary Determinations over Applications to Alter a Freshwater Wetland. Consequently, the more complex significant alteration projects have had review times increase. Additional modifications were instituted to prioritize the review of applicants' answers to deficiency notices from DEM. Although these practices have been instituted and improvements have been made, further improvements on behalf of small projects with limited impacts are necessary.

The process for handling applications should be modified in the statute to allow DEM a sliding scale of review time depending upon project complexity. Rule changes need to be made to clarify which projects are prioritized due to their limited impact.

BENEFITS Establishing a priority system to speed reviews on small projects will benefit the applicant and the DEM. Review time for the applicant will be reduced and criticism, calls, and lost staff time due to constant inquiries will be substantially reduced at DEM.

W.9 Revise the wetland rules to enable more expeditious handling of emergencies on private property.

BACKGROUND Under the current wetland rules, an emergency alteration is defined as an activity or alteration authorized by the Director within any wetland area which must be undertaken to protect the health and safety of the public from actual or threatened imminent harm. A conditional exempt activity exists for emergency environmental protection where the protective actions are undertaken with the supervision of DEM or federal clean-up personnel. Best management practices to protect the wetland must be used. For other emergency alterations, DEM has developed a specific application which may be submitted verbally or in writing and may receive verbal approval, however, the verbal or written request for permission to proceed with an emergency alteration must be made by an appropriate official of a town, city, state or federal agency or public utility. The understanding is that these individuals or agencies are responsible for correcting problems which arise on an emergency basis and pose an imminent threat to the public health and safety. Specific conditions including deadlines are also included (see Rule 9.01 of the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act for more details).

Since development of the rules, instances have arisen which indicate there is a need to allow DEM the discretion to issue emergency alteration permits for individual property owners. Additionally, emergencies have arisen regarding farms which require immediate attention. Many of these problems do not affect the general public but do represent actual or threatened imminent harm to the individual, their family or their property. Corrections to these problems often cannot wait for a consultant to prepare a plan and DEM to review the correction through normal application processes. While DEM has often looked at these

matters on a case-by-case basis, it is important to have specific criteria set forth in the rules which anticipates this need and qualifies the appropriate handling of such requests.

BENEFITS Modifying existing rules to enable more expeditious handling of emergencies on private property will allow DEM to respond more quickly to the need of citizens when there is actual or threatened imminent harm to individuals, their families, their property or their businesses. Modifying the rules to qualify how such matters are handled will be beneficial to DEM personnel, will help alleviate any potential problem regarding misuse of this type of permit, will solve immediate threats or actual harm more quickly and will allow DEM to become a part of the solution to the correction needed. This way, DEM can help protect the wetland environment which may otherwise be unnecessarily altered in the haste of attempting to correct the problem faced by the property owner.

W.10 **Modify the current application and public hearing process for applications to alter freshwater wetlands (formal applications) so as to: provide for greater interaction amongst interested parties; facilitate discussion with local officials and the applicant; allow for consideration of modified plans or proposals which may develop from input by DEM or any other interested party without having to repeat the permitting process; encourage the adoption of "best" design alternative.**

BACKGROUND The current application and hearing process for "formal" applications has been criticized by applicants, abutters and municipalities. The current process is one in which the DEM accepts what the applicant wants to do, notices it to the public and municipalities with limited information, accepts comments and objections without debate and renders a decision to permit or deny without debate. If there are any substantive changes in the project to address concerns raised during the review process, the process starts all over again. This process is time-consuming and rigid. Since these applications involve the more complex and controversial projects, all parties would like more input and flexibility in the process. The applicant requires a process which allows for more up-front meetings and discussions with DEM staff. Where possible, best design alternatives need to be agreed to by both the applicant and DEM. This will streamline the process, reduce design costs, incorporate minimization of impacts, and increase protection of wetland values up front in the process. The abutter and the municipality want a more informative process where, during open meetings or hearings, DEM can explain the project; its impacts; what mitigative features will be incorporated into the project; and what, if anything, will be done to alleviate concerns of the public should the project be allowed. They want a process that is open where they can interact with the DEM and have their concerns addressed.

If after full discussion with the municipality, abutters, and other members of the public the applicant believes design alternatives can be incorporated to address all concerns, they want a process that allows for these changes without starting from the beginning. In order to accomplish this, the process set forth in the legislation must be modified. With other changes recommended, DEM could reallocate staff to better serve the applicant and the public. By creating a more open decision process, DEM could interact better with the municipality, the abutter or other interested parties. It has been suggested that noticing all "formal" application projects to be discussed at an open forum once or twice per month would bring all concerned parties together. This will facilitate a more informed public and result in a decision process more flexible to the needs of the applicant and the public.

BENEFITS Modifying the current application and public hearing process for formal applications would benefit the applicant through up-front meetings and recommendations including the identification of best design alternatives. Creating an open process to allow interactive discussions among the municipality, abutter, applicant, DEM and the public would allow resolution of concerns, a better informed public, a less rigid process to accommodate revisions and design alternatives and a smoother permitting process for the more complex projects impacting wetlands now handled by the DEM.

- W.11** Develop a procedure which would enable the recertification of previous "presence of wetlands" and "edge" determinations where site conditions are essentially unchanged.

BACKGROUND Presently, edge determination findings are valid for four years from the date of verification by DEM. The Department does not recognize the findings after the expiration date of the verification, and no renewal process exists.

BENEFITS A recertification process for wetland location findings would enable work products to be reused, lessen processing times at DEM, and reduce costs for the applicant and DEM.

- W.12** Change the permit-life of formal approvals from 1 year to 4 years.

BACKGROUND Currently, the Freshwater Wetlands Act and specifically R.I.G.L. Section 2-1-22(d) states that permits issued as a result of the formal application process shall be valid for a period of one year from the date of issue and shall expire at the end of that time unless renewed. Such permits shall be renewed for up to three (3) additional one-year periods. Historically, this criteria set forth in the law has been problematic for the permittee and the DEM. Generally, the consensus by both the permittee and the DEM is that such permit periods are too short. Many complex projects require multiple permits from various agencies and/or involve delays for a number of reasons. Experience has shown that many applicants do not realize the permit expiration date until after it has passed simply because they are tied up with other application processes or issues attempting to move forward with the project. Often, the project has not started even at the end of one year; however, a request for renewal must be filed and processed taking time by the applicant and the DEM. Much of this time appears to be unnecessary. While there are definite environmental benefits of placing a time limit on a permit, such benefits are generally associated with the ability to reconsider impacts as a result of changes in surrounding conditions or site characteristics that are modified over longer periods of time than one year.

BENEFITS Modifying the current wetlands statute to allow permits to exist for four years rather than one year will reduce the burden on the applicant of having to worry about a quickly approaching expiration deadline and then filing renewal request applications for successive years. It will also reduce the burden of DEM from having to process such applications that generally are unnecessary when considering the short time periods involved.

- W.13** The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee shall review the existing rules and practices regarding farming activities related to Chapter 2-1-22(i) of the General Laws to determine if any amendments need to be made.

BACKGROUND Primarily, the DEM Division of Agriculture follows a procedure set forth in a Memorandum of Understanding (MOU) among the DEM, the U.S.D.A., Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service) and the U.S.D.A. Farm Services Agency (FSA). The purpose of the MOU is to coordinate the efforts of the DEM, the NRCS and the FSA to assure that agricultural projects under R.I.G.L. Section 2-1-22(i)(2) and (j) are planned, designed and implemented in a manner which is consistent with the Administrative and/or regulatory requirements of the respective agencies and the farmer's operational needs. Under the practices and procedures set forth in the MOU, the NRCS and FSA work with the farmer to develop a proposed project and preliminary plan. This preliminary plan is coordinated with the DEM Division of Agriculture and submitted to the Division of Freshwater Wetlands and Water Resources for review and comment. The purpose of the initial review by DEM Wetlands and Water Resources is to help the Division of Agriculture determine the extent of all wetlands and ascertain any initial concerns from the Divisions of Wetlands and Water Resources regarding impacts of the proposed project. Following final plan development by NRCS and submission to the Division of Agriculture, the Divisions of Wetlands and Water Resources provide final comments to help the Division of Agriculture determine if the project represents an insignificant alteration to freshwater wetlands. The process that has been stated above has, and is, being criticized by the farm community as being too slow. Comments submitted by the Farm Bureau have been critical of this practice as being outside the process set forth in R.I.G.L. Section 2-1-22(i) and not being streamlined enough to allow farmers a speedy review and approval of their projects involving freshwater wetland alterations. A contrary review of this process by the DEM Division of Wetlands and Water Resources is that it allows for an accurate identification of regulated wetlands; an ability for alternatives to be considered; an ability to eliminate unnecessary wetland alterations; an ability to minimize wetland alterations and an ability to modify the project to improve chances of approval as an insignificant alteration, all before final plans are designed and submitted. Given the viewpoints presented, it was felt that the practices and procedures should be reviewed by the Division of Agriculture and the Agricultural Council Advisory Committee as set forth in R.I.G.L. Section 2-1-22(i)(3) to determine if any amendments need to be made to the rules or practices now existing.

BENEFITS The process set forth in R.I.G.L. Section 2-1-22(i)(3) which allows the Division of Agriculture and Agricultural Council Advisory Committee to adopt regulations should be used to determine if any amendments need to be made to existing rules and practices. This process should resolve the concerns of the Farm Bureau and identify any changes in practices or existing rules which may be necessary to streamline the permitting process set forth in R.I.G.L. Section 2-1-22(i).

DISSENTING OPINION Presented by Sue Albert, representing the RI Farm Bureau.

BACKGROUND In 1989 - Freshwater Wetlands Act was amended to exempt certain farm activities from being regulated by the Division of Freshwater Wetlands (2-1-22 (i-1). For agricultural activities which require new construction, the Division of Agriculture was identified as the group responsible for handling permitting (2-1-22(i-2). Since 1994, the Division of Agriculture has been administering agricultural wetlands permits under a new procedure set forth in a Memorandum of Understanding (MOU) among DEM, the USDA Natural Resources Conservation Service (NRCS), and the USDA Farm Services Agency (FSA). The purpose of the MOU was to coordinate efforts of the agencies (DEM, NRCS, and the FSA) to assure that agricultural projects were consistent with the goal of the

respective agencies and the farmers' operational needs. The result of the MOU has been a backlog of permitting decisions while waiting for review and comments from the Division of Wetlands and the Division of Water Resources. In other words, water quality projects such as animal waste management improvements and upgrading, and water conservation projects which are for the most part designed and paid for through a federal cost share program remain on hold. Farmers and NRCS technicians become frustrated while often federal dollars for those water quality projects dry up.

It is the position of the RI Farm Bureau that the process developed under the MOU serves neither the farmer's needs nor issues of both water quality and water conservation. More important, the development of the MOU did not follow the process for adopting regulations for subsection 2-1-22 (i)(3).

BENEFITS By returning to a process of agricultural wetlands permitting under the Division of Agriculture, with the technical and engineering support as offered by the USDA Natural Resources Conservation Service, agricultural permitting can be addressed in a timely manner while assuring that the overall goals of wetlands protection, water quality, and water conservation remain intact. Another obvious benefit is that the Freshwater Wetlands Division which is currently overburdened with permitting will not have to use staff time and resources on those agricultural projects deemed insignificant alterations.

W.14 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee should review and determine the need for a specific application form for farming projects which would request more precise project information so as to enable more streamlined handling of various farming projects.

BACKGROUND One item discussed during the meeting involving agricultural wetlands matters related to the lack of a written application form for farmers when submitting projects to the Division of Agriculture under R.I.G.L. Section 2-1-22(i)(2). Currently, the Division of Agriculture is contacted by the farmer for assistance and a meeting(s) is(are) held to discuss the farmer's planned project. This meeting usually involves the U.S.D.A. Natural Resources Conservation Service (NRCS). Following this meeting a plan is prepared for submission to the Division of agriculture to begin the thirty (30) day review process set forth in R.I.G.L. Section 2-1-22(i)(2). This process, however, is not consistent with the law which requires that, "...the Division of Agriculture shall be notified by the filing of a written application for the proposed construction by the property owner. The application shall include a description of the proposed construction and the date upon which construction is scheduled to begin, which date shall be no earlier than thirty (30) calendar days after the date of filing of the application." Currently, the Division of Agriculture does not have an application form for farmers.

BENEFITS Development of a written application form as required by R.I.G.L. Section 2-1-22(i)(2) will help the Division of Agriculture obtain more precise information regarding the farmer and the proposed project affecting freshwater wetlands. This should assist the Division of Agriculture in processing requests by farmers to undertake projects proposed in freshwater wetlands thereby streamlining the review process. The development of a written application form will result in compliance with the Freshwater Wetlands Act.

- W.15 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee shall review the definition in the statute qualifying persons as farmers and recommend changes so as to encourage new farming activities in the state.**

BACKGROUND The current definition for a farmer under R.I.G.L. Section 2-1-22(j) is an individual partnership or corporation who operates a farm, has filed a 1040F U.S. Internal Revenue Form with the Internal Revenue Service, has a state of Rhode Island farm tax number, and has earned ten thousand dollars (\$10,000) gross income on farm products in each of the preceding four (4) years. While this definition prevents misuse of the law by non-farmers, it also prevents new farmers or persons wanting to start into farming from enjoying the less restrictive regulatory process set forth in the law. This can discourage an expansion of farming activities in the state. It also hinders new farmers attempting to carry out farm projects in a timely manner. This problem could be rectified if the Division of Agriculture and the Agricultural Council Advisory Committee developed a revised definition for farmers. This new definition should capture existing farmers that do not meet the current definition and individuals wanting to start into farming. This definition should be carefully crafted so as not to misuse the less restrictive regulatory process set forth in the law. This could be accomplished, for example, by perhaps restricting the use of the land on which the wetland alteration takes place to remain as farmland for a specific amount of time following the alteration.

BENEFITS Revising the definition of farmer as set forth in R.I.G.L. Section 2-1-22(j) will encourage new farming activities in the state. This will be accomplished by allowing new farmers and persons wanting to start a farm to enjoy the same less restrictive regulatory process currently set forth in the law for existing farmers.

- W.16 The DEM - Division of Agriculture and the R.I. Agricultural Council Advisory Committee should review the definition of normal farming and ranching activities under Chapter 2-1-22(i)(2) to determine if the building of a barn constitutes a farming ranching activity; if so, the regulations should be revised accordingly.**

BACKGROUND Currently, under the wetlands statute, the construction of a new farm structure in wetlands, such as a barn, requires the farmer to submit an application for approval to the Division of Freshwater Wetlands. Under R.I.G.L. Section 2-1-22(i)(3), however, the statute allows the Division of Agriculture, in coordination with the Agricultural Council's Advisory Committee to determine whether a proposed activity, other than an activity listed in subsection (i)(1) of the statute, constitutes a normal farming activity or involves the best farm management practices. Inasmuch as the statute authorizes the determination of other proposed activities to be declared a normal farming activity, construction of farm structures, such as a barn, can be added to the list of exemptions under R.I.G.L. Section 2-1-22(i)(1). By determining the building of a barn to constitute a normal farming and ranching activity, the Division of Agriculture could revise its regulations and add this activity as exempt from the provisions of R.I.G.L. Section 2-1-22.

BENEFITS The farmer would no longer have to submit an application for a barn or similar construction in wetlands to the Division of Freshwater Wetlands for review and approval.

Conversely, the Division of Freshwater Wetlands would no longer have to review such applications. Such activity could be carried out at the discretion of farmers in accordance with best farm management practices.

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ISDS

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| | The guide should be reviewed annually and updated as needed. | |
| SD.15 | Conduct an informational seminar mandatory for licensed designers at least once annually to review regulatory requirements, explain changes in procedures, accept comments, and provide for discussion of emerging issues. | 39 |
| SD.16 | Educate ISDS owners about the benefits of proper maintenance and water conservation and what not to put into an ISDS; use the application approval process as an opportunity to convey this information. | 40 |

RECOMMENDATIONS/BACKGROUND & BENEFITS

ISDS

- SD.1 Establish a licensing program within DEM to provide for qualifying and regulating private professionals engaged in ISDS design activities.**

BACKGROUND Presently, any engineer or land surveyor possessing a license from the State of RI to practice within his or her respective profession is authorized by DEM regulations to design septic systems. Generally, these "designers" are highly knowledgeable and proficient in many technical disciplines, and offer a valuable service to their clients. However, many designers lack specific training and expertise on on-site wastewater disposal technology, operation and maintenance, and some are not adequately familiar with DEM regulations and procedures. Most rely on the prescriptive standards contained in the regulations as the design basis and, in effect, on DEM staff permit reviewers to check plans and give guidance. Designing ISDS systems is relatively risk-free due to the extensive involvement of regulatory personnel and is often done on part-time basis or, in large firms, by less-seasoned or entry-level personnel. Furthermore, DEM experience has been that a small but active number of designers purposely misrepresent or fabricate data to lower costs or conceal conditions which might cause permitting problems. When a serious problem does develop during permit development or after the permit is issued, the credibility of the state's process or the adequacy of the state's protection efforts is questioned.

In response, DEM-ISDS' permitting program practices a high degree of oversight over various steps of the design and installation process. These include verification of field data, strict compliance with procedural and regulatory requirements, and suspension of approvals where design parameters are later found to be incorrect. This has resulted in a cumbersome process, with many applications returned unapproved (2500 in 1994) requesting additional information, further site testing or corrections. Notwithstanding a general concern that some DEM regulations and procedures may be unnecessary, vague or inadequately communicated to the public, which is addressed separately herein, this process is inefficient and adds greatly to the overall approval time for permits.

Of even greater concern to builders and homeowners, no one seems to be accountable under the present process should a permit be delayed or a system not function properly. Regulators distance themselves from accepting any responsibility, insisting that the designer, installer, or applicant simply do not adhere to the regulatory requirements.

What is needed is a regulatory structure which places responsibility for compliance with regulatory requirements and proper functioning of on-site wastewater disposal systems (septic systems) directly upon private professionals and removes the state from the burdensome process of permit reviews. In essence, licensing of septic system designers would shift DEM's oversight emphasis from applications to design professionals. Instead of reviewing thousands of applications per year in minute detail, DEM would review the performance of an estimated 100-200 licensed designers.

The designers would be qualified and tested, and receive periodic instruction and information from DEM. The Committee feels strongly that there should be no grandfather clause in the

license program. Refresher training on state-of-the-art practices and Department regulations would be mandatory. A hearing process would be established to hear evidence in instances where sanctions are imposed for a designer's failure to perform properly.

BENEFITS Similar to the recommendation on licensing wetland professionals, this recommendation is the most significant, resulting from the commission's study of the ISDS program. It is expected to reduce the average approval time for most applications from 8-12 weeks to 2-4 weeks. Septic system designs will improve, septic systems will perform better and last longer, installation problems resulting from poor designs or undisclosed site conditions will decrease, and life-cycle service cost will decrease. Builders and homeowners may expect significantly more accountability. Substantial resource savings are expected which will be reallocated to a range of needs, to include: administering the licensing program, nurturing the profession, education and outreach, upgrading of substandard and failing ISDS systems statewide, and reducing the application backlog during the peak construction months.

SD.2 Delegate the installation inspections of new ISDS systems to DEM-licensed professionals, subject to DEM oversight.

BACKGROUND Present rules and procedures require that DEM inspect the installation of approved ISDS designs. The objectives of the inspection are to ensure that the systems are installed at the proper location and depth, the proper materials are used, the best construction techniques are followed, and that the system is generally in conformance with the approved design. Inspections consume 30% of the technical staff's time. Staff which would otherwise be available to review design plans and resolve permitting problems are presently burdened with extensive inspection responsibilities. On average, three inspections are performed for each installation.

ISDS installations must be inspected. Because systems are completely buried beneath the ground-surface, there is no practical way to assess the quality of construction once installed. Also, they are built "in-place" with a combination of materials existing on the site, gravel and components supplied by vendors, excavation machinery, and know-how to put it all together. Compliance inspections lower the number of opportunities installers have to cut corners which might adversely affect the life of the septic systems.

Present rules do not require that the designer be involved in the installation of the ISDS that he or she designs. In fact, in the majority of instances, the designer is disassociated with the installation process altogether. Most builders or owners rely on the installer to install a proper system and DEM to ensure compliance. However, DEM's inspections are spot checks only and are not a guarantee that the best construction methods are followed or that the designer's specifications are met. Even with DEM inspections, many systems fail well before the end of the 20-25 year life expected of them.

This recommendation would make designers ultimately responsible for the proper installation of septic systems they design by requiring that they supervise each installation and certify that the ISDS conforms with design plan. As with the other licensing programs recommended in this document, the Committee feels strongly that there should be no grandfather clause in the license program. The designer would carry primary and nearly exclusive responsibility for the performance of the system. It is expected that designers, builders and installers would build linkages with one another to form construction teams directed by the designers. DEM

oversight would be selective based on the past record of the designer and the size and complexity of the project. In addition, the threat of ISDS designer license revocation or suspension will be a strong deterrent against abuse or short-cuts.

BENEFITS The recommendation is expected to reduce the number of system inspections by DEM by half. It will enable significant resources to be reallocated to site-suitability field reviews and help implement the year-round water-table determination process. Expectations for better performance from septic systems should increase. Also, by placing responsibility squarely upon the private professionals and eliminating the culpability of the installers, failure investigation and restitution may be simplified.

SD.3 Develop thorough site-suitability criteria and alternative system types to address the design needs appropriate to the site conditions.

BACKGROUND The sizing of a leachfield for a typical residential dwelling is exclusively dependent on the water table design depth and the percolation rate of the most restrictive soil stratum. It generally does not take into account the size of the lot, the soil type, the slope of the land, the presence or absence of limiting factors on nearby parcels, the density of housing, whether the ISDS is the permanent disposal option likely for the parcel of land, or the cumulative impact on important surface water and groundwater resources. Other limitations or omissions in the rules prevent the Department from encouraging the use of best or most appropriate technologies. For example, soils having a percolation rate of 60 minutes per inch are considered unsuitable. While such soils are a serious concern on a small parcel of property, the Wisconsin Mound - Pump System could be used on a larger parcel to successfully overcome the limitation. Presently, the rules recognize only three types of systems: trenches, chambers and seepage pits. The use of any other system requires a variance and its lengthy review and notice process. Current regulations require large amounts of fill to maintain the required 25 ft invert perimeter. Serial distribution could be employed on sloping sites to minimize fill requirements with no loss of function or protection.

The lack of comprehensive siting regulations results in a process which is unpredictable, unresponsive and mediocre. A site either meets the limited criteria and receives a permit or it doesn't. Those which do not, enter a deliberative variance process with little guidance or direction. Alternatives are available which may enable the Department to streamline permits for many sites.

The recommendation will result in the expansion of suitability criteria to encompass all pertinent siting features and issues. New ISDS system types will be added which match more closely with site conditions.

BENEFITS Permit approvals and time frames will become more predictable. Overall permit approval time will be reduced. Use of alternative technologies will increase and better performing systems will result.

SD.4 Develop a procedure for systematically approving proven alternative technologies and products for use in place of or in conjunction with conventional systems.

BACKGROUND In the past decade, a number of new technologies have been developed relating to on-site sewage disposal. Some are very different than septic system technology, resembling mini-treatment plants; others offer new materials or configurations or in some way purport to enhance treatment. These technologies generally fall into three categories: products or components, alternative processes, and innovative or experimental systems. They include engineered plastics and fabrics, filtering devices, systems using pumps or dosing equipment, aeration systems, denitrification systems, and waterless toilets. Many of the technologies are proprietary and some have been approved for use in other states. In order to properly evaluate each technology and how each relates to standards contained in the ISDS rules, an objective procedure established by rule is needed. Such a procedure is felt to be critical to fully implementing SD.3. This recommendation is now being implemented.

BENEFITS The alternative technologies will make new tools available to the designer to aid in the ISDS design process. The procedure will result in definitive guidance to designers and installers as to how each technology might be used and comply with DEM regulations. Some technologies will enhance ISDS performance and may reduce the long term costs of on-site disposal.

SD.5 Develop and implement alternative water table determination methodologies - namely soils-based methods and comparison well methods - to enable year-round water table design depth determinations where feasible

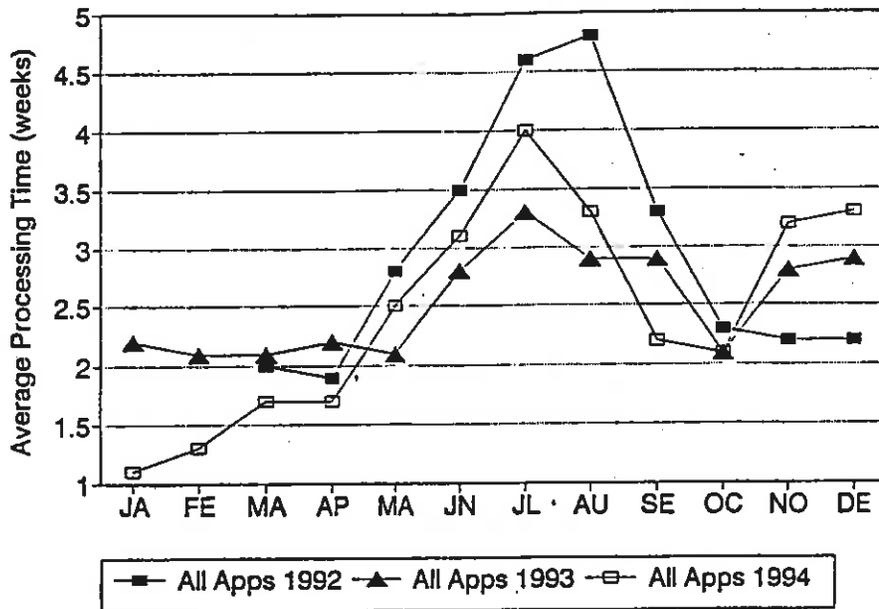
BACKGROUND The application process for septic system approval involves two critical steps: determination of the design groundwater table depth (DWT) and approval of the design. The first step ordinarily requires the excavation of a test hole at the site of the proposed leaching field, installation of a monitoring pipe and measurement of the water table depth and fluctuation during a wet season. Results are submitted to DEM for verification and acceptance. The DWT is the most important design parameter of an ISDS and often determines whether or not a site is suitable for on-site sewage disposal.

The wet season DWT procedure causes a major backlog in application processing every spring, which last frequently through August (see Figure 2). In addition, applicants who decide to build in May often must wait until the following wet season to proceed.

The recommendation will implement alternative techniques to determine the DWT depths at any time of the year. DEM will adopt a soils-based method similar to that being used in Maine. The United States Geological Survey recently published a report commissioned by DEM on the comparison well method, which will also be available. Although these techniques will involve increased staff resources (0.5 FTE) in the suitability step, they will be totally offset by reallocating staff-time saved by other streamlining initiatives.

BENEFITS The recommendation will enable more than 75% of applicants to proceed to the design step within 2-4 weeks of their decision to proceed. The perennial spring permitting backlog will be reduced by more than 50%.

Figure 2. Seasonal Backlog in ISDS Application Processing.



SD.6 Provide procedures to enable concurrent submittal of site-suitability and design approval applications.

BACKGROUND As mentioned above, the ISDS permitting process involves a two-step process: site-suitability and design approval. Ordinarily, each step includes mailing an application to the DEM - Office of Business Affairs with a fee, processing of the fee payment at that office, hand-carrying the day's applications to the DEM -ISDS Office, logging-in and scheduling a review date or deadline using the computer tracking system, informing the applicant's designer of the date (for dry season tests only), making the field visit or review, recording the findings, logging-out the application, and mailing of the results. At best, such a process will take two weeks. During peak construction periods, it may take six weeks.

On many sites, a design can be prepared based on conditions determined from file records, soils maps, topographical and surficial geology maps and some field reconnaissance. In such cases, the suitability step is used principally to verify expected conditions and design assumptions. Combining the two application steps would economize on processing time. The procedure might also be advantageous at sites where there is less certainty as to suitability for on-site wastewater disposal and compliance with regulations. The availability of a completed plan with design details may foster interaction between parties present at the field test, identification of possible alternatives, and immediate decisions on further testing.

BENEFITS The concurrent procedure when used should reduce permitting times from 2-6 weeks to 1-3 weeks. Some reallocation of resources (0.25 FTE) will be required.

SD.7 Extend the life of approved ISDS permit applications wherein the use of an off-site drinking water supply is proposed (i.e. no private wells use).

BACKGROUND Current regulations specify that permits are valid for only two years from date of approval where the water supply source is off-site. (Areas served by private drinking water wells expire after one year.) A renewal process exists which allows designs to be renewed (usually at least once or twice) without any modification so long as the design continues to comply with the standards which were in effect at the time the original design was approved. The process requires that the designer visit the property to check for site changes including possible impacts from drainage modifications caused by construction activity in a housing plat or on an adjacent lot. A renewal application is filed with a fee of \$30 to the DEM. Processing time is one-two weeks. The purpose of the renewal is to give the Department an opportunity to review the impact of any changes in site conditions on the design. The renewal process also helps to keep any new owner in contact with the designer, check conditions which may impact the owners development intentions, update DEM records on ownership and avoid problems and delays during the construction process.

Developers balk at the short period of validity and the renewal process, citing excessive engineering costs, permit fees, unnecessary paperwork, and missed renewals which result in expiration of permits. Wetlands determinations are valid for four years. ISDS permits should be valid for the same period.

BENEFITS Potential benefits include: less burden on the applicants to track validity of their applications, decreased engineering costs, and less workload for DEM personnel. Personnel can be reallocated to other critical tasks.

SD.8 Streamline the ISDS alteration or upgrade rules and procedures to provide an incentive for users to replace failing septic systems.

BACKGROUND This recommendation has been partially implemented. Under current rules, ISDSs must be upgraded to current standards if: wastewater flow will increase, the ISDS is being replaced, or a system suitability determination concludes that the extent of renovation or change of use proposed on a structure exceeds certain thresholds and requires an upgrade. Many upgrades are the result of adding second floors to a home, converting a seasonal home to year-round use, or remodelling of a restaurant. The procedures and standards applied to these upgrades are virtually the same as for new construction. However, these existing uses are often constrained by lot size, proximity to nearby wells and other features, and may be near wetlands. Approval times for these applications are nearly as long as for new construction and are a significant impediment to encouraging upgrades. Two-thirds of the estimated 140,000 ISDSs in use are thought to be substandard or in failure.

The Department has already modified its water table testing procedures to enable year-round determination of water table design depths for most alteration sites. This recommendation will result in the creation of separate standards to apply to existing uses. It is expected that standards will address drinking water well setbacks, sizing, "work-arounds" for certain requirements where appropriate, wetlands concerns, coordination between DEM, local governments and other state agencies, and alternative technology.

BENEFITS Property owners using substandard or failing on-site wastewater disposal systems will be encouraged to replace them. The cost of complying with the regulatory process will decrease. The expected time-frame for approval will be more predictable. Better information will be available to homeowners who might wish to replace their systems. As a result, the quality of sensitive or critical resources will be improved or be better protected from deterioration and public health risks will be reduced.

SD.9 Establish clear objectives and standards for ISDS repairs which will foster expeditious processing of applications and protection of the environment.

BACKGROUND Between one-third and one-half of the ISDS systems installed each year are for repairs of failed systems. Because public health considerations necessitate immediate repairs to failed systems and many homeowners cannot afford a costly repair, the Department has routinely waived many of the standards for site evaluation and design. The water table depth is normally estimated and leaching fields are often minimally sized. Additionally, present rules do not require that repair designs be prepared by engineers but, rather, allow licensed installers to submit repair plans on behalf of homeowners who have contracted with them to undertake the repairs. While this has permitted speedy repairs, many repairs are short-lived and some may continue to pose public health risks and other environmental problems.

The recommendation will establish a definitive policy on repairs to improve longevity of service and minimize environmental risks. It is expected that criteria will be developed which will match the repair needs more closely with actual site conditions and constraints and target critical areas for enhanced protection. The policy must maintain a sensitivity to cost impact to the homeowner.

BENEFITS Repairs will last longer and be better protective of public health and the environment. Repairs will be more consistent overall because installers will have clearer guidance on the requirements of repaired systems. Price quotes given to homeowners will be more comparable. The policy may eventually enable DEM to accept many repairs as upgraded systems substantially meeting standards under the SSD process.

SD.10 Redefine the unit of sizing (i.e. number of bedrooms) of ISDS systems for residential uses to facilitate evaluation of system suitability under the upgrade policy.

BACKGROUND Residential ISDSs are designed based on the number of bedrooms in a dwelling. A unit flow of 150 gallons per day per bedroom is used based on an estimated wastewater generation of 75 gallons per person per day. Today's homes however tend to be larger than homes of the 60's and 70's upon which the flow unit is based and often include studies or office rooms which may also be used as bedrooms. The current definition of a bedroom under ISDS standards is a room at least 100 square feet in area, having one window and an interior doorway. ISDSs designed based on the assumption that these auxiliary rooms are bedrooms will be larger and more expensive than necessary to service the needs of the home. In some cases, lots are not large enough for these larger systems and permit approvals become a problem. Also, when assessing whether an existing system complies with current regulations, the number of rooms qualifying as bedrooms may often lead to a determination of not suitable or not in compliance. In spite of the clear objective definition for a bedroom,

many applicants find it confusing and unjust that a room which they sincerely intend to use otherwise, is defined as a bedroom by DEM. The Department frequently finds that small additions to homes meet the definition of bedroom and will require a modification of the septic system prior to construction of the addition. It should be noted that present ISDS practices generally do not require the submittal of house layouts with the application; the building is shown only as a footprint on the plan indicating where the building will be built.

Another unit of sizing of ISDSs is needed which takes into account both past and current house design practices. Two key alternatives under consideration are: a method based on gross square footage of living space, and a second method based on the total number of rooms in the dwelling perhaps with allowances for kitchens, living rooms and baths. Other alternatives, including one based on the number of fixtures and fixture type will be evaluated. It is possible that a combination of methods will be suggested, based, for example, on the date the home was built or whichever results in the largest sewage flow. Notwithstanding, any new basis for sizing should not serve to allow substandard systems to remain in place. A modification of the regulations concerning the SSD process may be necessary in conjunction with this change. The objective will be to simplify the definition for homeowners, realtors, builders, and local officials and eliminate confusion or misunderstandings over DEM's requirements.

BENEFITS The recommendation will enable homeowners, homebuyers, real estate agents and others to establish the number of bedrooms in a house without fear that DEM will find the ISDS inadequate for that number of bedrooms. It will help them make informed decisions about the size adequacy of an ISDS servicing a home which may come under review for regulatory compliance through the SSD process. Accordingly, it should reduce processing time for SSDs in instances where this issue had caused confusion and delays.

SD.11 Establish and publish a more flexible variance procedure for alteration or upgrade applications without compromising public health or environmental protection.

BACKGROUND Upgrades to ISDSs which are not emergency repairs are considered alterations, in which the full standards strictly apply. Where standards cannot be met, variance applications must be submitted to demonstrate that the granting of the variance is acceptable. The process involves a pre-review by the department, a 20- day notification and comment period, proof-of-service, a final review by DEM staff, and final approval by an agent of the Director. The process takes 3-6 months and is costly. Oftentimes, projects are well underway when the need for an upgrade to the septic system becomes known. A delay of this magnitude can be onerous.

The objective of this recommendation is to add flexibility to the process to enable DEM to work more closely with applicants and accommodate existing site constraints without creating added risks to public health or environmental protection. Importantly, the process must not restrict DEM from seeking the views of interested parties where increased risks to their interests are potentially at stake. A rule change is necessary to implement this recommendation.

BENEFITS Variances will be processed for most upgrades within 4-6 weeks. Building Officials will be more disposed to requesting that the applicant seek DEM approval prior to issuing a building permit.

SD.12 Modify the rules for departmental review and approval of variance applications to eliminate current bottlenecks.

BACKGROUND Present rules require that the Chief of the Division of Groundwater & ISDS make the final decision on all variance applications. This requirement is not necessary and is overly-restrictive in that an action cannot be delegated when the Chief is unavailable. The restriction will be eliminated and replaced with language which will give the Director flexibility to appoint other qualified DEM staff members to make final variance decisions.

BENEFITS Variance review times will decrease.

SD.13 Establish a dual-tier variance procedure by rule which would allow a simplified procedure for some minor variances and not involve a public notice requirement; other variances would require full notification.

BACKGROUND With few exceptions, current rules require that a proposed ISDS comply with strict set-backs to dozens of features such as water supply pipelines, drinking water wells, drinking water tributaries, and certain critical coastal wetlands. Many sites cannot comply with these set-back requirements, resulting in numerous lengthy variance applications to the Department. A significant time component is the notification process to abutters and other designated parties as per rule. Abutters frequently raise questions irrelevant to the issues involved, resulting in calls to the Department, requests for written responses and dissatisfaction when a permit is approved. Many variances involve potential health risks to the applicants or building occupants alone. The notification process, in these cases, raises unnecessary fears and anxiety. Also, from a scientific standpoint, many variances pose no greater risks than those designs which comply with standards.

The recommendation will establish a two-tiered variance process and set specific criteria which would exempt certain variance applications from the notification requirements.

BENEFITS Variance review times will be reduced significantly on approximately 10% of the variance applications.

SD.14 Develop an ISDS permit guide that targets both applicants and designers to include:

- a) Instructions for completing forms
- b) Application submittal requirements, including fees
- c) Process flow chart detailing steps in the processed, products, mailings, etc
- d) Addresses and telephone numbers for assistance
- e) Sample design types and design notes
- f) Review sheet checklist

The guide should be reviewed annually and updated as needed.

BACKGROUND A comprehensive set of instructions and guidelines is not available at the present time to help applicants and engineers understand the ISDS application processes. Information learned by the designer is not available to the applicants. Applicants often feel helpless and fear the DEM process because they do not understand the process and must rely on others for guidance and direction. The Department's practice to correspond with the designer, to speed-up responses, leaves the applicant out of the loop until final approval is obtained, which exacerbates the problem. Even worse, calls made to the Department for basic information may be handled inconsistently or result in mis-communication because of the complexity of the process or circumstances.

A written guide will help immensely toward improving communication among all parties involved.

BENEFITS The guide will help consumers understand the DEM processes, aid in early decision-making, foster a better working relationship between applicant and designers and with DEM, lead to more complete application submittals, and reduce permitting times. Fewer calls will be made to the Department with the resulting benefit that other calls will be handled more quickly and more efficaciously.

- SD.15** Conduct an informational seminar mandatory for licensed designers at least once annually to review regulatory requirements, explain changes in procedures, accept comments, and provide for discussion of emerging issues.

BACKGROUND Communications between the design professionals and DEM presently include occasional mailings, telephone calls between DEM employees and individual professionals, and limited appearances before various professional organizations. These are not sufficient to meet the needs of either party. However, effective communication is made difficult by the large number of professional involved - over 400. In addition, little planning-time is currently available to DEM staff to prepare properly for the large potential audience.

Nevertheless, the need to communicate is even much more important today than in the past. In the period 1981 to 1989, DEM-ISDS promulgated only 4 amendments to the rules. Each was very brief, with approximately 10 pages all-totalled. However, during the last four years, three amendments were produced totally more than 50 pages. Amendments were the result of changes in legislation and increased responsiveness by the Department to needed regulatory changes. The pace of regulatory change is expected to increase as a result of the committee's work. Also, the interest locally and nationally concerning non-point pollution impacts from ISDS has risen sharply during the same period. The development of new technologies in response to this movement is challenging regulators to accept still more change. Many designers are small business owners who are hard-pressed to remain current on the rapid changes in the state-of-the-art and regulations.

By licensing designers as per SD.1, the Department should have the resources and focus necessary to conduct effective informational seminars. Designers should find them to be worthwhile and a valuable source of useful guidance.

BENEFITS The number of applications deemed unacceptable for approval upon first review will decrease and, as a result, overall approval-time will decrease. Informational meetings

will also serve to encourage open discussion on important issues of concern to the designers or DEM, achieve consensus on controversial topics, provide for feedback on new policies or procedures, and be a conduit for suggestions for constructive change.

SD.16 Educate ISDS owners about the benefits of proper maintenance and water conservation and what not to put into an ISDS; use the application approval process as an opportunity to convey this information.

BACKGROUND ISDSs work best when properly maintained. Yearly inspection of the septic tank and periodic pumping when needed can avert costly damage to the leaching field. Lowered water use may extend the life of the leachfield and prevent overflows of poorly functioning systems. Homes without garbage grinders have significantly less problems with their ISDSs. Toxic chemicals and some septic system additives may be harmful to ISDS operation and pollute groundwater. Unfortunately, most homeowners are not aware of the importance of these factors on the health of their septic systems. The objective of this recommendation is to provide homeowners with accurate technical information concerning ISDS operation and maintenance.

BENEFITS This recommendation will result in improved maintenance of septic systems and reduced frequency of repairs. Groundwater will be better protected as will private drinking water wells.

RECOMMENDATIONS/BACKGROUND & BENEFITS

ENFORCEMENT

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| E.1 Promote the creation of a program to offer low-interest loans to help defray the costs for either repair or replacement of failed septic systems | 43 |
| E.2 Expand the Department’s practice of requiring that permit holders use consultants to ensure compliance with permit terms and conditions. These consultants should be licensed by DEM. The role of the consultant as an environmental monitor should be strengthened. Concomitantly, sanctions against permittees who do not comply with consultant’s requirements should be strengthened. | 44 |
| E.3 Both programs should continue to issue and improve upon Notices of Intent to Enforce (NOIs). a. ISDS Program should modify its initial letter to be less intimidating and more informative. This letter should be firm in its message that a problem exists and should make clear that the recipient has the opportunity to meet with DEM staff to discuss issues and means to resolve the problem short of the formal Notice of Violation and ensuing enforcement process. b. Develop a second NOI letter for each of the programs to ensure the recipient the opportunity to resolve the violation informally before an NOV is issued. | 44 |
| E.4 Revise the wetlands statute to require disclosure of an enforcement letter and other correspondence concerning wetlands on the property to the potential buyer when enforcement actions involving the property are outstanding. | 45 |
| E.5 Develop a program that authorizes municipalities, under DEM authority, to assist DEM by providing pre-enforcement compliance functions. These functions would be supplementary in nature. | 45 |
| E.6 Create a process to: a) allow for after-the-fact applications under carefully defined circumstances, and; b) charge a higher fee for after-the-fact applications than for those applications submitted prior to initiation of any construction activity. The agency should have the discretion to still require restoration where necessary. | 46 |
| E.7 Develop a guideline for internal use, available to the public, for the Division of Freshwater Wetlands to focus its resources on the most egregious violations. | 47 |
| E.8 Modify the process followed by DEM for administrative adjudication hearings that allow a time period for opposing parties to correct any obvious errors contained within a recommended decision before submission to the Director. | 47 |
| E.9 Revise the wetlands statute to allow the DEM to cite the responsible party, the property owner, or both for unauthorized wetlands alterations. | 48 |

E.10 Revise the wetlands statute to improve the ability to gain restoration and reduce the permanent loss of wetlands as a result of unauthorized alterations, including : a) the result of the sale of property to innocent buyers when an unauthorized wetland alteration has occurred on the property; and b) the impacts of "migrating" wetlands alterations onto adjacent, neighboring, or downstream parcels of land owned by individuals not responsible for the alteration. 48

E.11* Modify the wetlands statute to allow for a maximum penalty of up to \$25,000 for Notices of violation involving major unauthorized wetland alterations, but in no event shall an NOV contain an assessed penalty in excess of \$25,000. Any additional violations occurring after receipt of an NOV are subject to an additional penalty of up to \$25,000. 49

E.12 Make greater use, to the extent resources permit, of the Attorney General's Office in the prosecution of violators for civil matters. 52

E.13 Modify the wetlands statute and the appropriate statute covering ISDS to create criminal proceedings and penalties, or to allow an increase in existing criminal penalties. 53

* Recommendations with an asterisk are presented with a dissenting opinion from a Committee member.

RECOMMENDATIONS/BACKGROUND & BENEFITS

ENFORCEMENT

E.1 Promote the creation of a program to offer low-interest loans to help defray the costs for either repair or replacement of failed septic systems

BACKGROUND It is estimated that between 20% and 30% of the 140,000 septic systems in Rhode Island are failed. The ISDS Section receives between 1,000 and 1,500 applications per year for repairs to failed ISDS systems. In addition, DEM field inspectors, responding to sewage overflow complaints, identify more than 500 failed ISDS systems per year. Failed ISDSs present threats to public health, cause nuisance conditions in neighborhoods, degrade water bodies, and can adversely affect groundwater quality. They may also cause serious inconvenience to homeowners who are forced to limit water use in homes as a result.

Failed systems should be repaired immediately but the cost to the homeowner is often prohibitive. The cost to replace failed ISDSs is typically around \$5,000. However, on difficult or sensitive sites, the cost may well exceed \$10,000. In case of a homeowner's inability to pay, enforcement actions, including legal orders and assessment of penalties are futile, counter-productive, and frustrating to the homeowner, DEM officials, and neighbors.

Homeowners are essentially on their own when it comes to funding or financing repairs to septic systems. Lending institutions will not lend money unless risks are reasonably low. Therefore, the homeowner must have low debt, ability to pay, or sufficient equity (in the case of a home equity loan) to receive a loan. Compared to automobile loans, loans to finance septic systems are more difficult to obtain because the asset cannot be repossessed by the lending institution.

Some means of providing grants or low-interest loans is essential if the problem of failed systems is to be tackled successfully. A diagram showing the possible range of financing alternatives is contained in the Appendices. A fine example of a highly-successful program exists in the City of Warwick, where partial grants/loans (40%/60%) are provided up to a maximum of \$4,000 for single-family residential ISDSs meeting certain failure criteria. The funding is provided through local bonds. Alternatively, the state could play a role by re-funding the Sewer and Water Supply Failure Fund (now depleted), created in 1984 for the purpose of assisting municipalities and individuals with failed ISDSs. Other examples include revolving loans with state/federal funds (SRF), special funds derived from ISDS permit, application, or license fees, or creation of protection districts at the local level with a fund supported by "user" fees on houses served by ISDSs. How to fund replacement of failing ISDS systems is one of three major issues now being defined and explored to address wastewater disposal problems in unsewered areas. The other issues being the role of alternative technology and operation and maintenance/management strategies.

More discussion is needed on this recommendation to synthesize a workable solution. The magnitude of the needed commitment of funding and the resource needs to administer such funding needs to be balanced with identifiable improvements in environmental protection and quality and economic impacts to taxpayers/users.

BENEFITS The proposed system of loans to carry out repairs/replacement would significantly reduce the need to seek legal orders to enforce homeowners to repair failed systems. DEM's public image would improve, being linked neither to that of an ineffective protector of public health nor of an overly aggressive enforcer. More importantly, a low-interest loan program would provide a quicker resolution of the failure for the homeowner while ending the health threat for the public.

- E.2 Expand the Department's practice of requiring that permit holders use consultants to ensure compliance with permit terms and conditions. These consultants should be licensed by DEM. The role of the consultant as an environmental monitor should be strengthened. Concomitantly, sanctions against permittees who do not comply with consultant's requirements should be strengthened. NOTE: Not all projects will require the presence of a consultant to monitor compliance with permit conditions. Those that require the submission of engineering plans will require monitoring.**

BACKGROUND The Department lacks sufficient staff to enforce compliance and legal orders. Although applicants receiving a permit may be required by DEM to retain a qualified professional to monitor the project and report problems to DEM, total conformance to all permit conditions has not occurred.

Proposed improvements to using consultants as monitors include establishing a DEM licensing process to certify consultants and sanctions for the professional's failure to ensure compliance and report problems to DEM, for the permittee who does not follow consultant's instructions, and for collusion between consultant and permittee. In addition, DEM staffing levels must be sufficient to carry out an oversight role.

BENEFITS The use of DEM-licensed consultants to ensure compliance will provide more effective use of DEM staff and permit reallocation of staff and resources. Sufficient sanctions will protect wetland resources and assure compliance with ISDS regulations.

- E.3 Both programs should continue to issue and improve upon Notices of Intent to Enforce (NOIs).**
- a. ISDS Program should modify its initial letter to be less intimidating and more informative. This letter should be firm in its message that a problem exists and should make clear that the recipient has the opportunity to meet with DEM staff to discuss issues and means to resolve the problem short of the formal Notice of Violation and ensuing enforcement process.**
 - b. Develop a second NOI letter for each of the programs to ensure the recipient the opportunity to resolve the violation informally before an NOV is issued.**

BACKGROUND Notices of Intent to Enforce (NOI's) are useful to gaining compliance without invoking the legal mandates of the more resource-consuming Notice of Violation (NOV). The programs have stressed the use of these enforcement actions in the last few years and have reserved NOV's for more egregious violations or cases where the NOI is not working. An improved NOI initial letter would inform property owners of the process, the violation, the impact to public health and safety, and the remedy, offering a meeting with the

Division. A second NOI letter will provide a second, more firmly worded opportunity to resolve the violation without resorting to an NOV.

BENEFITS Issuance of NOI better serves property owners where violations of wetlands and ISDS rules or regulations have occurred while at the same time creating a more effective system to gain compliance. Many initial NOI letters elicit immediate compliance that saves staff time and state resources. Using NOIs should be continued.

- E.4 Revise the wetlands statute to require disclosure of an enforcement letter and other correspondence concerning wetlands on the property to the potential buyer when enforcement actions involving the property are outstanding.**

BACKGROUND Notices of Intent to Enforce (NOIs) require less financial and staff commitment from the state than the legal prescriptions of Notices of Violation. NOIs are the first step in a series of correspondence to correct wetlands violations. However, the absence of an NOI recorded in the land evidence records allows a property owner to transfer property without disclosing either non-NOV enforcement proceedings or negotiations. New owners, having no knowledge of the violation, are thus absolved of any responsibility, and restoration is made difficult. Recordings of NOIs is not recommended, however, since it would eliminate the benefit of the informal nature of this type of enforcement action by requiring hearings and legal counsel. Therefore, the preferred alternative to recording NOI's is for the statute to be revised to require the property owner receiving the NOI to fully disclose this information to a potential purchaser prior to the sale of the property. Cost of restoration could become part of the transfer negotiations. Failure to provide full, documented disclosure of the enforcement matter could subject the seller to civil proceedings, including the recovery of damages by the uninformed purchaser.

BENEFITS Full disclosure of NOI's prior to property sales would provide greater protection of functions of the state's wetlands, as well as protection for buyers.

- E.5 Develop a program that authorizes municipalities, under DEM authority, to assist DEM by providing pre-enforcement compliance functions. These functions would be supplementary in nature.**

BACKGROUND The ISDS section does not have sufficient staff to inspect and assure proper installation of permitted systems. The Wetlands Division also lacks staff to assure that the directives of permits are followed. DEM should consider, or be enabled if not currently authorized to do so, to develop specific cooperative agreements with willing and capable municipalities with paid staff to inspect on-going projects and help ensure conformance to ISDS and wetlands permits. If problems are uncovered and voluntary compliance is not achieved within a specified time, DEM staff should be available to back up the municipal representative.

DEM needs to have sufficient staff to support municipal officials helping to ensure compliance, either as back-up or to assure against overly zealous local enforcement. Training by DEM can minimize problems and is a necessary component of this recommendation.

BENEFITS A well-trained municipal representative inspecting local, permitted ISDS and wetland activity could prevent enforcement actions and their concomitant costs. Providing inspections that currently do not occur would assure better environmental protection.

E.6 Create a process to:

- a) allow for after-the-fact applications under carefully defined circumstances, and;
- b) charge a higher fee for after-the-fact applications than for those applications submitted prior to initiation of any construction activity.

The agency should have the discretion to still require restoration where necessary.

BACKGROUND The Division of Freshwater Wetlands currently allows after-the-fact applications only for minor or insignificant alterations provided, through enforcement action, the owner files a plan and pays the regularly scheduled application fee. The majority of these cases is handled through a Notice of Intent of Enforce (NOI) with no assessed penalty. This lack of an assessed penalty allows DEM to keep the NOI process less formal legally. While the NOI process allows DEM and the property owner to resolve enforcement actions in a much more informal manner than through a Notice of Violation (NOV), the process has reportedly lost some of its ability to deter unauthorized alterations. A concern is that the practice may lead to more "as-built" applications and consequent enforcement actions will consume more staff hours. In order to deter unauthorized alterations but allow continued resolution of insignificant alterations short of assessing penalties and requiring time-consuming hearings, an increased fee for such activities should be required. Presently, however, the law does not allow for a higher fee to help resolve this problem.

The Department does not allow after-the-fact applications for unauthorized significant alterations of wetlands, but there should be exceptions to the rules. Under the present wetlands statute DEM is authorized to require restoration of affected wetlands. However, in cases where individuals have proceeded to build structures, develop road and drainage systems, and otherwise expend large sums of money to carry out capital improvements to property, the order to restore becomes contentious. Settlement negotiations in these circumstances are less likely and both parties move forward with an all-or-nothing position. This demands extensive time from DEM's staff and legal resources.

While DEM wetlands could allow an after-the-fact application for significant alterations, that practice has in the past led to problems such as loss of wetlands and unresolved enforcement cases. Given the application process set forth in the law for significant alterations and the difficulties involved for this complex process, DEM's policy has been to require restoration of all significant alterations to wetlands. Although DEM's current practice under the wetlands statute is clear cut, it can be problematic in "gray" areas and can lead to contested cases. Also, DEM has been reluctant to allow after-the-fact applications for significant alterations as a practice since it may lead to a fairness issue that would prevent DEM from obtaining restoration of impacted valuable wetland resources. Too often hearing officers and judges are reluctant to support restoration in the face of claims that it is unfair to allow others to apply while DEM wants a property owner to restore without allowing an application. A concern is that, a practice, once set, will preclude up-front restoration, no matter how important. Therefore, carefully designed rules and regulations would have to be prepared which would balance the need to resolve gray areas through after-the-fact applications while still allowing DEM to require restoration where deemed necessary. Given the fact that after-the-fact

applications for significant alterations would consume much more staff time, a higher fee is recommended for these applications. This higher fee can serve a dual purpose to deter such actions and eliminate a competitive advantage in some circumstances.

BENEFIT An increased fee for after-the-fact applications provides an incentive to comply with the law and the program regulations and eliminates the advantage to ignoring proper procedures. Allowing after-the-fact applications for some significant alterations will resolve some of the gray area decisions DEM faces and eliminate some needless contested adjudicatory cases. A higher fee for these will also help to recover the cost of more extensive staff time involved with them. Clarifying through rules when after-the-fact applications will be allowed will provide guidance to the DEM, the property owner, and the hearing officer as to when such applications are appropriate. Such guidance will also support DEM's decision to require restoration up front without allowing an after-the-fact application.

E.7 Develop a guideline for internal use, available to the public, for the Division of Freshwater Wetlands to focus its resources on the most egregious violations.

BACKGROUND The Division of Freshwater Wetlands faces public relations problems as a result of misperceptions about its enforcement role. Some of the public believe that the Division applies its enforcement powers equally against every infraction of the law and the rules and thus is unable to effectively resolve the most egregious cases. Other members of public criticize the Division for not responding to every complaint and allowing serious violations to escape enforcement action.

In order to ensure effective use of staff resources and provide greatest protection of wetlands, DEM Division of Freshwater Wetlands prioritizes complaints to quickly resolve those that appear to threaten wetland functions most extensively. Less damaging violations are unfortunately, but necessarily, set aside to await action at a later date. The Division should develop a written guideline for internal use and available to the public that sets forth the practices currently followed. The guideline should consider degree of culpability, extent of wetland impact, strength of evidence, history of violation, maturity of the case, reasonable public concern, and the sensitivity of the wetland area.

BENEFIT A guidance document will provide a clear statement of policy that will enable the public to understand actions of the Division. Time now spent on answering complaints and responding to criticism will be spent on enforcement, focusing on the most egregious cases first.

E.8 Modify the process followed by DEM for administrative adjudication hearings that allow a time period for opposing parties to correct any obvious errors contained within a recommended decision before submission to the Director.

BACKGROUND The hearing process before DEM's Administrative Adjudication Division (AAD) takes the form of full evidentiary hearings under Superior Court rules. Decisions by a hearing officer in DEM's Administrative Adjudication Division may be appealed in Superior Court only by the respondent of an enforcement action, and not by the Division that issues the enforcement action.

Presently the Divisions, on behalf of the Director, issue enforcement actions. Certain actions are subject to appeal to the DEM's Administrative Adjudication Division (AAD), where a hearing officer is assigned to a case. Following a full evidentiary hearing, a recommended decision is forwarded to the DEM Director for final agency decision. Historically, the general process has worked well, however, problems arise in the form of typographical errors, omissions of fact, or factual errors in the recommended decision which should be corrected prior to a final agency decision. Presently, however, there is no appropriate means of resolving these problems since neither the Division nor the opposing party can seek modification or correction of any errors in the recommended decision. It is recommended, therefore, that the process be modified to allow a specific amount of time following issuance of a recommended decision for the parties to submit corrections of any omissions, typographical errors, or factual errors before final agency decision by the Director.

BENEFIT Allowing a specific period of time for opposing parties to submit corrections of typographical errors, omissions of fact, or factual errors in AAD's recommended decision to the Director will allow the Director to review and base his decision on a more accurate document. This will result in decisions that are more fair and more protective of the environment.

- E.9** **Revise the wetlands statute to allow the DEM to cite the responsible party, the property owner, or both for unauthorized wetlands alterations.**

BACKGROUND The wetlands statute currently authorizes DEM to cite the responsible party with a violation for unauthorized wetland alterations. However, when DEM cannot prove the identity of the party responsible for an unauthorized alteration, legal remedies to restore the wetland cannot proceed. Identifying the responsible party becomes more difficult when the property owner does not reside at the site of the unauthorized alteration even though the property owner may be shown to benefit from the results of the alteration. Naming the property owner at the time the unauthorized alteration took place or is taking place as the responsible party would allow legal remedies to require restoration to proceed.

BENEFITS Modifying the wetlands statute to include the property owner at the time unauthorized alterations occur as a responsible party will allow wetlands to be better protected and restored more quickly for the benefit of the public.

- E.10** **Revise the wetlands statute to improve the ability to gain restoration and reduce the permanent loss of wetlands as a result of unauthorized alterations, including : a) the result of the sale of property to innocent buyers when an unauthorized wetland alteration has occurred on the property; and b) the impacts of "migrating" wetlands alterations onto adjacent, neighboring, or downstream parcels of land owned by individuals not responsible for the alteration.**

BACKGROUND a) Under the current wetlands statute, an order to restore wetlands is eligible for recordation in the land evidence records and any subsequent owner shall be responsible for complying with the requirements of the order. This provides potential purchasers and lending institutions notice of problems that need to be resolved. However, in the event that property containing unauthorized wetland alterations is transferred prior to DEM issuing and recording an order to restore, the ability of DEM and the public to obtain

restoration of the affected wetland is diminished as a result of an innocent party becoming involved as owner of the property. While DEM may still cite the responsible party for the unauthorized wetland alteration, the ability to gain access to the property for restoration, and impacts to the new owner's legal enjoyment and the value of the property as purchased, become significant legal concerns. This legal concern is a problem since it can prevent or significantly reduce the ability of DEM to obtain restoration of the wetland. In order to resolve this issue, the statute should be modified to recognize this problem and to place a limited responsibility upon an innocent purchaser. This limited responsibility would require the new owner to allow restoration of the wetland by the responsible party to the extent that such restoration does not interfere with existing capital improvements and the owner's reasonable enjoyment and the value of the property. Notice of the problem can be accommodated by a "Notice to Owner" of the outstanding problem. This notice will inform owners of the violation carried out by others and that DEM is seeking to obtain, with their cooperation and participation, reasonable restoration of wetland functions and values. This Notice to Owner could be eligible for recording to alert subsequent purchasers that legal proceedings are underway to obtain restoration by others.

b) Along with a) above, unauthorized wetland alterations may occur on adjacent, neighboring, or downstream properties as a result of activities on nearby property. Under these circumstances, the responsible party may be carrying on a discharge or land use activity that results in erosion and runoff of sediment into wetlands on property owned by an innocent neighbor or neighbors. In order to obtain restoration, DEM has to cite the responsible party and then negotiate to gain access to allow restoration to take place on adjacent parcels of land. A "Notice to Owner" (eligible for recording) in cases where multiple current or subsequent owners are involved, would reduce the complex legal requirements involved in resolving the problem. While these unfortunate problems are not the norm, they occur often enough to absorb extensive division and legal staff resources. Acknowledging these problems in the statute and providing a means of obtaining restoration while limiting responsibility of neighboring property owners and their subsequent transferees is an important aspect of dealing with this problem.

BENEFITS Clarifying language in the wetlands statute regarding restorations of unauthorized wetlands violations involving: a) innocent buyers of property where orders to restore were not recorded prior to land sale; and b) innocent owners of property where wetlands violations requiring restoration which were caused by a neighboring property owner will help DEM more easily obtain restoration of affected wetlands by responsible parties, while balancing the protection of innocent property owners and their property values.

E.11* **Modify the wetlands statute to allow for a maximum penalty of up to \$25,000 for Notices of violation involving major unauthorized wetland alterations, but in no event shall an NOV contain an assessed penalty in excess of \$25,000. Any additional violations occurring after receipt of an NOV are subject to an additional penalty of up to \$25,000.**

BACKGROUND The penalties associated with the wetlands statute are generally not sufficient to deter major wetlands alterations. Equally important, the lack of monetary penalties against the most responsible parties and other parties with lesser degrees of culpability forces the Department to resort to other mechanisms, such as extensive use of

NOV's, to ensure compliance. Significant penalties would deter violations and improve enforcement.

Under the current statute, the maximum penalty is \$1,000.00, regardless of the size of the alteration. For large projects with major wetlands alterations, \$1,000 is a small sum compared to the expected return from the development.

A maximum penalty of \$25,000 for major unauthorized wetland alterations is consistent with federal laws protecting wetlands and water resources. It is consistent with other Rhode Island law protecting water resources (see R.I.G.L. 46-12-13). Rule changes must be developed which would impose large fines only on appropriately large violations. Minor violations would not be subject to these large penalties. To ensure that the maximum penalty will be applied only to major violations, DEM must, as required by RIGL Section 42-17.1-1 *et. seq.*, comply with the Rules and Regulations for Assessment of Administrative Penalties developed for all DEM programs. These Rules set forth the specific criteria and guidelines for assessment of penalties. Other DEM programs have the capability to assess the maximum penalty and do so through these prescribed Rules. **These Rules would have to be modified to address any change in the maximum penalty under the wetlands statute and must be modified to provide specific guidance to direct DEM regarding the application of a proposed penalty assessed for a wetlands violation.** Pursuant to Section 42-17.6, any assessment of an administrative penalty is subject to an adjudicatory hearing. At the hearing, DEM has the burden to show that the assessed penalty is appropriate, pursuant to the rules. Any modification to these rules and development of specific guidelines for DEM to follow, are subject to public hearing with the opportunity for public participation in the development of rules.

Concerns that the DEM will abuse this recommended change in the statute should be assuaged by both the extensive decline in the use of NOV's in the past four years in favor of NOIs and by the lack of abuse by DEM programs that already have this capability. The decline in the issuance of NOV's in favor of NOIs by the Division of Freshwater Wetlands is demonstrated in the table and graph below. The Division intends to continue its compliance program using Notices of Intent to Enforce (NOI) without penalty. In addition, any penalty associated with a Notice of Violation shall not exceed \$25,000.

BENEFITS Increased penalties for unauthorized alteration of wetlands will provide a strong disincentive to violate the statute and will reduce the number of enforcement cases and their accompanying costs. Placing a limit on the amount of civil penalties assessed in any Notice of Violation will reduce concerns that DEM will abuse the increased maximum penalty allowance.

DISSENTING OPINION Presented by Sue Albert, representing the RI Farm Bureau. An increase in penalty fines is inappropriate at this time. The present procedure under R.I.G.L. 42-17-1-1 *et. seq.* Rules and Regulations for Assessment of Administrative Penalties do not set forth specific criteria and guidelines for the assessment of fines. All Notice of Violation penalties associated with each instance of violation are calculated in accordance with Section 9 and 10 of the Freshwater Wetlands matrix.

Section 9 (b) provides for a penalty assessment "per violation", for multiple violations of the

same law, rule, regulation, license, permit or order as separate violations. This language has led to a layering of penalties for, in many cases, one activity or event. In other words, one activity can lead to separate violations subject to the maximum fine. This procedure would have to be amended in order to satisfy the ceiling of \$25,000 now being recommended.

Section 10 (Assessment of Administrative Penalty-Calculation) This section of the rules addresses the deviation from standard which refers to the degree to which the violation is out of compliance with legal requirement of the law or regulation. Under Section 10 (a) the applicable penalty range is reached by first determining the "Type of Violation". A Type 1 violation triggers a maximum penalty. Section 10, (a) states that any failure to obtain a required permit shall be considered a violation subject to the maximum fine. On too many occasions people have become subject to the maximum penalty for what may be a minor infraction based on this language alone.

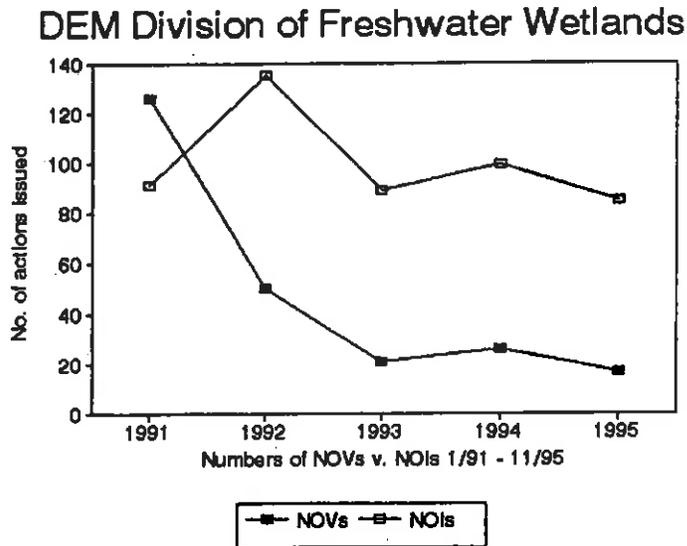
Under the current statute, the maximum penalty is \$1000, regardless of the size of an alteration. Although this system may not adequately address major areas of alteration it has resulted in unreasonably high penalties and often times a duplication or layering of fines for small alterations such as areas of disturbances of under 300 sq. ft.

As all agree that the rules for assessing fines need to be revised before the wetlands maximum penalty can be increased, it is my recommendation that any amendment to increase fines be tabled until full review of the process has taken place. The rules must first be revised so as to clearly identify and separate violations into distinct classes or categories.

Table 2. Comparison of numbers of Notices of Violation and Notices of Intent to Enforce issued from January 1991 through November 1995.

| YEAR | TOTAL NOVs/NOIs Issued | No. of NOVs | % of Total | No. of NOIs | % of Total |
|--------------------|------------------------|-------------|------------|-------------|------------|
| 1991 | 217 | 126 | 58% | 91 | 42% |
| 1992 | 185 | 50 | 27% | 135 | 73% |
| 1993 | 110 | 21 | 19% | 89 | 79% |
| 1994 | 125 | 26 | 20% | 99 | 80% |
| 1/95 through 10/95 | 102 | 17 | 16% | 85 | 84% |

Figure 3. Comparison of the numbers of NOVs and NOIs issued from January of 1991 through November of 1995.



E.12 Make greater use, to the extent resources permit, of the Attorney General’s Office in the prosecution of violators for civil matters.

BACKGROUND A large percentage of DEM legal resources are spent on major or complex enforcement matters that could be handled by the Attorney General’s Office. Because DEM has limited legal resources, the Attorney General’s enforcement role is sought to prosecute violators. DEM staff is often engaged in prolonged legal actions requiring extensive court appearances, leaving the regulatory offices without ready access to legal counsel.

BENEFITS Freeing DEM legal resources from extended court enforcement matters will provide more legal time for permitting, policy, and daily legal matters and will thus reduce delays on permit issuance.

E.13 Modify the wetlands statute and the appropriate statute covering ISDS to create criminal proceedings and penalties, or to allow an increase in existing criminal penalties.

BACKGROUND The wetlands statute and corresponding statute for ISDS do not have a criminal penalty for knowingly or willfully altering wetlands nor for repeat offenders. The current legal basis for imposing a criminal penalty under the wetlands statute is violating an order of the Director, carrying a maximum penalty \$500 or thirty days in jail, or both. Since the cost to the state to bring legal action is often more than the fine, convictions are not often sought.

R.I.G.L. 46-12-14, addressing criminal penalties for polluting waters of the state, could serve as a model for revisions to the wetlands statute and corresponding statute for ISDS.

Knowing, willful unauthorized wetlands alterations and ISDS installations should carry the same level of monetary and incarceration penalties imposed by violations of other resources regulated by DEM. All criminal investigations and proceedings should take place under the direction of properly empowered law enforcement officers and under the powers set aside for the Attorney General's Office.

BENEFITS A sufficient criminal penalty for knowing or willful unauthorized alteration of wetlands will deter illegal activity. A criminal penalty will reduce the number of cases before DEM due to deterrence.

RECOMMENDATIONS/BACKGROUND & BENEFITS

FUNDING

RECOMMENDATION

PAGE

F.1 Establish a trust account or revolving fund for holding fee receipts derived from wetlands and ISDS permit applications; use funds for the purposes of meeting expenses associated with applicant-driven request for services.

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RECOMMENDATIONS/BACKGROUND & BENEFITS

FUNDING

- F.1** Establish a trust account or revolving fund for holding fee receipts derived from wetlands and ISDS permit applications; use funds for the purposes of meeting expenses associated with applicant-driven request for services.

BACKGROUND Prior to 1986, the Wetlands and ISDS programs were entirely funded by general revenues. In 1986, the legislature created restricted receipt accounts for DEM's programs, which enabled DEM to charge application fees. Fees now make-up approximately one-third of the Wetland program budget and two-thirds of the ISDS program budget. Beginning in 1993, seven percent of all fee receipts were rededicated to meet general state obligations. In 1995, the practice of separate accounting of fee receipts through the budget process was abolished.

The erosion of the fee accounts is disturbing. The primary purpose of these accounts was to ensure applicants, particularly builders and developers, that the resources needed to process their permits would be available in spite of budgetary constraints of the state. The fee program established a sort of fee-for-service arrangement similar to the private sector market. In good economic times of robust building, fee income would increase generating additional resources to hire, equip and train staff to process more permits. In poor economic times, the workload would decrease, and fee income and staffing could be reduced accordingly. While there is no firm indication that the fee-for-service concept has been eliminated, the fact that the budget process no longer acknowledges fee receipts signals that a significant change may be forthcoming.

State general funds should be allocated as necessary for the management and support of services benefiting the general public. Trust accounts should be established, preferably outside of the annual appropriations process, to ensure that personal and business needs for service are met.

BENEFITS The establishment of trust accounts for fee receipts would enable the Department to render a more constant and individual services to applicants. The ability to hold-over excess receipts from year to year would dampen the budgetary impact of abrupt reductions in fee income in any given year and would facilitate financing of capital outlays such as the purchasing of computer facilities.

RECOMMENDATIONS/BACKGROUND & BENEFITS

GENERAL

| RECOMMENDATION | PAGE |
|---|------|
| G.1 Establish a Land-Use permitting procedure within DEM to receive and process joint applications for projects involving both wetlands and ISDS permitting. Begin with subdivision suitability applications and expand to individual site applications and other permits as warranted. | 58 |
| G.2 Establish a public information function within the regulatory branch of DEM to provide assistance to individuals and businesses concerning the regulatory requirements of the agency, and to develop and disseminate educational and guidance material on permitting and enforcement. | 58 |
| G.3 Establish a policy and planning function under the Director charged with the responsibility of identifying overlaps in regulation and inconsistencies in policies or program practices, and guiding the permitting activities. Initially the duties would be related to the ISDS and Freshwater Wetlands programs, but should expand towards a clear unified objective for all of DEM's programs. | 59 |
| G.4 Establish a mechanism to eliminate the overlap and conflict in policies between DEM and CRMC which cause significant project delays. | 60 |
| G.5 Develop a computerized master file and indexing system for key DEM programs to facilitate cross-referencing and due diligence searches. | 61 |
| G.6 Develop a tracking system for the application process which would make information available to the public and the local communities; remote access to computerized permit file information should be pursued. | 61 |
| G.7 Enhance computer capabilities and change administrative procedures to enable increased utilization of computers to expedite routine tasks, minimize handwritten reports and facilitate consistent, thorough and speedy reviews. | 62 |
| G.8 Use the collective-bargaining process to negotiate with the unions to: a. establish a 40 hour standard work week, for the purpose of increasing the productivity of the current work force; b. broaden job duties within classifications to enable greater flexibility in assigning personnel and facilitate restructuring when needed; c. place restrictions on the bumping process to avoid or minimize the displacement of trained personnel and the obligation to hire unqualified persons | 63 |
| G.9 Upgrade technician positions to Environmental Scientist grade and ensure that all technical staff have an appropriate career path to attract and retain qualified employees. | 63 |

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|--|-----------|
| G.10 Establish a state policy whereby all personnel actions requested by DEM to fill fully-funded vacancies for Wetlands and ISDS personnel are processed promptly by the Department of Administration. | 65 |
| G.11 Make continuing training of staff a high priority. | 65 |
| G.12 Maintain and supplement existing staff resources. | 66 |
| G.13 Make sufficient numbers of vehicles available for staff. | 66 |
| G.14 The Committee on ISDS & Wetlands should be continued after the submission of the final report in order to assist in the implementation of the recommendations. | 66 |

RECOMMENDATIONS/BACKGROUND & BENEFITS

GENERAL

- G.1 Establish a Land-Use permitting procedure within DEM to receive and process joint applications for projects involving both wetlands and ISDS permitting. Begin with subdivision suitability applications and expand to individual site applications and other permits as warranted.**

BACKGROUND Approximately 20% of the projects requiring ISDS permits are located near wetlands, wherein ISDS rules and polices require that the potential wetland impacts be reviewed by the Wetlands staff under their separate permitting procedures prior to approval. If the applicant considers the wetland to be outside the jurisdiction of the state under DEM regulations, the applicant is reluctant to apply for a wetlands review. In response to court decisions and rising public expectations on coordinated permitting from DEM, the Department has in recent years strengthened efforts to ensure wetlands issues are addressed prior to issuing any permit. However, the sequential process results in duplication of work, significant additional expense, and delayed permitting. Furthermore, when changes in the design made as a result of attempts to comply with one program's requirements do not agree with the original design submitted to and approved by another program, the applicant must seek a revision of its original approval. Additionally, at times conflicts in regulatory policy are manifested, in which cases the applicant cannot proceed.

Under this proposal, a joint permit submittal process would be established for the wetlands and ISDS permits. It is expected that a four-person team would be formed by reallocating existing personnel and would be given authority to issue joint permits. The team would initially concentrate on subdivision plans, because they most often involve both divisions, and applications for upgrade of ISDS systems. They could then be expanded to handle individual residential applications, commercial systems and possibly water quality certifications, stormwater discharge permits, and groundwater quality certifications related to the two programs.

BENEFITS A joint permitting program would avoid duplication, force the agency to resolve conflicts internally, and economize on staff resources. The resulting permits would be more comprehensive and more consistent. The joint permitting program would provide impetus for more uniform policies and joint compliance reviews during implementation. The initiative should help facilitate coordination with local community planners under the new Subdivision Enabling Act.

- G.2 Establish a public information function within the regulatory branch of DEM to provide assistance to individuals and businesses concerning the regulatory requirements of the agency, and to develop and disseminate educational and guidance material on permitting and enforcement.**

BACKGROUND The Department currently does not have a central office to handle general questions concerning its programs. Each call is referred to the program which best fits the

subject matter at hand. Often a prospective applicant is unsure which program to contact and only after several tries does he obtain the information sought. Not all offices are fully cross-trained about all the programs offered by the Department. Success is often dependent on the knowledge level and experience of the person answering the telephone. Also, while regulatory staff is expected to be helpful and polite, they are oriented toward compliance with regulation and procedure as opposed to giving guidance. They also may be pressured with deadlines to perform application reviews and prepare inspection reports and may not have adequate time to spend with applicants to answer detailed questions. As a result, applicants as well as citizens with enforcement concerns are frustrated and anxious.

The objective of the recommendation is to reallocate staff made available through other streamlining recommendations to serve a public information function to aid prospective applicants. Regulations, guidance documents, fact sheets, and policy statements would be made available. The staff will spend time with the public to make certain all important questions are addressed to their satisfaction. Accuracy, clarity, consistency and professional presentation will be emphasized. The person or office would work in close association with the permitting programs but would not become involved in specific applications once initiated. Initially, the service would be available only for wetlands and ISDS activities, but could expand to other programs depending on need.

BENEFITS A public information person or function will help create a more business-friendly Department and will help individuals understand the permitting processes, their importance and relevance. As a result, applicants will be able to anticipate permitting concerns and cause better more complete application to be filed, with a concomitant reduction in overall permitting times.

- G.3** Establish a policy and planning function under the Director charged with the responsibility of identifying overlaps in regulation and inconsistencies in policies or program practices, and guiding the permitting activities. Initially the duties would be related to the ISDS and Freshwater Wetlands programs, but should expand towards a clear unified objective for all of DEM's programs.

BACKGROUND One of the criticisms of regulatory programs in recent years has been that the individual programs have conflicting or duplicative requirements. For example, the Wetlands program may evaluate stormwater handling system which discharge to wetlands for one impact while the Water Resources program or CRMC will evaluate the same facility under its own rules and regulations for impacts which may include those which Wetlands has already evaluated. Conflicts arise when the design is deemed inadequate by one program while being accepted by the other. When a change in design is made to address the deficiencies in one program, the change may constitute a significant enough change by the other program to warrant review of the revision for purpose of approval. Sometimes the agencies are unable to agree or achieve a consensus on the most appropriate design. The problem is compounded if more than two agencies are involved, or if permit approvals or local variance decisions have time limits which expire. As a result, the applicant may be caught in regulatory quagmire not anticipated by either program.

While substantial improvements have been made in recent years to correct such problems, a more focused approach aimed at preventing these problems is needed. The flaw is that policy

formulation occurs at the program level. No single entity is evaluating the effectiveness or efficiency of existing regulatory programs as they relate to one another or on the resources needing protection. The recommendation will establish a policy specialist position reporting to the Associate Director for Water Quality Management. Areas of potential conflict and duplication will be thoroughly explored prior to any regulatory change. If possible, the area of regulation on a particular item will be limited to only one, most appropriate permitting program. The process will be continuous and will apply to all existing regulations. Initially, the policy specialist will concentrate on the ISDS and Wetlands programs. Other programs such as Water resources, Groundwater and CRMC will then be addressed.

BENEFITS Instances of conflicts and duplication will be significantly reduced or eliminated. Applicants and staff will better understand the protection goals of the programs. The policy planning process will result in the identification of criteria by which to evaluate cross-program impacts. Guidance material can then be assembled, perhaps including case studies for illustration, which will make the processes more predictable for both the applicant and the agency.

G.4 Establish a mechanism to eliminate the overlap and conflict in policies between DEM and CRMC which cause significant project delays.

BACKGROUND The Rhode Island Coastal Resources Management Council is an agency charged with protecting and enhancing R.I.'s coastal environment. ISDSs and alterations in freshwater wetlands, which are areas regulated by DEM, can have an adverse effect on the coastal environment. CRMC has recognized this and has established policies and permit procedures to avoid or minimize these adverse impacts. While these efforts have been largely successful, many activities require environmental permitting by both agencies. ISDS installations for repairs or new construction within 200 ft of a coastal feature require approval from both agencies. Subdivisions (six lots or more) and systems disposing over 5000 gpd anywhere within the watershed of the Narrow River and most all of the South County salt ponds also require both ISDS and CRMC application review and approval. In addition, many stormwater handling systems discharging into wetlands proximate to the coastal environment may require reviews by both agencies. Overlaps in jurisdiction also occur in other programs, most notably the DEM Water Quality Certification process and the local community planning programs.

These processes are, to varying degrees, duplicative and are an inefficient use of state resources. They add substantially to permitting times and can be especially time-consuming where conflicts in policies result in changed designs or unclear direction to applicants. Attempts to streamline the processes have not been successful.

The Committee feels that this matter cannot be addressed adequately within the short-time frame available and without the involvement of all affected parties. A separate process is therefore recommended. The Committee suggests that two alternatives be specifically considered: separating jurisdictions according to physical boundaries, wherein all ISDS, wetland and stormwater permits for a project are issued by either DEM or CRMC depending on the location of the project; or merging programs or sub-programs so that only one agency handles permitting for a particular type of activity or impact. For example, under the first alternative, CRMC might undertake all ISDS permitting within 200 feet of the coastal feature,

whereas under the second alternative, DEM might undertake permitting for a new dwelling with an ISDS or repairs to an ISDS within a coastal zone, but CRMC would handle any needed alterations of coastal wetlands, such as revetments or construction of docks.

BENEFITS Requirements for permitting could be made clearer by the respective agency in charge and some permitting processes might be eliminated. Staff resources could be reallocated to handle other permits more quickly or improve compliance monitoring. Overall permitting times should be reduced.

G.5 Develop a computerized master file and indexing system for key DEM programs to facilitate cross-referencing and due diligence searches.

BACKGROUND DEM does not have a centralized computer system for maintaining records of permit or compliance activities in its several programs. DEM has been building its computer capabilities gradually since 1986. In January 1992 the ISDS program, which had no computer capabilities, implemented a computerized tracking system for permit applications and, later, one for enforcement cases. Most information in the permitting files are made available to the public by way of a computer terminal installed in the reception area at the ISDS office. The wetlands division recently installed a new tracking system similar to the ISDS program's system. Other programs within DEM use a variety of different databases to store their information. Most of the computers used are desktop PC's connected to a local network server. Few computer linkages currently exist between programs and little computerized information is available to the public. Wetlands information is not available to ISDS personnel electronically, nor is ISDS information available to Wetlands personnel. Software compatibility, hardware differences, lack of gateways between networks, and funding are problems.

The Department needs to become more efficient in its handling of daily tasks. The courts and the public expect that DEM regulators are cognizant of the status of regulatory compliance of each affected program on a site-by-site basis. Also, the regulated community needs quicker and better access to information concerning regulatory compliance issues for activities which affect them. The need applies to residential concerns and business opportunities.

The computerized master file and indexing system proposed under this recommendation will be the first step towards a more comprehensive use of computers at DEM. Approximately \$150,000 would be needed in additional software programming and hardware to fund the implementation of the initiative. Existing personnel would be trained and be responsible for data-entry, updating and accuracy. A full-time computer systems specialist would be needed to ensure reliability, compatibility, and security.

BENEFITS The indexing system will aid permitting by making permit information more easily accessible to design professionals and DEM staff.

G.6 Develop a tracking system for the application process which would make information available to the public and the local communities; remote access to computerized permit file information should be pursued.

BACKGROUND Local communities and the public currently experience difficulty obtaining basic information on the status of an application before DEM. Frequently the building inspector or the planning departments have need for this information. The information may be needed to aid the town in a wetlands hearing process, a local zoning or planning issue, or a site development/construction concern. Presently, only the ISDS program makes computerized information available to the public. The Wetlands program is developing a tracking system now but does not have adequate computer capabilities to enable staff to take full advantage of the system. In all cases, the public must either call or visit the DEM office to obtain the information.

This recommendation applies to individual project applications and their permitting status. The Department will utilize computers and communications equipment to make application information available to applicants, local communities, and the public. The cost is estimated to be \$20,000, mostly for programming.

BENEFITS Applicants will have better access to information concerning their applications. The utilization of computers should decrease calls to DEM for routine information. The public should be able to retrieve information at their convenience rather than be restricted to DEM office hours.

- G.7 Enhance computer capabilities and change administrative procedures to enable increased utilization of computers to expedite routine tasks, minimize handwritten reports and facilitate consistent, thorough and speedy reviews.**

BACKGROUND Both the ISDS and Wetlands programs are paper-intensive programs, generating or cataloguing large numbers of documents. These include application forms, plans, certificates and affidavits, property easement descriptions, engineering reports, inspection reports, field reports, evaluations, meeting and telephone call memoranda, status notes and file summaries. Most actions of the Department are predicated on precise, detailed and exact information concerning a proposed activity. As a result, nearly every action requires that the project file be physically retrieved, scanned for the information needed, and refiled with a firm, clear notation of any action taken. In addition, most of the work products and documents produced by DEM personnel are hand-written. The time it takes to produce, retrieve, update, copy and archive this information, directly impacts the efficiency of a various office functions. Some states are beginning to automate many regulatory functions to increase efficiency of routine tasks. By employing image-scanning equipment, more powerful computers and newly developed applications software, DEM would enable staff to more quickly retrieve and process application information in response to permit requests, telephone inquires, and complaint investigations.

This recommendation would enable DEM Wetlands and ISDS to implement a near paper-less office. While permanent paper records would likely continue to be part of basic files, most of the processing activities would utilize the computer. Reporting by DEM staff would utilize standardized wording and formats, perhaps from drop-down type menus. The proposal would cost an estimated \$500,000 to implement. Staffing would be reduced by an estimated 5 FTEs, with the addition of one system's specialist for a net reduction of 4 FTEs. The pay-back would be a little over 3 years.

BENEFITS The recommendation will improve office efficiency, thoroughness and completeness. Communications among DEM, the applicant and the public will be enhanced. Records will become more easily available and more useful. Enhanced use of computers may also facilitate intra-departmental and inter-departmental coordination.

G.8 Use the collective-bargaining process to negotiate with the unions to:

A. establish a 40 hour standard work week, for the purpose of increasing the productivity of the current work force;

B. broaden job duties within classifications to enable greater flexibility in assigning personnel and facilitate restructuring when needed;

C. place restrictions on the bumping process to avoid or minimize the displacement of trained personnel and the obligation to hire unqualified persons;

BACKGROUND Wetlands & ISDS staff work a standard 35 hour week and are allowed two-10 minute breaks per workday. The standard in industry is a 40 hour work week. Productivity could be increased by 15% if the Department adopted a forty-hour work week. The increased cost to pay employees for the extra 5 hours of work is less than the cost of having an additional person on staff to perform the same 5 hours of work for seven individuals per week due to the fixed cost of many fringe benefits under the state compensation system.

The other contract changes recommended would help alleviate problems resulting from classification restrictions and job security entitlements. Job classifications are construed too narrowly in some cases and prevents adjusting job duties to changing needs. Workers do need to be protected from unwarranted or improper changes in job duties, particularly those which the employee is not capable of performing. However, with proper training and careful placement, reassignments can be healthy and beneficial for both the employee and the state. By contrast, it seems counter-productive to displace competent, experienced and dedicated employees with persons, although of equal rank in classification, who have no skills to perform the specific jobs. This so-called "bumping process" is extremely de-stabilizing for the programs and is not a process which either party supports completely.

BENEFITS Overall performance is expected to increase as a result of increased efficiency, better utilization of staff, and retaining of experienced personnel. Permit times should be reduced provided staffing levels are maintained.

G.9 Upgrade technician positions to Environmental Scientist grade and ensure that all technical staff have an appropriate career path to attract and retain qualified employees.

BACKGROUND A well-defined career path is critical towards attracting and retaining qualified staff. The DEM staff career path is in transition. Formerly, the technical staff in the ISDS Section was made-up of sub-professionals having only high school education, and occasional some post-secondary education, in the area of construction, elementary surveying,

plan reading, etc. Higher-level staff consisted of administrative managers and one or two engineers.

Over the last five years, the nature of the work and responsibilities assigned to technical staff has changed. The bulk of the change was due to streamlining initiatives at the program level and changes in science and technology associated with the industry. As a result, persons meeting only the minimum qualifications for these positions are no longer capable of performing the job.

New knowledge on soil behavior and advances in technology have increased the complexity of the program. Soil features such as density, color, texture and redoximorphology are now used to evaluate the suitability of sites for sewage treatment and disposal and establish design criteria for ISDS systems. New technologies requiring in-depth knowledge of biochemical processes such as on-site denitrification systems are being used to enhance protection of pond water quality and drinking water supplies. In order to interpret these evaluations and grasp the intricacies of new technologies, a thorough education in the environmental or life sciences, particularly soils, is required. This foundation coupled with field experience and training dealing with on-site wastewater treatment issues are essential requirements for the technical duties performed by persons in these positions.

Regarding changes in responsibilities, all permitting technicians now have signature authority for granting permit approvals. Previously, this function was reserved exclusively for supervisors. This includes all phases of permitting including not only approvals of design applications but also aiding applicants through the design process, working-out acceptable plans one-on-one with builders and designers, addressing construction problems, dealing with local community officials and concerned neighbors, and identifying violations and providing testimony at formal hearings. The action has greatly expedited permit processing and has enabled the program to reduce personnel costs by nearly 10% over the last three years.

The need for changes in the qualifications and caliber of personnel was not only driven by technical externalities. The private sector had complained to previous Directors and Governors that the personnel reviewing plans and making determinations in the field were not up to the task, not equal to them, and were not qualified. As a result the Department has attempted to improve the caliber of staff and hire the most qualified persons applying for technical positions whenever possible. The division has been successful at doing this, however there is concern for DEM's ability to retain this caliber of personnel at present grades.

To address this need, the Department should immediately qualify all permitting technicians to at least entry-level grade for environmental scientist. The salary change would amount to approximately \$2,500 per employee and would affect five employees, for a total cost of \$12,500. The extra costs would be recovered through savings generated from other cost reduction initiatives proposed herein. Secondly, a career ladder in the environmental scientist track should be established in the ISDS program. Assignments of increased complexity or responsibility requiring greater knowledge or experience would be handled by mid-level or higher-level staff. The career-path would be similar to that of engineers (already established within the ISDS Section) and would have similar benefits.

A similar review should be made in the wetlands division for wetland biologists and implemented as appropriate.

BENEFITS The recommendation will reduce permitting times by ensuring that experienced, competent staff are employed in the programs and are encouraged to stay-on. Better and more effective refinements in program initiatives may be expected. Also, more decisions may be delegated to lower level staff, who would then be able to work more closely with applicants to resolve permitting problems.

G.10 Establish a state policy whereby all personnel actions requested by DEM to fill fully-funded vacancies for Wetlands and ISDS personnel are processed promptly by the Department of Administration.

BACKGROUND While the objective of both programs is to retain current staff if possible, personnel vacancies will likely continue to occur for personal reasons. Vacancies created in either the Wetlands or ISDS program in the past three years have generally not been filled promptly. No new personnel have been hired by the ISDS program in more than two years. Frequently, it has taken more than a year to fill a vacancy. The length of time that these vacancies exist has a direct impact on permit processing efficiency. Implementation of the recommendation would signify the importance that these two programs have on the economy and environmental protection and demonstrate the state's commitment in maintaining an adequate service level in the future as the streamlining recommendations are implemented.

BENEFITS Permitting times should be affected less as a result of staff changes. The likelihood of success in the streamlining efforts will improve.

G.11 Make continuing training of staff a high priority.

BACKGROUND A higher priority than currently exists must be placed on continuing professional education and training for DEM technical staff. Currently DEM staff do not routinely attend training seminars, scientific conferences, and other educational programs to keep abreast of the latest technical advances in the applicable scientific fields.

Well-designed and appropriate staff training is essential to develop a responsive enforcement program which is protective of the environment and is sensitive of the needs of Rhode Island's citizens. A well-trained staff that is informed about problem resolution, sensitive to the extent of the violation and the resulting impacts versus the resources necessary to resolve the problem, will improve service to the public and the regulated sector.

When the consultant for an applicant feels that he or she has a greater depth of knowledge and understanding (through formal training or through experience) than the DEM representative, DEM's credibility suffers. A well-trained staff can be allowed to assert more discretion to reach problem resolution thereby allowing senior staff and managers to concentrate on more difficult and complex problems.

BENEFITS Staff that are well-trained and are kept current with the developments in their field have more credibility and a better ability to make judgment calls when discretion is

allowed. The ability to make good judgments and decisions speeds the process of enforcement resolution. Staff professionalism increases and morale is greatly improved.

G.12 Maintain and supplement existing staff resources.

BACKGROUND Continuing budget cuts have eroded the capabilities of ISDS and wetlands programs. As personnel leave and the programs are cut, some positions are either left vacant or lost through attrition, leaving the Department unable to respond in a reasonable time to many enforcement matters.

The Divisions are understaffed to investigate the myriad of complaints received and to resolve the complex technical, biological, engineering and legal elements of these complaints. While recognizing the shortfalls in funding for all state programs, an increase in funding is recommended to continue and to supplement staff resources for improving enforcement. Assuring quick permit response for repair of failed septic systems and responding to the demands of the public and orders of the courts for timely resolution of unauthorized wetlands alterations requires this recommendation.

BENEFIT: Maintaining an adequate staffing level would help the Department to respond to more complaints, thereby providing increased protection of wetlands and increased protection of the state's waters from pollution from failed septic systems.

G.13 Make sufficient numbers of vehicles available for staff.

BACKGROUND The Divisions do not have a sufficient number of vehicles to support the level of field activity. Staff are using personal vehicles as well as some state-owned vehicles. This practice lacks professionalism and at times jeopardizes the safety of staff who use their own vehicles when property owners doubt the identity of the staff or the official nature of the visit. In addition, insurance for staff who use their private vehicles for business purposes is higher.

Increases to program operating funds are critical to supplying staff with equipment necessary to complete tasks. One area where increases in operating funds is necessary is in state-owned vehicles. It is essential that staff for the regulatory programs be provided well-marked vehicles to carry out compliance reviews and complaint investigations. Well-maintained, safe state vehicles of sufficient number are important to the efficiency of the programs.

BENEFIT: The use of a marked state vehicle sends an important message to a property owner that a state official is present carrying out official state business. This reassures the property owner as to with whom they are dealing and increases the safety of staff when carrying out inspections on private property.

G.14 The Committee on ISDS & Wetlands should be continued after the submission of the final report in order to assist in the implementation of the recommendations.

BACKGROUND It is clear that these recommendations are merely a blueprint for regulatory change. The real product remains to be shaped, refined, accepted by the public and, finally, implemented. The make-up of the Committee is unique in that it represents a broad cross-

section of stake-holders - including builders, environmentalists, legislators, academicians, attorney, engineers, land surveyors, and biologists. The involvement of all the members in the next phase will offer continuity and provide the momentum for needed change. Importantly, the recommendations requiring statutory changes require a consensus-building approach and the development of the actual language of bills in order to have a reasonable chance of passage.

BENEFITS The continuation of the Committee will expedite implementation of recommendations, continue the open process, keep a focus on the original objectives, and provide a balanced perspective of competing concerns. A broad-based constituency will be necessary to successfully develop and pass legislation.

APPENDIX A

GOVERNOR'S ADVISORY COMMITTEE ON SEPTIC SYSTEMS AND WETLANDS

GOVERNOR'S ADVISORY COMMITTEE ON SEPTIC SYSTEMS AND WETLANDS

The Committee consists of legislators, environmental regulators, attorneys, environmental advocates, the construction industry, the farming community, and academia.

Committee members and affiliation:

Anthony Santoro, Committee Chairman
Sue Albert
Dean Albro
Russell Chateaufneuf
Michael Geisser
Donald Davis, PLS
Dennis Esposito, Esq.
Peter Ginaitt
Frank Golet, PhD
William Irons
Eugenia Marks
Scott Moorehead, P.E.
Richard Rafanovic
Michael Rubin, Esq.
Fred Schick
Edward Szymanski, P.E.

Alison Walsh

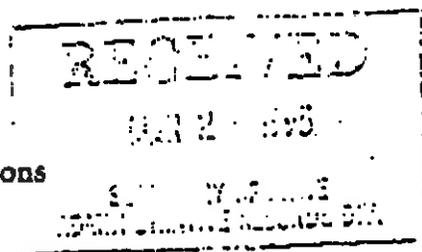
President, Roger Williams University
Rhode Island Farm Bureau
Chief, DEM, Division of Freshwater Wetlands
Chief, DEM, Division of Groundwater and ISDS
Cistar Associates
Alpha Associates
Adler, Pollock and Sheehan
RI State Representative
URI, Wetlands Scientist
RI State Senator
Environment Council of RI
SFM Engineering
Providence Water Supply Board
RI Attorney General's Office
RI Builders Association, Builder/Developer
Associate Director for
Water Quality Management, DEM
Save The Bay

APPENDIX B

EXECUTIVE ORDER NO. 95-12



State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-277-2080



LINCOLN ALMOND
GOVERNOR

EXECUTIVE ORDER

No. 95-12

March 29, 1995

GOVERNOR'S ADVISORY COMMITTEE ON
WETLANDS AND SEPTIC SYSTEMS

WHEREAS, the State's effort to regulate septic systems is necessary to protect public health, safety and welfare; and

WHEREAS, protection of wetlands is essential to provide habitat to wildlife and protect against flooding; and

WHEREAS, the Department of Environmental Management, which is charged with the protection of wetlands and the regulation of septic systems, has made tremendous progress in reducing delays, clarifying policies, and coordinating reviews; and

WHEREAS, further improvement in these vital regulatory programs would benefit the regulated community, the environment, and public health, safety and welfare;

NOW, THEREFORE, I, LINCOLN ALMOND, by virtue of the authority vested in me as Governor of the State of Rhode Island and Providence Plantations, do hereby order as follows:

1. There is hereby established an advisory committee to study the programs administered by the Division of Freshwater Wetlands and the Division of Groundwater

Executive Order 95-12

March 29, 1995

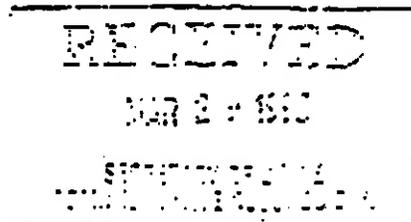
Page 2.

and ISDS of the Department of Environmental Management. The Committee shall be known as the Governor's Advisory Committee on Wetlands and Septic Systems.

2. The Committee shall consist of 17 members to be appointed by the Governor.
3. The Department of Environmental Management shall provide staff support to the Committee;
4. The Committee shall examine ways to improve the regulation of septic systems and the protection of wetlands. The Committee shall also examine the timetables, staffing, funding, process for dispute resolution, and licensing as they pertain to these programs.
5. The Commission shall meet regularly and shall issue its interim written report to the Governor by July 1, 1995. It shall issue its final written report to the Governor by October 1, 1995 or sooner if the Committee has reached its final conclusions prior to that date.


Lincoln Almond
Governor

Date: 3/29/95



APPENDIX C

RECOMMENDATION SUMMARIES

Wetlands W.1 - W.16
ISDS SD1 - SD.16
Enforcement - E.1 - E.13
Funding - F.1
General - G.1 - G.14

RECOMMENDATIONS FOR STREAMLINING PERMITTING - WETLANDS AND ISDS

| RECOMMENDATIONS - WETLANDS | RESOURCE CONSIDERATIONS | | | IMPLEMENTATION | | PERMITTING TIMES | | |
|--|-------------------------|-----------|---------------------------|------------------------|------------------------|-------------------|----------------------|-------------|
| | New Staff | New Costs | Net Staff(e) Reallocation | Reallocation Costs (e) | Category | Date | Existing | New |
| W.1 - License Professionals - Wetland Delineation | None | 0 | (2.0 FTE) | (80,000) | Legislation/Regulation | 7/1/96 12/1/96 | 1-3 mos. | 1-4 wks (c) |
| W.2 - Develop Criteria - values of wetlands | None | 0 | (1.5 FTE) | (60,000) | Regulation | 7/1/96 | 6-18 mos. | 1-3 mos. |
| W.3 - Rewrite Definitions of wetlands | None | 0 | (0.5 FTE) | (20,000) | Legislation/Regulation | 7/1/96 12/1/96 | N/A | Reduced |
| W.4 - Redefine perimeter and riverbank wetlands | None | 0 | (0.5 FTE) | (20,000) | Legislation/Regulation | 7/1/96 12/1/96 | N/A | Reduced |
| W.5 - Develop Standards for restoration, replacement | None | 0 | 0.5 FTE | 20,000 | Regulation | 7/1/96 | 6-18 mos. | 1-6 mos. |
| W.6 - Dev. hierarchy of permit types | None | 0 | 1.0 FTE | 40,000 | Legislation/Regulation | 7/1/96 12/1/96 | N/A | Reduced |
| W.7 - Expand exempt activities | None | 0 | (1.5 FTE) | (60,000) | Regulation | 7/1/96 | N/A | N/A |
| W.8 - Develop quicker permitting system for small projects | None | 0 | 1.0 FTE | 40,000 | Legislation/Regulation | 7/1/96 12/1/96 | N/A | Reduced |
| W.9 - Revise emergency permitting rules | None | 0 | (a) | (a) | Regulation | 7/1/96 | 1.5 mos. | 1-2 days |
| W.10 - Modify app. & hearing process | None | 0 | 2.0 FTE | 80,000 | Legislation/Regulation | 7/1/96 12/1/96 | formals 6-18 mos. | 3-6 mos. |
| W.11 - Recertify expired determinations | None | 0 | (a) | (a) | Regulation | 12/1/96 | 1-2 mos. | 1-2 wks. |

W - Wetlands SD - ISDS G - General/Other P - Policy E - Enforcement F - Funding

NOTES:

- (a) Net resource impacts negligible or impossible to quantify at this time
- (b) Effect on permitting times negligible
- (c) For most (> 75%) applications
- (d) Actual cost may be more or less depending in specific program implemented
- (e) Items in parentheses are net decreases in staff or savings resulting from implementation of the recommendation

RECOMMENDATIONS FOR STREAMLINING PERMITTING - WETLANDS AND ISDS

| RECOMMENDATIONS - WETLANDS | RESOURCE CONSIDERATIONS | | | IMPLEMENTATION | | PERMITTING TIMES | | |
|--|-------------------------|-----------|----------------------------|------------------------|----------------------------|-------------------|----------|---------|
| | New Staff | New Costs | Net Staff (e) Reallocation | Reallocation Costs (e) | Category | Date | Existing | New |
| W.12 - Extend permit term to 4 yrs. | None | 0 | (a) | (a) | Legislation | 7/1/96 | N/A | Reduced |
| W.13 - Amend Rules for farming | None | 0 | N/A | N/A | Regulation | 7/1/96 | N/A | N/A |
| W.14 - Develop application form specific to farming projects | None | 0 | N/A | N/A | Regulation | 3/1/96 | N/A | N/A |
| W.15 - Revise definition of farmer | None | 0 | N/A | N/A | Legislation | 7/1/96 | N/A | N/A |
| W.16 - Review permitting for farm structures | None | 0 | N/A | N/A | Legislation/ Regulation | 7/1/96 12/1/96 | 1.5 mos. | 2 wks. |

W - Wetlands SD - ISDS G - General/Other E - Enforcement

NOTES:

- (a) Net resource impacts negligible or impossible to quantify at this time
- (b) Effect on permitting times negligible
- (c) For most (> 75%) applications
- (d) Actual cost may be more or less depending in specific program implemented
- (e) Items in parentheses are net decreases in staff or savings resulting from implementation of the recommendation

RECOMMENDATIONS FOR STREAMLINING PERMITTING - WETLANDS AND ISDS

| RECOMMENDATIONS -ISDS | RESOURCE CONSIDERATIONS | | | IMPLEMENTATION | | PERMITTING TIMES | | |
|---|-------------------------|-----------|------------------------|------------------|---------------------------|-------------------|--------------------------|-----------------|
| | New Staff | New Costs | Net Staff Reallocation | Reallocation (e) | Category | Date | Existing | New |
| SD.1 - License system designers | None | 0 | (2.0 FTE) | (80,000) | Legislation Regulation | 7/1/96 12/1/96 | 8-12 wks | 2-4 wks. (c) |
| SD.2 - Delegate installation inspections to licensees | None | 0 | (1.25 FTE) | (50,000) | Regulation Designers Lic. | 12/1/96 4/1/97 | N/A | N/A |
| SD.3 - Develop site-suitability & alternative system criteria | None | 0 | (a) | (a) | Regulation | 12/1/96 | N/A | Reduced |
| SD.4 - Develop procedure for alternative technology approval | None | 0 | 0.5 FTE | 20,000 | Regulation | 12/1/95 | N/A | Reduced |
| SD.5 - Develop criteria for year-round water table determinations | None | 0 | 0.5 FTE | 20,000 | Regulation | 3/1/96 | 1-12 mos. | 2-4 wks. (c) |
| SD.6 - Enable concurrent submittals of site-suitability and design applications | None | 0 | 0.25 FTE | 10,000 | Regulation | 3/1/96 | 1-4 mos. | 2-6 wks. |
| SD.7 - Review Extended life of ISDS permits for off-site water supply | None | 0 | N/A | N/A | Regulation | 12/1/96 | N/A | Reduced |
| SD.8 - Simplify alteration/upgrade rules | None | 0 | N/A | N/A | Regulation | 7/1/96 | alterations 8-12 wks. | 1-2 wks. |
| SD.9 - Develop standard repair policy | None | 0 | N/A | N/A | Regulation | 3/1/96 | N/A | N/A |
| SD.10 - Redefine unit of sizing for ISDS systems | None | 0 | N/A | N/A | Regulation | 3/1/96 | N/A | N/A |
| SD.11 - Establish more flexible variance procedures for ISDS upgrades | None | 0 | N/A | N/A | Regulation | 3/1/96 | N/A | N/A |

W - Wetlands SD - ISDS G - General/Other P - Policy E - Enforcement F - Funding

NOTES:

(a) Net resource impacts negligible or impossible to quantify at this time

(b) Effect on permitting times negligible

(c) For most (> 75%) applications

(d) Actual cost may be more or less depending in specific program implemented

(e) Items in parentheses are net decreases in staff or savings resulting from implementation of the recommendation

RECOMMENDATIONS FOR STREAMLINING PERMITTING - WETLANDS AND ISDS

| RECOMMENDATIONS - ISDS | RESOURCE CONSIDERATIONS | | | | IMPLEMENTATION | | PERMITTING TIMES | |
|--|-------------------------|-----------|------------------------|-----------------------|----------------|---------|------------------|---------|
| | New Staff | New Costs | Net Staff Reallocation | Net Cost Reallocation | Category | Date | Existing | New |
| SD.12 - Modify rules for review of variance applications | None | 0 | (a) | (a) | Regulation | 12/1/95 | N/A | Reduced |
| SD.13 - Establish dual-tier variance procedure | None | 0 | (a) | (a) | Regulation | 3/1/96 | 3-6 mos. | Reduced |
| SD.14 - Develop ISDS permit guide | None | 0 | (a) | (a) | Policy | 3/1/96 | N/A | N/A |
| SD.15 - Conduct seminar for system designers - at least annually | None | 0 | (a) | (a) | Policy | 4/1/96 | N/A | Reduced |
| SD.16 - Educate ISDS owners regarding maintenance and water conservation | None | 0 | (a) | (a) | Policy | 1/1/96 | N/A | N/A |

W - Wetlands SD - ISDS G - General/Other E - Enforcement

NOTES:

- (a) Net resource impacts negligible or impossible to quantify at this time
- (b) Effect on permitting times negligible
- (c) For most (> 75%) applications
- (d) Actual cost may be more or less depending in specific program implemented
- (e) Items in parentheses are net decreases in staff or savings resulting from implementation of the recommendation

RECOMMENDATIONS FOR IMPROVING RESOURCE PROTECTION - WETLANDS AND ISDS

| RECOMMENDATIONS - ENFORCEMENT | FUNDING CONSIDERATIONS | | | | IMPLEMENTATION | | BENEFITS | |
|---|------------------------|-----------|------------------------|------------------------|------------------------|-------------------|---------------------|--|
| | New Staff | New Costs | Net Staff Reallocation | Net Costs Reallocation | Category | Date | Resource Protection | Focus |
| E.1 - Create state loan program for septic systems (SD) | None | (u) | (a) | N/A | Legislation | 1/1/97 | Increased | problem resolution |
| E.2 - Delegate compliance monitoring to licensed professionals (W) | None | 0 | | | Legislation/Regulation | 7/1/96 12/1/96 | increased | efficiency/problem resolution |
| E.3 - Draft new Notice of Intent to Enforce letters (W)(SD) | None | 0 | (a) | a) | Policy | 2/1/96 | increased | information & education/problem resolution |
| E.4 - Require full disclosure of enforcement actions to buyers (W)(SD) | None | 0 | (a) | (a) | Legislation/Regulation | 7/1/96 | increased | information & education |
| E.5 - Delegate pre-enforcement to municipalities (W)(SD) | None | 0 | | | Regulation | 1/1/97 | increased | efficiency/problem resolution |
| E.6 - Create process or after-the-fact wetlands applications with higher fees (W) | None | 0 | (t) | (t) | Legislation/Regulation | 7/1/96 12/1/96 | increased | fairness/efficiency/information & education/problem resolution |
| E.7 - Develop guide to focus enforcement actions (W) | None | 0 | (t) | (t) | Policy | 5/1/97 | level | information & education/problem resolution |
| E.8 - Modify the AAD process (W)(SD) | None | 0 | N/A | N/A | Legislation/Regulation | 7/1/97 12-1-97 | increased | fairness/information & education |
| E.9 - Cite responsible party or owner for unauthorized wetland alterations (W) | None | 0 | (a) | (a) | Legislation/Regulation | 7/1/96 12/1/96 | increased | problem resolution |
| E.10 - Revise wetlands statute to cover results of off-site alterations | None | 0 | | | Legislation | 7/1/96 | increased | information & education/problem resolution |
| E.11 - Increase maximum penalty (W) | None | 0 | (a) | (a) | Legislation/Regulation | 7/1/96 12/1/96 | increased | deterrence |
| E.12 - Transfer some enforcement to the Attorney General (W)(SD) | None | 0 | N/A | N/A | Policy | 2/1/96 | increased | deterrence/efficiency/information & education/problem resolution |
| E.13 - Enable criminal proceedings and penalties (W)(SD) | None | 0 | (a) | (a) | Legislation | 7/1/96 | increased | deterrence/problem resolution |

W - Wetlands SD - ISDS G - General/Other E - Enforcement P - Policy

NOTES:

- (a) Net resource impacts negligible or impossible to quantify at this time
- (t) Temporary reallocation of staff and costs to accomplish this task
- (u) Presently unavailable

RECOMMENDATIONS FOR STREAMLINING PERMITTING - WETLANDS AND ISDS

| RECOMMENDATIONS - GENERAL | RESOURCE CONSIDERATIONS | | | | IMPLEMENTATION | | PERMITTING TIMES | |
|--|-------------------------|------------------------|----------------------------|----------------------------|----------------|--------|------------------|---------|
| | New Staff | New Costs | Net Staff (e) Reallocation | Net Costs (e) Reallocation | Category | Date | Existing | New |
| G.1 - Est. land-use permitting procedure | None | 0 | 3 FTE | 120,000 | Policy | 7/1/96 | N/A | Reduced |
| G.2 - Est. public info & permitting function to assist applicants | None | None | 1 FTE | 40,000 | Policy | 7/1/96 | N/A | Reduced |
| G.3 - Est. Policy and Planning Office | None | None | 1 FTE | 60,000 | Policy | 7/1/96 | N/A | Reduced |
| G.4 - Est. group to evaluate overlap/conflicts w/CRMC/DEM | None | 0 | (a) | (a) | Policy | 7/1/96 | N/A | Reduced |
| G.5 - Dev. Computerized master file & indexing system for key DEM programs | None | 150,000 implementation | 1 FTE | 50,000 | Policy | 1/1/97 | N/A | Reduced |
| G.6 - Dev. app. tracking system w/remote access | None | 20,000 | N/A | N/A | Policy | 9/1/96 | N/A | Reduced |
| G.7 - Enhance computer capabilities to expedite process | None | 500,000 | (4 FTE) | (160,000) | Policy | 7/1/97 | N/A | Reduced |
| G.8 - Negotiate with unions to gain flexibility & increase productivity | None | 0 | (a) | (a) | Policy | 7/1/96 | N/A | Reduced |
| G.9 - Upgrade permitting technicians and establish career paths | None | 0 | N/A | 30,000(d) | Policy | 7/1/96 | N/A | Reduced |
| G.10 - Fill vacancies promptly | None | 0 | N/A | N/A | Policy | 1/1/96 | N/A | Reduced |
| G.11 - Make continuing staff training high priority | None | 0 | N/A | N/A | Policy | 1/1/96 | N/A | N/A |
| G.12 - Maintain & supplement staff resources | None | 0 | N/A | N/A | N/A | 7/1/96 | N/A | N/A |
| G.13 - Make sufficient numbers of vehicles available | None | 0 | N/A | N/A | N/A | N/A | N/A | N/A |
| G.14 - Continue Committee on ISDS and Wetlands | None | 0 | N/A | N/A | Procedure | 1/1/96 | N/A | N/A |
| GRAND TOTAL | | 670,000 | (1.5 FTE) | 0 | | | | |

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NOTES:

(a) Net resource impacts negligible or impossible to quantify at this time

(b) Effect on permitting times negligible

(c) For most (> 75%) of applications

(d) Actual cost may be more or less depending in specific program implemented

(e) Items in parentheses are net decreases in staff or savings resulting from implementation of the recommendation