How a Consensus Based Approach Led to Legislative Action in Rhode Island

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US EPA Stream and Wetland Buffers: Making the Most of a Good Thing
May 4, 2016 workshop
2013 Public Law 42-64.13-10

RI Regulatory Reform Act Legislative Charge to Assess:

- the adequacy of protection afforded to wetlands and/or waters of the State:
  - RI General Laws § 2-1-18-25, Agricultural Functions of Department of Environmental Management,
  - § 42-17.1, Department of Environmental Management,
  - § 42-64.13-10, The Rhode Island Regulatory Reform Act.

- Identify gaps in protection for septic disposal and various wetlands.

- Recommend statutory and/or regulatory changes that are required to protect wetlands statewide.

RI Consensus Based Approach
Permit Streamlining = Impetus for Change

- 24 of 39 Cities and Towns currently have buffers or setbacks at or beyond what was provided by the Wetlands Act

- Distances ranged generally from 50’ to 200’ (1000’ in 2 cases for hazardous waste facilities)

- Some applied to structures or disturbance, some applied solely to OWTS, some to both
Problems with Current Standards

- State standards provide inadequate protection, prompting differing municipal standards
- Various municipal standards result in diverse outcomes
- Lack of uniform process is burdensome & unpredictable
- Duplicative reviews & competing interests add costs to businesses and landowners
Legislative Task Force Membership:

- James Boyd, Coastal Resources Management Council*
- Joseph Casali, P.E., Civil Engineer Representative
- Russell Chateauneuf, P.E., Civil Engineer Representative*
- Janet Coit, Director, Department of Environmental Management*
  - Designee - Alicia Good
- Thomas D’Angelo, RI Builders Association, Builder’s Trade Association*
- Garry Ezovski, P.E., Business Community Representative 1*
- Kevin Flynn, Associate Director, Division of Planning*
- Lorraine Joubert, URI NEMO, Environmental Entity*
- Thomas Kravitz, Burrillville, Municipal Representative 1*
- Thomas Kutcher, Save the Bay, Wetlands Biologist*
- Scott Moorehead, P.E., P.L.S., Business Community Representative
- Vincent Murray, South Kingstown, Municipal Representative 2*
- Eric Prive, P.E., Licensed Designer/ Environmental Engineer*
- Scott Rabideau, Business Community Representative 2*
- Nancy Scarduzio, Designee, Office of Regulatory Reform*

* = stakeholder representation statutorily required
### Technical Presentations & Guest Speakers

**15 Meetings held October 2013 – November 2014**

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Subcommittee of Task Force: DOP & DEM Staff and 4 Task Force Members:
4 months & 2 meetings of the Task Force
Literature Review Part 1 - RI & NE specific buffer reports
Literature Review Part 2 – Other wetland reports & OWTS reports

Wetlands and All Land Disturbances

- Functions & values— dependent on species -> ranges of 100 – 300+

OWTS & Water Quality Impacts

- No magic number, too site specific but larger buffer reduces risk
- Alternative technology systems:
  - there are more things in wastewater than just nitrogen
  - advanced systems for phosphorus do not exist at this time
Four primary themes emerged from technical reviews:

1. Ensure that requirements for buffers are protective.

2. Strive to eliminate different wetland buffer and setback standards in state and local permitting processes and consider whether a single permitting authority should exist.

3. Clarify terminology.

4. Ensure adequate funding and capacity for implementation based on permit authority and responsibilities.
The Task Force recommended:

Statutory Changes - Revise State Law to:

• Eliminate the terms “perimeter wetlands” and “riverbank wetlands” from the definition of “freshwater wetland”.
• Clarify that vernal pools are to be included in the definition of freshwater wetland.
• Define or redefine the terms “jurisdictional area”, “buffer”, and “setback” as they apply to wetlands regulation.
• Establish a jurisdictional area of 200 feet from all rivers and streams regardless of size and from drinking water supply reservoirs.
• Establish a jurisdictional area of 100 feet from all vegetative wetlands and standing bodies of water. (Includes lakes, ponds, other wetlands, and vernal pools.)
• Establish a provision to enable petition by communities to DEM or CRMC to identify of “Critical Resource Areas” that would be afforded additional protection.
• Add a sunset provision to phase out municipal ordinances regarding wetland buffers and OWTS setbacks
• Require State agencies to provide access to information re applications filed with state agencies.
**Recommendations**

**The Task Force Also Recommended:**

**Regulatory Changes – Revise State Regulations to:**

- Implement consistency on the use of the terms “buffer” and “setback” and clarify and simplify the definitions used in wetland regulations.

- Establish and specify requirements for buffers (undisturbed areas) and setbacks within the limits of authorized jurisdictional areas taking into account the scientific findings outlined in the report.

- Allow for municipal input during the permit review process.

- Allow for a provision in the wetland and OWTS regulations to enable petition by municipalities for the identification of “Critical Resource Areas” that may need added protection.

**Funding:**

- To ensure there is adequate budget and State staff to ensure compliance with new regulations, new wetland buffers and conditions of approval during and after construction.

- To increase funding for DEM to budget for program needs and hire additional staff to carry out changes of an anticipated increased workload and to ensure communication between the State and cities and towns during application reviews.
DOP – TASK FORCE & FINAL REPORT due by December 31, 2014 - submitted December 30, 2014 to the Senate President, Speaker of the House, and Governor

DEM – LEGISLATION – working with Task Force input submitted legislation to implement report recommendations in March 2015

GENERAL ASSEMBLY - IMPLEMENTATION - Bills S-737 and H-5962 → Passed in 2015

DEM – implement new regulations by July 1, 2016 – Working with a Wetland Regulation Revision Workgroup which includes Task Force members plus additional stakeholders (agriculture & RIWWA)
DEM IMPLEMENTATION

Wetland Legislation

A short history –

1971: RI Freshwater Wetlands Act passed (second such law in the country)

1974: Revisions made to define and regulate “perimeter wetlands” and “riverbank wetlands”:
   * land within fifty feet (50’) of the edge of any wetland consisting, in part or in whole, of a bog, marsh (≥ 1 acre), swamp (≥ 3 acres) or pond as defined by the Rules.

   * 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 100 feet (100’) of the edge of any flowing body of water having a width of less than ten feet (10’) during normal flow.”

1988: Provisions added for farmers and farming activities
DEM IMPLEMENTATION

Wetland Legislation

- Drafted by DEM; Sponsored by key legislative leaders
- Involved changes to both freshwater wetlands law and local zoning enabling law
- Expanded jurisdiction for both DEM and CRMC; will result in phase out of municipal ordinances involving wetland and septic system setbacks and buffers
- Jurisdictional areas: 100 feet from all freshwater wetlands and 200 feet from all rivers, streams and drinking water supply reservoirs
- Maintained same authority to regulate floodplain, areas subject to flooding & areas subject to storm flowage
- Clarified terms – new use of term “buffer”
- Expanded coordination with municipalities
Required DEM and CRMC to promulgate standards for buffers and setbacks

**Buffer** defined as:

“an area of undeveloped vegetated land adjacent to a freshwater wetland that is to be retained in its natural undisturbed condition, or is to be created to resemble a naturally occurring vegetated area.”
**DEM IMPLEMENTATION**

- Two additional stakeholder interests vocal during legislative process:
  - Large Public Water suppliers
  - Farmers
- Original legislation amended to address farmer concerns including a mandate for an advisory group to provide input during rule development on agricultural and plant-based green infrastructure
- Point of confusion: effect on existing land uses
DEM IMPLEMENTATION

- Legislation passed and signed into law by Governor Gina Raimondo

- No new resources in 2015; Governor’s current budget proposal would add 2 new FTEs for compliance.
DEM IMPLEMENTATION

Now the *REAL FUN* begins!

RI Consensus Based Approach
Wetlands Regulation Development Process

- Inter-agency team – DEM and CRMC
- Tiered approach: considering watershed characteristics, existing land uses, vulnerability & extent of wetland resource, wetland functions & values, and other factors.
- Considering dividing State into three regions using watersheds and land use factors
Tiered Approach

• **Region A**: high priority for fish & wildlife habitat conservation, water quality

• **Region B**: mix of land uses and watershed characteristics, including urban, suburban and rural characteristics

• **Region C**: Most densely developed areas, including metropolitan Providence area and other urban centers
DEM IMPLEMENTATION

Maximum Buffer Widths

- Rivers in high value watersheds
- Rivers and certain contiguous wetlands and ponds within watersheds of drinking water supply reservoirs
- High-value habitat wetlands or rare wetland types (marshes, bogs, evergreen swamps, vernal pools with intact upland habitat)

Minimum Buffer Widths

- Small, isolated wetlands
- Wetlands within Region C urban cores
- Wetlands located in median strips of travel corridors
- In No Case will a Buffer Zone be “zero”
Questions

Detailed information on the 2014 Legislative Task Force can be found at: http://www.planning.ri.gov/statewideplanning/land/ltf.php

or contact

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For detailed information on the DEM Implementation Efforts contact:

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