

# WHAT'S THE SCOOP ON WETLANDS?

## Frequently Asked Questions about DEM's Freshwater Wetlands Program

Original May 2000

Addendum for Rules Changes in Effect  
January 2001 and September 2001

- ✓ What about the Coastal Resources Management Council (CRMC)?  
I understand that they are regulating freshwater wetlands now.
- ✓ Do I need a wetlands permit in an emergency situation?
- ✓ If DEM denies an application, what recourse is there?
- ✓ What if I'm already working towards a wetlands permit with  
DEM? Do I have to reapply to CRMC?
- ✓ What about applications for projects that are on the  
jurisdictional boundary?



Refers to page numbers where original questions are found.



## What about the Coastal Resources Management Council (CRMC)? I understand that they are regulating freshwater wetlands now.

As of August 18, 1999, freshwater wetlands that are “in the vicinity of the coast” are regulated by the CRMC. Biologists from the two agencies worked together to establish a boundary line that divides the separate areas of freshwater wetlands jurisdiction. Generally the jurisdictional boundary coincides with state and local roads, and those freshwater wetlands seaward of the boundary, i.e., “in the vicinity of the coast,” are under the jurisdiction of CRMC. Those freshwater wetlands landward of the boundary remain under the authority of DEM.

New freshwater wetlands applications from property seaward of the jurisdictional boundary should be submitted to CRMC for review, while new freshwater wetlands applications for property landward of the boundary should be submitted to DEM. If you have a valid permit that was granted by DEM, and your property is seaward of the boundary, DEM has authority over this permit *only* until December 31, 2001. After this date, CRMC will be the authority, unless there is an outstanding enforcement action or legal proceeding against DEM associated with your permit, or unless your project is on or straddles the boundary.

The maps that illustrate the boundary are available for viewing at DEM Office of Technical and Customer Assistance, at CRMC in the Stedman Government Center, Wakefield, and at the applicable coastal city and town halls. *Keep in mind that this Guide pertains to the DEM Wetlands Program.* Although CRMC adheres to the same protection standards as DEM, CRMC’s procedures may differ. Any questions about CRMC’s freshwater wetland program should be directed to their permitting staff at (401) 783-3370.



## Do I need a wetlands permit in an emergency situation?

Public utilities, municipalities, and state or federal agencies, and now, any property owner, can make a verbal or written request for permission to undertake emergency wetland alterations if the emergency poses a threat to public health and safety. The request should explain the problem, why it

threatens health and safety, the location, the actions to be taken, who will oversee the activity, and how the wetland will be restored following the emergency alteration. The work proposed to address the emergency cannot cause any permanent alteration to a wetland, and the wetland must be restored as much as possible to its condition prior to the emergency action. For example, there may be a failed bridge on a town road that crosses a small stream. Obviously, the town must take immediate action to protect public safety, and that may require the use of heavy equipment in and around the stream. DEM normally allows this emergency work based on a phone call from the town, or property owner with a similar problem, provided that downstream wetlands are protected prior to the emergency work (silt fencing, hay bales) and that the wetland area is restored and no permanent alteration of wetland occurs.



### **If DEM denies an application, what recourse is there?**

The DEM does not deny many wetland applications. Most applicants are able to satisfactorily avoid and minimize impacts to wetlands and receive permits. If an application is denied, it may be that DEM generally believes an alternative exists to what is proposed, which would lessen the impact of the project on wetlands. However, if your application is denied, you have the right to request a hearing to appeal the decision. The hearing request must be made in writing and filed directly with the Administrative Adjudication Division within 30 days of the receipt of DEM's decision. Previously an applicant was only given 10 days to respond. The hearing may not be necessary if all parties enter into settlement negotiations and execute a Consent Agreement.



### **What if I'm already working towards a wetlands permit with DEM? Do I have to reapply to CRMC?**

On August 18, 1999, a new freshwater wetland program became effective whereby CRMC regulates "freshwater wetlands in the vicinity of the coast." All freshwater wetlands applications pending with DEM on August 18, 1999 were reviewed by DEM under the Rules and Regulations in effect at the time the application was submitted. No additional freshwater wetlands permit will be required from the CRMC. If DEM has verified wetland edges for you but you have not yet submitted an application for a permit to DEM, that

permit application should be submitted to the CRMC. CRMC will respect the wetland edge verification completed by DEM. Ongoing DEM enforcement actions on properties that are seaward of the line generally will also continue to be processed by DEM.

All Determinations and permits issued by DEM prior to August 18, 1999 will remain valid for the specified time periods. Any *Application for Renewal, Application for Permit Transfer, or Application for Permit Modification* of a valid permit that was granted by DEM prior to the effective date of CRMC Rules and Regulations will be submitted to DEM for processing only until December 31, 2001. As of January 1, 2002, these requests must be submitted to CRMC, as well as applications for any new permits.

### 43 What about applications for projects that are on or that straddle the jurisdictional boundary?

The CRMC will review all applications for linear projects (roads and utilities) that are on the jurisdictional boundary and are located within a CRMC Special Area Management Plan (SAMP), or within 200 feet of a coastal feature. DEM will review applications for linear projects that are on the line, but are not located within a Special Area Management Plan and are not within 200 feet of a coastal feature.

In the rare occasion that an application for a project straddles the jurisdictional boundary, the new rules apply for each of the following situations. If all freshwater wetlands are on the landward side, DEM will have authority. If all the wetlands are on the seaward side, CRMC will have authority. If wetlands are located on both sides of the boundary and if the project is located partially or entirely inside in a CRMC Special Area Management Plan or within 200 feet of a coastal feature, then CRMC will have authority. If the project is outside all CRMC jurisdictional areas, then DEM will have authority. If your project is linear and straddles the boundary DEM and CRMC will decide on a case-by-case basis who will be the authority. A written request for this type of project should be given to CRMC and the agencies will coordinate a response.