

**For Department of Administration Legislative Task Force meeting #1 on 9/26/13**

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Summary State of Rhode Island Freshwater Wetlands Act  
Title 2 Agriculture and Forestry  
Chapter 2-1 Agricultural Functions of the DEM  
Sections 2-1-18 through 2-1-25

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The RI Freshwater Wetlands Act was enacted in 1971. It was the second state freshwater wetland law in the country after the Massachusetts law.

The Act establishes *“the public policy of the state to preserve the purity and integrity of the swamps, marshes, and other freshwater wetlands of the 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, in the exercise of the police power those wetlands are to be regulated hereunder.”* (Section 2-1-19)

The Act Declaration of Intent identifies important functions that wetlands perform and the services they provide, including (Section 2-1-18):

- Reducing flood hazards by absorption and storage of floodwaters;
- Recharge of our vital ground water resource;
- Providing valuable wildlife habitat areas; and
- Providing high value recreation areas.

The Act recognizes that both wildlife habitat areas and high value recreation areas are essential to the well-being of people.

The definition of freshwater wetlands in the Act is purposefully broader than vegetated freshwater wetlands alone; e.g. swamps, marshes, and bogs, etc.

The definition includes flowing and standing surface waters as well as other areas of land adjacent to some of the vegetated wetlands and waters, which are considered wetlands for purposes of the Act.

Specifically, the Act defines freshwater wetlands to include, but not be 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.”*(Section 2-1-20 (4))

The Act further defines some of the individual wetland types, i.e., bogs, marshes, swamps, ponds, rivers, riverbanks and floodplains. (Section 2-1-20)

The vegetated wetland types are defined by size, vegetation and by water regime:

A *bog* can be any size, with 50 percent of the ground or surface water covered by Sphagnum moss and other specific plants listed in the Act, and with water near or at the surface during the normal growing season.



Photo by Shawna Smith, RI DEM

A *freshwater marsh* is an area that is 1 acre or more in size, dominated primarily by herbaceous reeds and grasses in standing or running water during the growing season.



Photo by Bruce Ahern, RI DEM

A *swamp* is an area that is 3 acres or more in size, dominated by woody vegetation and where groundwater is near or at the surface of the ground for a significant part of the growing season.



Photo by Dan Kowal, RI DEM



Photo by Kate McPherson, RI DEM

The definition of *pond* includes all ponds, whether natural or manmade, one-quarter acre or greater in size where open standing or slowly moving water is present for at least six months a year.

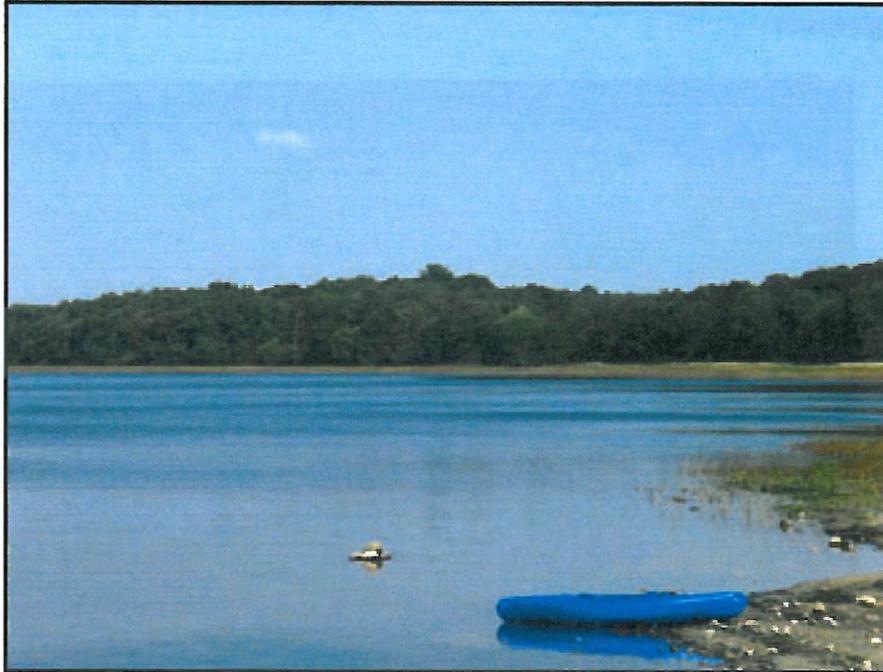


Photo by Katie DeGoosh, RI DEM

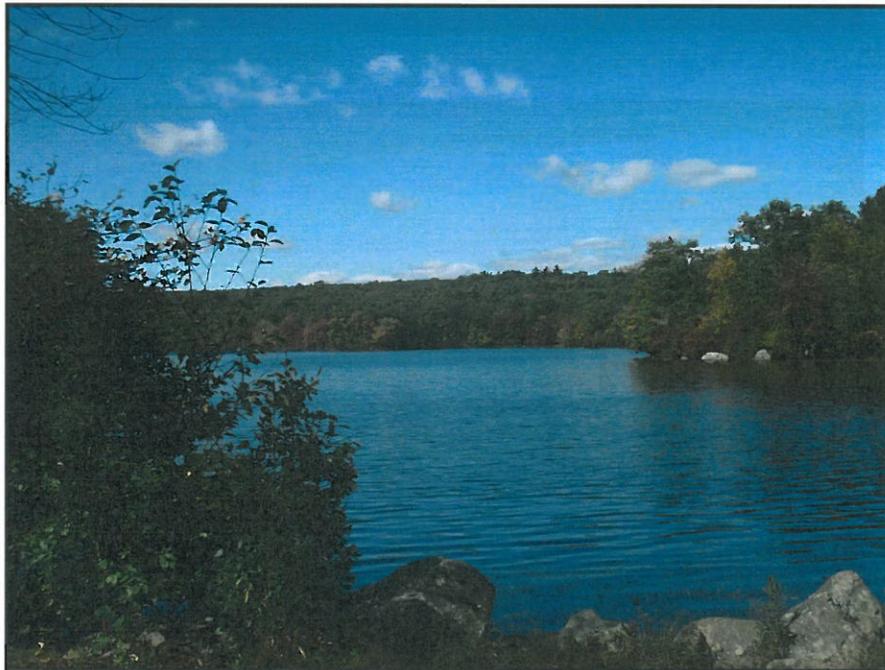


Photo by RIDEM

The definition of *river* specifies a body of water that is a perennial stream as indicated on the US topographic maps.



Photo by Kate McPherson, RI DEM



Photo by Fred Presley, prior RI DEM

For purposes of the Act, a portion of a river's bank is considered freshwater wetlands as well. Specifically,

- That area of land within 100 feet of either side of a river or stream less than 10 feet wide, and
- That area of land within 200 feet of either side of a river or stream 10 feet wide or more are defined as *riverbank*.



Photo by Dr. Frank Golet

⊗ → The Act does not provide specific definitions of the terms buffer zone or setback. However, the inclusion of riverbank and the area of land within 50 feet of a bog, marsh, swamp or pond as freshwater wetland does in effect designate these areas as lands intended to serve as buffers.

The Act states that *"No person, firm, industry, company, corporation, city, town, municipal or state agency, fire district, club, nonprofit agency, or other individual or group may excavate; drain; fill; place trash, garbage, sewage, highway runoff, drainage ditch effluents, earth, rock, borrow, gravel, sand, clay, peat, or other materials or effluents upon; divert water flows into or out of; dike; dam; divert; change; add to or take from or otherwise alter the character of any fresh water wetland ... without first obtaining the approval of the director of the department of environmental management."* (Section 2-1-21)

The remaining sections of the Act describe procedures for:

- Rules and regulations (2-1-20.1);
- Designation of wetlands (2-1-20.2);
- Inspections (2-1-20.3);
- Approvals of the director (2-1-21 and 2-1-22); and
- Violations and penalties (2-1-23 and 2-1-24).

It should be mentioned that in 1989 there was an amendment to the Act that exempted normal farming and ranching activities from the Act according to specified procedures.

Also, as a result of another amendment, since 1999 the authority to regulate *freshwater wetlands in the vicinity of the coast* was transferred to the RI Coastal Resources Management Council (CRMC) pursuant to state Chapter 46-23. DEM and CRMC developed a jurisdictional boundary and maps which designate each agency's jurisdiction. DEM continues to regulate about 93% percent of the state's freshwater wetlands landward of the boundary.

### **Summary of Existing RI General Laws Regarding Onsite Wastewater Treatment Systems**

The state law that provides DEM authority to set standards for Onsite Wastewater Treatment Systems (OWTS) regarding the protection of wetlands and waters of the state is in Chapter 42-17.1-2, powers and duties of the director. Section 42-17.1-2(12) states that DEM has the authority:

“To establish minimum standards, subject to the approval of the environmental standards board, relating to the location, design, construction and maintenance of all sewage disposal systems.”

This is the complete text of DEM authority related to OWTS. This is the only state law regarding OWTS cited in 42-64.13-10 establishing this Legislative Task Force.

The only other state law that specifies standards for OWTS relative to water resources is Chapter 23-19.15 Rhode Island Cesspool Act of 2007, which requires the removal of cesspools within 200' of the coast, drinking water supply impoundment or public well.

Other state laws that address OWTS are listed below. However, none of these Chapters deal with the issues relevant to protection of wetlands and water resources that will be addressed by the Legislative Task Force:

Chapter 5-56 Installers of Individual Sewage Disposal Systems

Requires license for OWTS Installers.

Chapter 5-56.1 Designers of Individual Sewage Disposal Systems

Requires license for OWTS designers.

Chapter 23-19.5 Percolation Tests and Water Table Elevations

Requires percolation tests and water table determinations for land sold as buildable and provides standards for such tests.

Chapter 23-24.3 Substances or Compounds Used as Sewerage System Cleaners

Allows for the prohibition of OWTS cleaners that have toxic chemicals.

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