



ENVIRONMENTAL  
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## **State Wetland Protection**

*Status, Trends, & Model Approaches*

*A 50-state study by the  
Environmental Law Institute*

*With support from the  
U.S. Environmental Protection Agency*

2008

# **Appendix: State Profiles**

# Rhode Island

## I. Overview

Rhode Island is a low-lying Atlantic coastal state with an abundance of coastal and freshwater wetlands. Approximately 18.4 percent of the state's area (127,721 acres in total) is wetland and deepwater habitat.<sup>1</sup> Rhode Island was among the first states to pass legislation specifically addressing wetlands protection. Two agencies administer state-level wetland regulation: Rhode Island Department of Environmental Management (RIDEM) oversees most freshwater wetland regulation and Rhode Island Coastal Resources Management Council (RICRMC) oversees regulation of coastal wetlands, as well as freshwater wetlands in the vicinity of the coast.

## II. Regulatory Programs

### *Wetland definitions and delineation*

Rhode Island's water quality regulations define "Waters of the State" as:

all surface water and groundwater of the State of Rhode Island, including all tidewaters, territorial seas, wetlands, and land masses partially or wholly submerged in water; and both inter-state and intra-state bodies of water which are, have been or will be used in commerce, by industry, for the harvesting of fish and shellfish or for recreational purposes.<sup>2</sup>

Rhode Island law describes three categories of wetlands: "freshwater wetlands,"<sup>3</sup> "freshwater wetlands in the vicinity of the coast,"<sup>4</sup> and "coastal wetlands."<sup>5</sup> The three major categories of defined wetlands reflect the regulatory jurisdiction of RIDEM and RICRMC. The scope of wetlands regulation in Rhode Island extends to all wetlands in the state without exception.

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<sup>1</sup> R.I. DEP'T OF ENVTL. MGMT. [HEREINAFTER RIDEM], 2004 SECTION 305(B) STATE OF THE STATE'S WATERS REPORT (2004), available at <http://www.dem.ri.gov/pubs/305b/index.htm>.

<sup>2</sup> RIDEM, Water Quality Regulations, Rule 7.

<sup>3</sup> "Freshwater wetlands" includes, but is not limited to, "marshes, swamps, bogs, ponds, rivers, river and stream flood plains and banks, areas subject to flooding or storm flowage, emergent and submergent plant communities in any body of fresh water including rivers and streams and that area of land within fifty feet (50') of the edge of any bog, marsh, swamp or pond." R.I. GEN. LAWS § 2-1-20. Freshwater wetland types are further defined at: RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 5.0.

<sup>4</sup> "Freshwater wetland in the vicinity of the coast" means the following: "A. Bog, pond, marsh, swamp, river, area(s) subject to flooding, areas(s) subject to storm flowage, floodway, flowing body of water, stream, intermittent stream, submergent and emergent plant communities, special aquatic sites, and shrub and forested wetland located in the vicinity of the coast;" "B. Those areas located in the vicinity of the coast, that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions;" and "C. Any or all wetlands located in the vicinity of the coast created as part of, or the result of, any activity permitted or directed by DEM after July 16, 1971 including, but not limited to, restored wetlands." RICRMC, Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, § 5.04.

<sup>5</sup> "Coastal wetland and contiguous freshwater wetlands" are defined as "any salt marsh bordering on the tidal waters of [Rhode Island], whether or not the tidal waters reach the littoral areas through natural or artificial watercourses, and those uplands directly associated and contiguous thereto which are necessary to preserve the integrity of that marsh." R.I. GEN. LAWS § 46-23-6(B)(3)(e).

Moreover, most freshwater wetlands areas are ascribed an additional upland buffer area subject to regulation.<sup>6</sup>

A field inspection by a wetland scientist is required to delineate wetlands for regulatory purposes.<sup>7</sup> State rules and regulations outline delineation criteria for vegetated wetlands, perimeter wetlands, flowing and standing water wetlands, riverbank wetlands, and flood plain wetlands.<sup>8</sup>

### ***Wetland-related law and regulation***

Rhode Island adopted legislation in 1971 to regulate both freshwater wetlands under the Freshwater Wetlands Act<sup>9</sup> and coastal wetlands with the creation of the RICRMC.<sup>10</sup> As of June 2007, Rhode Island was in the process of making significant changes to its rules and regulations pertaining to wetlands; however, these actions could not be reviewed within in the reporting period for this publication.

*Freshwater Wetlands Act.*<sup>11</sup> Rhode Island's goal is no net loss of wetlands.<sup>12</sup> To help achieve that goal, the Freshwater Wetlands Act, administered by RIDEM, requires wetland permit applicants to demonstrate that: proposed projects or activities do not include any random, unnecessary, or undesirable alteration of wetlands; all alternatives to avoid and minimize impacts to wetlands have been pursued; and the proposed project adheres to the technical permit review criteria.<sup>13</sup> Permit review includes consideration of the cumulative impacts of incremental alterations to freshwater wetlands, which may be considered significant even if a proposed

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<sup>6</sup> All bogs and certain other wetlands types of a minimum size are ascribed an additional 50 feet upland "buffer" area, denominated as "perimeter wetlands" or "riverbank wetlands." The minimum size is three acres for swamps; ¼-acre for ponds; and one acre for marshes. In addition, flowing bodies of water are ascribed "riverbank wetland" area: 100 feet for bodies less than ten feet wide; and 200 feet for those ten feet wide or greater. See RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rules 5.57 and 5.74. See also RIDEM, WHAT'S THE SCOOP ON WETLANDS? 7-8 (May 2000), available at [http://www.nbwctp.org/resources/whats\\_the\\_scoop\\_on\\_wetlands\\_ridem.pdf](http://www.nbwctp.org/resources/whats_the_scoop_on_wetlands_ridem.pdf).

<sup>7</sup> As part of the delineation process for individual parcels, property owners are encouraged to contact RIDEM to ascertain whether the state has any prior wetlands determinations listed in its computer files. If no determinations appear on record, the property owner may submit a "Request To Determine the Presence of Wetlands" application, accompanied by a site plan. If the property owner knows of or suspects the presence of freshwater wetlands, he is encouraged to submit a "Request To Verify the Delineated Edge of Wetlands" form, accompanied by a property plan with surveyed wetland flag locations. See: RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 9.02. Upon submission of a request form, an agency representative will undertake a site visit to confirm the wetlands information. See also RIDEM, WHAT'S THE SCOOP ON WETLANDS? 11-13 (May 2000), available at [http://www.nbwctp.org/resources/whats\\_the\\_scoop\\_on\\_wetlands\\_ridem.pdf](http://www.nbwctp.org/resources/whats_the_scoop_on_wetlands_ridem.pdf).

<sup>8</sup> Delineation criteria are outlined at length in the state's freshwater wetland regulations. See: RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Appendix 4.

<sup>9</sup> R.I. GEN. LAWS § 2-1-18 *et seq.*

<sup>10</sup> *Id.* § 46-23 *et seq.*

<sup>11</sup> *Id.* § 2-1-18 *et seq.*

<sup>12</sup> See: RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 1.01. See also: Rhode Island Coastal Resources Management Program, Activities Under Council Jurisdiction, § 300.12.B.3.

<sup>13</sup> RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Rule 11.00.

alteration is considered insignificant.<sup>14</sup> Certain activities are exempt from permitting requirements, provided they are carried out in accordance with conditions specified in the rules.<sup>15</sup>

RIDEM issues two types of permits. Permit applicants submitting a “Request for Preliminary Determination” may be granted an “insignificant alteration permit” for activities that would result in minimum impact to wetlands. Permit applicants submitting an “Application to Alter” may be granted a “significant alteration permit.”<sup>16</sup> Alterations of perimeter and riverbank wetlands are permitted more frequently than alteration of other wetland types.<sup>17</sup>

RIDEM grants an estimated 400 wetland alteration permits per year. Very few permit applications are denied outright. Permitting supervisors make decisions on a case-by-case basis, considering whether or not applicants have adequately avoided and minimized impacts, as well as whether review criteria have been met. Although decisions are based on best professional judgment, permitting staff also rely on quantitative and, to some extent, qualitative reports and documentation to support decisions (e.g., floodplain compensation calculations, stormwater drainage calculations, and wildlife evaluations).<sup>18</sup>

*Coastal wetland regulation.*<sup>19</sup> The Rhode Island Coastal Resources Management Council was created in 1971 to preserve, protect, develop, and restore the coastal areas of the state. RICRMC operates as a state agency and is administered by a council representing the public, state and local government, and resource professionals.<sup>20</sup>

RICRMC’s permit system for coastal wetlands differs somewhat from RIDEM’s freshwater wetland permit system, although it is no less stringent and also operates on a “no net loss” policy.<sup>21</sup> An RICRMC “assent” is required for any alteration or activity proposed within shoreline features, which by definition includes coastal wetlands.<sup>22</sup> Filling, removing or grading, dredging and dredged materials disposal, significant cutting of vegetation, excavation, draining, damming, and/or diverting of hydrological flows in a coastal wetland are considered alterations requiring a permit.<sup>23</sup> RICRMC may also review any activity within the watersheds of poorly

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<sup>14</sup> *Id.*, Rule 3.01(C), Appendix 2.

<sup>15</sup> The following activities are exempt: limited clearing and cutting; limited maintenance and repair activities; demolition of buildings or property accessories; single family residences and property accessories; nonresidential buildings or multifamily residences or accessories; emergency environmental protection; site remediation; utility emergencies; new utility lines; agricultural practices; normal farming and ranching activities; conservation activities; monitoring and research activities; temporary recreational structures; moorings and anchorage for single boats; and emergency water withdrawal for fighting fires. *Id.*, Rules 6.02-6.09.

<sup>16</sup> RIDEM, WHAT’S THE SCOOP ON WETLANDS? 34 (May 2000), available at [http://www.nbwctp.org/resources/whats\\_the\\_scoop\\_on\\_wetlands\\_ridem.pdf](http://www.nbwctp.org/resources/whats_the_scoop_on_wetlands_ridem.pdf).

<sup>17</sup> *Id.* at 27.

<sup>18</sup> Personal Communication with Carolyn Murphy, R.I. Dep’t of Env’tl. Mgmt. (Feb. 13, 2006).

<sup>19</sup> R.I. GEN. LAWS § 46-23 *et seq.*

<sup>20</sup> Coastal Resources Management Council, *What is CRMC?*, at <http://www.crmc.state.ri.us/whatis/index.html> (last modified July 27, 2007).

<sup>21</sup> R.I. Coastal Res. Mgmt. Program, Activities Under Council Jurisdiction, § 300.12.B.3.

<sup>22</sup> R.I. Coastal Res. Mgmt. Program, Authorities and Procedures, § 100.1.

<sup>23</sup> R.I. Coastal Res. Mgmt. Program, Activities Under Council Jurisdiction, § 300.12.

flushed estuaries.<sup>24</sup> Like RIDEM, RICRMC also has a preliminary determination request process that facilitates accurate identification of wetlands within its jurisdiction.<sup>25</sup> Under RICRMC rules, certain activities are prohibited outright in particular coastal wetland areas.<sup>26</sup> RICRMC also oversees permitting for freshwater wetlands that lie within their jurisdiction;<sup>27</sup> permit requirements and procedures for freshwater wetlands are similar to those of RIDEM.

In making permitting decisions, staff rely on state coastal regulations and best professional judgment.<sup>28</sup> In 2005, 65 assents were issued for projects related in some way to wetlands (e.g., minor and major alterations, delineations, jurisdictional determinations, *Phragmites* control, verification of a wetland edge, etc.). The number of applications received, and subsequently approved, varies from year to year.<sup>29</sup>

### ***Organization of state agencies***

Since 1971, RIDEM and RICRMC have cooperatively administered the state's two parallel wetland programs. Jurisdiction over "freshwater wetlands" (overseen by RIDEM) and "freshwater wetlands in the vicinity of the coast" and "coastal wetlands" (overseen by RICRMC) is delineated on a jointly-developed master map. The jurisdictional line generally runs along road and highway boundaries. Wetlands shoreward of the line fall under the jurisdiction of RICRMC; wetlands landward of the line fall under the jurisdiction of RIDEM.<sup>30</sup> For proposed projects that straddle the jurisdictional line, RICRMC and RIDEM determine jurisdiction on a case-by-case basis.<sup>31</sup> Certain circumstances may also arise in which both RIDEM and RICRMC are involved in the regulation of the same freshwater wetland.

RICRMC has statewide authority to review specified categories of projects for any impacts they may have on the coastal region.<sup>32</sup> RIDEM retains exclusive jurisdiction to permit and certify aspects of projects regardless of where they fall in relation to the jurisdictional line. Specifically, RIDEM possesses exclusive authority to issue Individual Sewage Disposal System, Underground Injection Control, and Rhode Island Pollution Discharge Elimination System permits, as well as

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R.I. Coastal Res. Mgmt. Program, Authorities and Procedures, § 100.3.

<sup>25</sup> Coastal Resources Management Council, *Application Forms*, at

<http://www.crmc.state.ri.us/applicationforms/index.html> (last visited July 27, 2007).

<sup>26</sup> See: <http://www.crmc.state.ri.us/applicationforms/index.html>, Authorities and Procedures, §§ 100 *et seq.*

<sup>27</sup> In 1997, an amendment to the Rhode Island Coastal Zone Management Act gave RICRMC the authority to regulate "freshwater wetlands in the vicinity of the coast" in addition to coastal wetlands. See R.I. GEN. LAWS § 46-23-6.E.

<sup>28</sup> Personal Communication with Megan Higgins, R.I. Coastal Res. Mgmt. Council (Feb. 14, 2006).

<sup>29</sup> Personal Communication with Megan Higgins, R.I. Coastal Res. Mgmt. Council (Feb. 27, 2006).

<sup>30</sup> Maps delineating the jurisdictional line are available at RICRMC's and RIDEM's offices. Maps are also available online at <http://www.dem.ri.gov/maps/wetjuris.htm>.

<sup>31</sup> The procedure for handling proposed projects that straddle the jurisdictional line prescribes that RICRMC act as the "gatekeeper" for those projects, make a coordinated decision on jurisdiction with RIDEM, and notify applicants of the appropriate wetland review agency. See RIDEM, FRESHWATER WETLANDS IN THE VICINITY OF THE COAST (2001), available at <http://www.dem.ri.gov/programs/benviron/water/permits/fresh/pdfs/wfs06.pdf>.

<sup>32</sup> Specified categories of activities that may impact coastal regions include mineral extraction, chemical processing, energy projects, sewage treatment and disposal, solid waste disposal, and desalination plants. If RICRMC determines that any such inland activity may have environmental impacts on the coastal region, the project must obtain council assent. See R.I. GEN. LAWS §§ 46-23-6(B)(3), 46-23-6(E); R.I. Coastal Res. Mgmt. Program, Authorities and Procedures, § 100.2; R.I. Coastal Res. Mgmt. Program, Activities Under Council Jurisdiction, § 300.6 *et seq.*

state-triggered water quality certifications, regardless of the location of the proposed project.<sup>33</sup> RIDEM also has exclusive jurisdiction over all farmers pursuing agricultural projects, regardless of the location of the farm.<sup>34</sup>

*Rhode Island Department of Environmental Management.* RIDEM's Office of Water administers the state's permitting program for freshwater wetlands. The office also oversees §401 certification, compliance and enforcement, and rule writing and provides technical assistance. Non-regulatory activities include education and outreach, monitoring, and restoration. Approximately 17 full-time equivalent (FTE) staff are devoted to wetland permitting,<sup>35</sup> as well as two FTEs to water quality certification.<sup>36</sup> Five staff work in the Office of Compliance and Inspection on wetland enforcement.<sup>37</sup> The program is generally supported by funding from Rhode Island's General Fund, although U.S. Environmental Protection Agency (EPA) grants also provide support for monitoring and outreach.<sup>38,39</sup>

*Rhode Island Coastal Resources Management Council.* RICRMC administers the state's permitting program for "coastal wetlands" and "freshwater wetlands in the vicinity of the coast." Staff activities generally include permitting, policy development, restoration, technical support, and outreach. Although no individual staff is dedicated exclusively to wetland-related activities, two biologists, one coastal policy analyst, and one coastal geologist oversee wetland-related activities for the agency. This work is supported by general state appropriations.<sup>40</sup>

### ***§401 certification***

Rhode Island's wetland regulatory programs are not based on state authority to provide water quality certification under §401 of the Clean Water Act; however, §401 authority does provide an important supplement to the state's programs, thus providing comprehensive protection for wetland resources. Section 401 regulatory responsibilities include the review, approval or denial determination and enforcement. Certifications are tied to RIDEM and RICRMC permits.<sup>41</sup> Approximately 80 certifications are made annually. Less than one percent of decisions are denials or waivers. Staff rely on qualitative assessments in making certification decisions.<sup>42</sup>

### ***State programmatic general permit***

As a result of cooperative efforts between RIDEM, RICRMC, and the U.S. Army Corps of Engineers ("Corps"), a state programmatic general permit (SPGP) has been in effect in Rhode

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<sup>33</sup> RIDEM, *supra* note 16, at 41.

<sup>34</sup> RIDEM, *supra* note 31.

<sup>35</sup> RIDEM Office of Water wetland permitting staff positions include two supervisory scientists, eleven environmental scientist positions, four engineer positions, two administrative staff, and one policy position. Time from the program's Chief and Deputy Chief is not included in this FTE estimate.

<sup>36</sup> RIDEM Office of Water 401 certification staff include one scientist and one engineer. Time from the program's Chief and Deputy Chief is not included in this FTE estimate.

<sup>37</sup> RIDEM Office of Compliance and Inspection wetland enforcement staff include one supervisory scientist and four staff scientists. Time from the program's Chief and Deputy Chief is not included in this FTE estimate.

<sup>38</sup> The New England Interstate Water Pollution Control Commission also provides technical assistance to RIDEM in the form of two staff funded by EPA 104(b)(3) grants. These positions support outreach and monitoring activities.

<sup>39</sup> Murphy, *supra* note 18.

<sup>40</sup> Higgins, *supra* note 28.

<sup>41</sup> Murphy, *supra* note 18.

<sup>42</sup> Personal Communication with Terry Simpson, R.I. Dep't of Env'tl. Mgmt. (Mar. 8, 2006).

Island since February 1997. Under the SPGP, projects are characterized as Category I or Category II. Category I projects need not be reported to Corps, while Category II projects represent more significant impacts and are reviewed for compliance with all applicable state and local requirements at monthly screening meetings attended by RICRMC, RIDEM, Corps, and other agencies as appropriate. The SPGP outlines the criteria for determining project categories.<sup>43</sup> For both Category I and II projects, RICRMC or RIDEM may issue the SPGP, along with the appropriate state permit.<sup>44</sup>

### ***Mitigation***

RIDEM's rules and regulations include strict avoidance and minimization provisions, requiring that all probable impacts to freshwater wetlands be avoided to the maximum extent possible, and if unavoidable, be minimized to the maximum extent possible. RIDEM does not have formal guidelines on compensatory mitigation and, in practice, allows mitigation only in unusual circumstances.<sup>45</sup> Functional criteria for RIDEM's discretionary mitigation requirements include the nature and value of the wetland, as well as the area of the replacement wetland.<sup>46</sup>

RICRMC has adopted compensatory mitigation requirements for coastal wetlands.<sup>47</sup> To fulfill its "no net loss" policy,<sup>48</sup> RICRMC requires altered coastal wetlands to be replaced by wetlands of a similar type and that provide an ecological value equal to or greater than that of the altered wetland. The ratio of replacement to permanently altered or lost coastal wetland is 2:1; specific replacement requirements are determined on a case-by-case basis.<sup>49</sup> RICRMC's rules and regulations explicitly prohibit monetary compensation as an acceptable form of mitigation.<sup>50</sup>

### ***Compliance and enforcement***

RIDEM's wetland compliance program is located within the Office of Compliance and Inspection. RICRMC maintains wetland compliance and inspection activities through dedicated enforcement staff, as well as permitting staff. Both RIDEM and RICRMC are authorized to take a range of administrative, civil, and criminal actions to achieve compliance with the requirements of their wetlands programs.<sup>51</sup> Enforcement options include notices of violation (NOVs), immediate compliance orders, cease and desist orders, civil penalties,<sup>52</sup> injunctive proceedings, criminal penalties, and imprisonment.<sup>53</sup>

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<sup>43</sup> U.S. ARMY CORPS OF ENG'RS, NEW ENGLAND DIST., DEP'T OF THE ARMY GENERAL PROGRAMMATIC GENERAL PERMIT STATE OF RHODE ISLAND, GENERAL PERMIT NO: NAE-2006-2711 (Feb. 13, 2007), *available at* [http://www.nae.usace.army.mil/reg/RI%20PGP%20Issuance%20\(no%20PN\).pdf](http://www.nae.usace.army.mil/reg/RI%20PGP%20Issuance%20(no%20PN).pdf).

<sup>44</sup> RIDEM, *supra* note 1, at III.G-7.

<sup>45</sup> Personal Communication with Hank Ellis, Rhode Island Department of Environmental Management (Nov. 14, 2005). *See also* RIDEM, Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Appendices 3 and 6(E).

<sup>46</sup> Personal Communication with Hank Ellis, R.I. Dep't of Env'tl. Mgmt. (Nov. 14, 2005).

<sup>47</sup> *See* R.I. Coastal Res. Mgmt. Program, Activities Under Council Jurisdiction, § 300.12.E.

<sup>48</sup> *Id.* § 300.12.B.3.

<sup>49</sup> *Id.* § 300.12.F.1.

<sup>50</sup> *Id.* § 300.12 B.10.

<sup>51</sup> R.I. GEN. LAWS §§ 2-1-23 to 24, 46-23-7.

<sup>52</sup> RIDEM is authorized to assess an administrative penalty of up to \$5,000 for each wetland violation and up to \$10,000 for each wetland alteration that is knowing or reckless. *See* R.I. GEN. LAWS § 2-1-23. RICRMC is authorized to assess an administrative penalty of up to \$2,500 for each violation and to assess additional penalties of

In practice, both RICRMC and RIDEM primarily rely on administrative tools to ensure compliance with wetlands requirements, in particular, administratively assessed penalties and NOV's. RIDEM requires that NOV's be recorded in the Land Evidence Records of the relevant city or town in order to notify all parties that a violation has occurred. In most circumstances, RIDEM may take informal action by issuing warnings letters or Notices of Intent to Enforce to achieve compliance. RIDEM may settle enforcement proceedings by entering into a consent agreement, proceeding to an administrative hearing, or by proceeding to Superior Court. RIDEM's compliance and inspection program routinely requires restoration of freshwater wetlands through its informal and formal enforcement actions. Typically, any fill material or other structures placed within a freshwater wetland must be removed, and areas cleared of vegetation must be replanted with trees, shrubs, and groundcover.<sup>54</sup> RICRMC typically settles administrative enforcement proceedings by entering into a consent agreement with the violator. Often, the fine is reduced to an administrative fee as part of the consent agreement.<sup>55</sup>

Over the past five years, RIDEM has issued an estimated 19 formal orders (NOV's or Immediate Compliance Orders) per year. In 2004, RIDEM assessed \$56,400 in penalties for wetlands violations.<sup>56</sup> RICRMC issued a total of 31 administrative violation notices in the first eleven months of 2005. Fines in RICRMC enforcement cases range from \$250 (lowest administrative fee-based disposition) to \$2,500.<sup>57</sup>

### ***Tracking systems***

A statewide permit tracking system keeps record of all §401 water quality certification decisions, as well as coordinated enforcement and compliance efforts. Computerized tracking of RIDEM wetland decisions and associated loss/gain data went on line in 1998.<sup>58</sup> RIDEM has incorporated a geographic component for internal use since 1995, and Rhode Island's official website includes a wetland application search tool.<sup>59</sup> RICRMC is currently proposing to add a loss/gain tracking function to their permit database.

## **III. Water Quality Standards**

All public and private wetlands in the state are subject to §401 water quality certification. RIDEM has promulgated narrative water quality standards for all state waters, which include wetlands. These standards are used to determine if a proposed activity would result in a

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not more than \$500 for each day of continued violation after receipt of a cease and desist order. The penalties in the aggregate shall not equal or exceed \$10,000. *See Id.* § 46-23-7.

<sup>53</sup> Any person who violates an order of RIDEM is subject to a criminal fine not to exceed \$500 and to imprisonment not to exceed 30 days for each day of violation. *See Id.* § 2-1-24(c). A knowing violation of a RICRMC requirement is considered a misdemeanor subject to maximum fine of \$500 and a maximum imprisonment of three months for each day of violation. *Id.* § 46-23-7.3.

<sup>54</sup> Personal Communication with Hank Ellis, R.I. Dep't of Env'tl. Mgmt. (Jan. 25, 2006).

<sup>55</sup> Personal Communication with Megan Higgins, R.I. Coastal Res. Mgmt. Council (Dec. 5, 2005).

<sup>56</sup> Personal Communication with Hank Ellis, R.I. Dep't of Env'tl. Mgmt. (Nov. 11, 2005).

<sup>57</sup> Personal Communication with Megan Higgins, R.I. Coastal Res. Mgmt. Council (Nov. 15, 2005).

<sup>58</sup> RIDEM, FRESHWATER WETLAND PROTECTION AND REGULATION STATUS AND TRENDS REPORT 2001 THROUGH 2003 7 (2004), available at <http://www.dem.ri.gov/programs/benviron/water/wetlands/pdfs/wet2003.pdf>.

<sup>59</sup> RIDEM, *Wetlands Permit Application Search*, at <http://www.ri.gov/dem/wetlands/> (last visited July 27, 2007).



significant adverse impact to the water quality of wetlands. State water quality standards designate wetland-related uses, including fish and wildlife habitat and primary and secondary contact recreational activities.<sup>60</sup> Wetlands are also included under Rhode Island's anti-degradation policy.<sup>61</sup>

#### **IV. Monitoring and Assessment**

##### ***Monitoring and assessment for wetlands***

The New England Interstate Water Pollution Control Commission, with support from EPA, has assisted RIDEM with the development of a draft plan for systematic monitoring of freshwater wetlands. The plan includes a three-tiered approach to monitoring to meet the overall goal of improved protection and management of wetlands.<sup>62</sup>

##### ***Monitoring and assessment for streams***

Stream monitoring is conducted under the RIDEM's monitoring program for all "Waters of the State."<sup>63</sup> A program monitoring strategy was finalized in 2005 and includes sampling designs and monitoring strategies to protect the designated uses of the state's waters. In practice, a variety of assessment methodologies is used, including biological sampling and water chemistry sampling. Data feeds in the state's §303(d) listing/§305(b) reporting. Multiple state and federal partners are involved in the effort.<sup>64</sup>

#### **V. Restoration**

Gains in both freshwater and coastal wetland quantity and quality are realized through proactive restoration projects spearheaded by RIDEM, RICRMC, the Narragansett Bay Estuary Program, as well as other federal, state, local, and watershed-based agencies and organizations.<sup>65</sup> For example, the Rhode Island Habitat Restoration Team, pursuant to the Coastal and Estuary Habitat Restoration Program and Trust Fund, drafted and adopted the State Estuary and Coastal Habitat Restoration Strategy, which was approved by RICRMC. According to the strategy, grant monies are dispersed for habitat restoration design, planning, construction, or monitoring. The Rhode Island Habitat Restoration Team coordinates planning in the state.<sup>66</sup> RICRMC has also spearheaded the development of the Rhode Island Habitat Restoration Portal to provide data and

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<sup>60</sup> RIDEM, Water Quality Regulations, Rule 8.

<sup>61</sup> *Id.*, Rule 18.

<sup>62</sup> NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION & RIDEM, RHODE ISLAND WETLAND MONITORING AND ASSESSMENT PLAN – DRAFT (2005), available at [http://www.ci.uri.edu/Projects/RI-Monitoring/Docs/DRAFT\\_RI\\_Wetland\\_Monitoring\\_Plan\\_MAY05.pdf](http://www.ci.uri.edu/Projects/RI-Monitoring/Docs/DRAFT_RI_Wetland_Monitoring_Plan_MAY05.pdf).

<sup>63</sup> RIDEM, Water Quality Regulations, Rule 7. Also defined in "Wetland definitions and delineation" section above.

<sup>64</sup> RIDEM, STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS WATER MONITORING STRATEGY – WORKING DRAFT – 2005-2010 (2005), available at [http://www.ci.uri.edu/Projects/RI-Monitoring/Docs/DEM\\_WQ\\_Mon\\_Jan5\\_05.pdf](http://www.ci.uri.edu/Projects/RI-Monitoring/Docs/DEM_WQ_Mon_Jan5_05.pdf).

<sup>65</sup> There are many successful examples of restoration projects. Two large and noteworthy projects resulting in gains in wetland quantity and quality have been accomplished on state-owned land at the Galilee Bird Sanctuary (Narragansett) and the Lonsdale Marsh (Lincoln). Personal Communication with Carolyn Murphy, R.I. Dep't of Env'tl. Mgmt. (Jan. 31, 2006).

<sup>66</sup> *Id.*

information about habitat restoration in the state to other agencies and nonprofit groups. The associated Project Inventory is a database designed to help users identify restoration opportunities and completed projects in Rhode Island watersheds.<sup>67</sup>

RIDEM, working with the University of Rhode Island and supported by EPA, has completed the development of a watershed-based methodology to identify and determine priorities among freshwater wetland and buffer restoration sites.<sup>68</sup> In cooperation with the local watershed council, methods have been successfully piloted in the Woonasquatucket River Watershed.<sup>69</sup>

## **VI. Public-Private Partnerships**

RIDEM's wetland activities are guided by the final report of the Director's Task Force. The Task Force brought together over 40 public, private, and non-profit stakeholders and experts with the goal of permit streamlining.<sup>70</sup>

RICMRC and RIDEM also actively participate in the National Corporate Wetlands Restoration Partnership.<sup>71</sup> The partnership includes federal and state agencies and private corporations and seeks to restore wetlands and other aquatic habitats through matching private and public funds, thus leveraging collective resources and skills.<sup>72</sup>

In addition, the state partners with various citizen groups. For example, the University of Rhode Island's Watershed Watch Program works with local governments and other organizations to assess water quality by recruiting and training volunteers to become citizen scientists.<sup>73</sup>

## **VII. Education and Outreach**

Wetlands outreach and education has been strategically implemented by RIDEM with other agencies and partners since 1999, primarily in support of the regulatory program. Both RIDEM and RICMRC have composed a number of fact sheets, pamphlets, sample applications, engineering guidances, and other guidance documents that describe the state's wetland programs

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<sup>67</sup> See University of Rhode Island, *Habitat Restoration*, at <http://www.edc.uri.edu/restoration/> (last visited July 27, 2007).

<sup>68</sup> NICHOLAS A. MILLER & UNIVERSITY OF RHODE ISLAND, DEVELOPMENT OF A STATEWIDE FRESHWATER WETLANDS RESTORATION STRATEGY: SITE IDENTIFICATION AND PRIORITIZATION METHODS (2001), available at <http://www.dem.state.ri.us/programs/benviron/water/wetlands/pdfs/strategy.pdf>.

<sup>69</sup> FRANCIS C. GOLET, ET AL., WETLAND RESTORATION PLAN FOR THE WOONASQUATUCKET RIVER WATERSHED (2002), available at <http://www.dem.ri.gov/programs/benviron/water/wetlands/woonrest/files/p2.pdf>.

<sup>70</sup> RIDEM, WETLANDS TASK FORCE FINAL REPORT (2001), available at <http://www.dem.ri.gov/programs/ombuds/pstream/wetlands/index.htm>.

<sup>71</sup> Higgins, *supra* note 55.

<sup>72</sup> Corporate Wetlands Restoration Partnership, *Corporate Wetlands Restoration Partnership*, at <http://www.coastalamerica.gov/text/cwrp.html> (last updated Mar. 7, 2007).

<sup>73</sup> University of Rhode Island, *URI Watershed Watch*, at <http://www.uri.edu/ce/wq/ww/index.htm> (last visited July 27, 2007).

and procedures as an aid to applicants and the general public.<sup>74</sup> Targeted outreach includes: workshops for consultants and municipalities to review regulatory requirements; informational open houses; and maintenance of a booth at the Rhode Island Home Show to interact with current and future homeowners. RIDEM also regularly conducts presentations to civic groups on the importance of wetlands and on components of Rhode Island's wetland protection and restoration programs.<sup>75</sup>

### **VIII. Coordination with State and Federal Agencies**

In order to guide the state's dual regulatory scheme for wetlands, RIDEM and RICRMC initiated an interagency coordination review process that resulted in a Memorandum of Agreement (MOA) executed on September 17, 2001. The MOA includes procedures on the transition of the regulation of "freshwater wetlands in the vicinity of the coast" from RIDEM to RICRMC. The MOA also addresses the achievement of equivalent protection of freshwater wetlands under the jurisdiction of each agency based on RIDEM's existing regulations, includes clarification of the jurisdictional line, and provides for the exchange of technical and regulatory information on an ongoing basis. RICRMC and RIDEM currently achieve a high degree of coordination on wetland regulation, although minor program differences, such as different administrative structures, do result in some discrepancy.<sup>76</sup>

Through Special Area Management Plans, RIDEM provides integrated planning and coordination for natural resource protection and reasonable coastal-dependent economic growth. Preparation of the plans involves the participation by a broad range of actors, including federal and state agencies, boards, commissions, economic development corporations, cities and towns, institutions of higher education, advocacy groups, community-based organizations, and private citizens.

RICRMC is authorized to serve as a final arbitrator in disputes between local governments or state agencies involving coastal resources.<sup>77</sup> RICRMC's Technical Advisory Committee to the Rhode Island Habitat Restoration Team also provides a continuing forum for cooperatively reviewing projects with state and federal agencies and institutions, including RIDEM, EPA, U.S. Fish and Wildlife Service, and USDA Natural Resources Conservation Service.<sup>78</sup>

RIDEM's Performance Partnership Agreements with EPA demonstrate institutionalized federal-state cooperation on wetlands protection, including the identification of cooperative activities that serve as performance measures.<sup>79</sup> In addition, monthly meetings conducted as part of the

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<sup>74</sup> See RIDEM, *Freshwater Wetlands*, at <http://www.dem.ri.gov/programs/benviron/water/permits/fresh/index.htm> (last revised June 1, 2007); RICRMC, *Publications*, at <http://www.crmc.ri.gov/pubs> (last modified Feb. 15, 2007).

<sup>75</sup> Personal Communication with Chuck Horbert, R.I. Dep't of Env'tl. Mgmt. (Oct. 6, 2005).

<sup>76</sup> Most of the differences between RICRMC and RIDEM's requirements and procedures are relatively minor (e.g. permit and public notice procedures) and predate the development of the freshwater wetlands jurisdictional boundary.

<sup>77</sup> R.I. GEN. LAWS §§ 46-23-6(v)(B) to (D).

<sup>78</sup> Higgins, *supra* note 55.

<sup>79</sup> See R.I. DEP'T OF ENVTL. MGMT. & U.S. ENVTL. PROT. AGENCY - REGION I, PERFORMANCE PARTNERSHIP AGREEMENT BETWEEN THE RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND THE U S

SPGP process facilitate interagency coordination. Finally, RIDEM coordinates regularly and holds an MOA with the Rhode Island Department of Transportation on the review of transportation applications affecting wetlands.<sup>80</sup>

RICRMC also coordinates with USDA on agricultural restoration programs, principally by providing information to help USDA make priority decisions on Farm Bill programs.<sup>81</sup> RIDEM's Division of Agriculture handles threshold applications for farmers who propose to alter wetlands.<sup>82,83</sup>

## **IX. Acronyms and Abbreviations**

EPA – U.S. Environmental Protection Agency

FTE – Full-Time Equivalent

MOA – Memorandum of Agreement

NOV – Notice of Violation

RICRMC – Rhode Island Coastal Resources Management Council

RIDEM – Rhode Island Department of Environmental Management

SPGP – Statewide Programmatic General Permit

USDA – U.S. Department of Agriculture

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ENVIRONMENTAL PROTECTION AGENCY REGION I : STATE FISCAL YEARS 2004 AND 2005 (FEB. 26, 2004), *available at* <http://www.dem.ri.gov/pubs/plan2003/pdf/ppa0405.pdf>, at 32.

<sup>80</sup> Murphy, *supra* note 65.

<sup>81</sup> Higgins, *supra* note 55.

<sup>82</sup> RIDEM, *supra* note 16, at 23.

<sup>83</sup> RIDEM's Division of Agriculture is authorized to adopt regulations, in conjunction with the agricultural council's coordinating committee, regarding the definition of normal farming activities. Ellis, *supra* note 54.