REGULATORY BENEFIT AND COST ANALYSIS

DAM OPERATION PERMITS

March 2023

1.0 Purpose

The Department of Environmental Management (Department) proposes to adopt regulations regarding the implementation and enforcement of the Dam Permit Act (Act), R.I. Gen. Laws Chapter 46-19.1 (Proposed Regulations).

Pursuant to the Administrative Procedures Act (APA), R.I. Gen. Laws § 42-35-2.9, the Department has conducted a regulatory benefit and cost analysis (Analysis) for the Proposed Regulations using the best available information at the time of publication.

2.0 Background

On June 27, 2022, the Act was signed into law and went into effect upon passage. The Act reads as follows:

> Any person who owns or operates a dam that has the capacity to store greater than one thousand four hundred (1,400) normal storage acre feet of water shall apply to the director of the department of environmental management for a permit to raise or lower the water level behind the dam. The owner or operator shall apply for a permit, and until such time as a permit is issued by the director, the owner or operator shall operate the dam in a manner that is consistent with historic use as determined by the director. The director may enforce this section in accordance with chapters 17.1 and 17.6 of title 42. This section shall not apply to dams that impound water for a public water supply system as defined in § 46-13-2. The department may promulgate rules and regulations to implement the provisions of this chapter.

3.0 Regulatory Development

The Department has determined that the Act applies to six dams in Rhode Island. The State of Rhode Island (specifically, the Department) owns two of these dams. The others are privately owned. The Department has determined that each dam requires a permit from the Department.

The Act allows an owner and/or operator to operate the dam in a manner consistent with its historic use until the Department issues a permit. The Act does not define historic use.

In developing the Proposed Regulations, the Department determined that an owner and/or operator could apply for a permit to operate the dam in two different manners:

1. Operate the dam in a manner consistent with its historic use.
2. Operate the dam in a manner that differs with its historic use.

The Department reviewed three regulations to determine whether the requirements of the Act could be met through one or more of these regulations. Specifically, the Department reviewed the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (Part 150-15-3 of this Title) (FWW Rules), the *Water Quality Regulations* (Part 150-5-1 of this Title) (WQ Rules), and the *Rules and Regulations for Dam Safety* (Subchapter 05 Part 1 of this Chapter) (DS Rules). The Department determined that none of these regulations can meet the requirements of the Act.

In developing the Proposed Regulations, the Department interpreted the intention of the Act to be that if an owner and/or operator applies to the Department to operate the dam in a manner consistent with its historic use, the Department's review of the application and decision on the application will be limited to whether the proposed use is consistent with the historic use and that the application process be as least burdensome as possible. For these reasons, the Proposed Regulations do not include a fee to apply, and the owner and/or operator only must submit documents to show that the proposed use is consistent with the historic use and to show the monitoring that will be performed and the records that will be maintained to document how water will be managed behind the dam and below the dam consistent with the historic use.

In developing the Proposed Regulations, the Department determined that if an owner and/or operator applies to the Department to operate the dam in a manner that differs with its historic use, the owner and/or operator will also need to apply to the Department pursuant to the FWW Rules and WQ Rules. This additional application is necessary to comply with the FWW Rules and WQ Rules as currently promulgated and, as such, is not an added regulatory burden.

As the Act does not define historic use, the Proposed Regulations include definitions of historic, which means between July 1971 and June 2022, and historic use, which means the use that has consistently occurred in the operation of the dam between July 1971 and June 2022. The

Department chose July 1971 as this is when the *Freshwater Wetlands Act*, R.I. Gen. Laws § 2-1-18 et. seq., came into effect and persons proposing activities that may alter freshwater wetlands were required to apply to the Department for a permit. It also coincides with when the federal Clean Water Act was passed regulating activities that may affect water quality. The Department chose June 2022 as this is when the Act was passed.

In late September 2022, a first draft of the Proposed Regulations was distributed within the Department for review and comment. In mid-January 2023, a second draft of the Proposed Regulations was distributed within the Department for review and comment. This draft incorporated Department comments received on the first draft and unsolicited comments received from the Town of Burrillville. In early February 2023, additional revisions were made to the Proposed Regulations and this Analysis was prepared. In early to mid-March, additional revisions were made to the Proposed Regulations and this Analysis.

4.0 Regulatory Alternatives

Pursuant to the APA, R.I. Gen. Laws § 42-35-2.9(b)(1), the Analysis must include "the benefits and costs of a reasonable range of regulatory alternatives."

The Department identified three regulatory alternatives to implement the Act:

2.1 Amend the FWW Rules and WQ Rules and require the owner and/or operator to apply for a permit under the amended rules.

2.2 Promulgate the Proposed Regulations and require the owner and/or operator to apply for a permit under the Proposed Regulations and demonstrate compliance with the review criteria in the FWW Rules and WQ Rules.

2.3 Promulgate the Proposed Regulations and require the owner and/or operator to apply for a permit under the Proposed Regulations. If the owner and/or operator propose to operate the dam in a manner that differs from its historic use, the owner and/or operator must also apply for a separate permit under the FWW Rules and WQ Rules. Under the current FWW Rules and WQ Rules, a person proposing to operate a dam in a manner that differs from its historic use is required to apply for a permit.

5.0 Benefit – Cost Analysis

Below, the Department analyzes the quantitative and qualitative costs and benefits resulting from the three regulatory alternatives exclusive of those attributable to the statute.

5.1 Affected Stakeholders

The Department has identified the following stakeholders that will be affected by the Proposed Regulations:

5.1.1 Dam Owners and Operators – The owners and operators of six dams will be required to apply for a permit under the Proposed Regulations.

5.1.2 Municipalities – One of the six dams required to apply for a permit under the Proposed Regulations is owned by a dam management district created by two towns and is operated by an association of volunteers appointed by the towns.

5.1.3 Property Owners – There are numerous persons or entities that own property behind the dams or below the dams that desire to use the freshwater wetlands behind the dams and below the dams.

5.1.4 Public – Societal benefits of improved wetland protection generally accrue to the public. The public includes interested parties such as watershed councils and conservation organizations that value wetland protection and individuals who use the freshwater wetlands behind the dams and below the dams.

5.1.5 Small Business – Three of the six dams required to apply for a permit under the Proposed Regulations are owned by small businesses.

5.1.6 State Agencies – Two of the six dams required to apply for a permit under the Proposed Regulations are owned by the Department.

2.2 Quantitative Costs

2.2.1 Permit fee

5.2.2 Site plans prepared by a professional engineer and/or land surveyor that include identification of freshwater wetlands

2.2.3 Analysis of impact to freshwater wetlands prepared by a professional consultant

2.2.4 Submission of available documents to support historic use

Regulatory Alternative	Permit Fee	Engineering Plans	Wetland Analysis	Documents to Support Historic Use	Total Cost
4.1	$4,000 [1]	$10,000 [2]	$7,500 [3]	None that can be quantified	$21,250
4.2	None	$10,000 [2]	$7,500 [3]	None that can be quantified	$17,500
4.3	None	None	None	None that can be quantified	None that can be quantified

5.3 Qualitative Costs

The owner and/or operator will need to invest time to apply for a permit and review and comment on a draft permit. Other interested parties will need to invest time to review and comment on a draft permit. The owner and/or operator will need to invest time and money to comply with the permit. Documents to demonstrate historic use may not be available, and the owner may decide to sell the dam rather than incur the cost of obtaining a permit under the FWW Rules and WQ Rules.

5.4 Quantitative Benefits

None that can be determined. It will vary depending on the dam, the proposed use and the parties that will be affected by the operation of the dam.

[1] Fee to apply for significant alteration permit, Part 3.8.9(C)(28) of the FWW Rules
[2] Estimate of $100 per hour and 100 hours per application. Estimate of dollars per hour obtained from Internet search. Estimate of hours per application obtained from knowledge of Department permitting staff.
[3] Estimate of $75 per hour and 100 hours per application. Estimate of dollars per hour obtained from Internet search. Estimate of hours per application obtained from knowledge of Department permitting staff.

5.5 Qualitative Benefits

5.5.1 Certainty to Dam Owner and Operator

The owner and/or operator will have certainty as to how the dam can be operated in compliance with the law through issuance of a permit from the Department and will be protected from government action through compliance with the permit.

5.5.2 Certainty to Users

People who use the freshwater wetlands behind the dam and below the dam will have certainty in how the dam will be operated and will be able to plan their activities and make decisions around that certainty.

5.5.3 Protection to Animals

The freshwater wetlands will be protected for many species of birds, fish, mammals, and benthic organisms that are home to the freshwater wetlands.

5.5.4 Protection of Property

People who own property behind the dam and below the dam will have certainty in how the dam will be operated to protect their property from flooding and drought.

6.0 Determination

The Analysis shows that Regulatory Alternative 4.3 generates no quantitative costs or benefits. There are several qualitative costs and benefits; however, for the reasons noted above, the Department cannot quantitatively determine these costs and benefits.