

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 130 – COMPLIANCE & INSPECTION

SUBCHAPTER 10 – DAM OPERATION PERMITS

PART 1 – Rules and Regulations for Dam Operation Permits

1.1 Purpose

These rules and regulations establish requirements for implementation of R.I. Gen. Laws Chapter 46-19.1, "Dam Permits".

1.2 Authority

These rules and regulations are promulgated pursuant to the requirements and provisions of R.I. Gen. Laws Chapters 42-17.1, "Department of Environmental Management," 42-17.6, "Administrative Penalties for Environmental Violations", and 46-19.1, "Dam Permits" in accordance with the provisions of R.I. Gen. Laws Chapter 42-35, "Administrative Procedures Act."

1.3 Administrative Findings

- A. Consistent with R.I. Gen. Laws Chapter 46-19.1, these rules and regulations are applicable to Dams that have the capacity to store greater than one thousand four hundred (1,400) normal storage Acre feet of water and have a Control structure and do not impound water for a public water supply system as defined in R.I. Gen. Laws § 46-13-2. Given that applicability, the Department makes the following findings:
1. There are six Dams which are Jurisdictional Dams under these rules and regulations. These are:
 - a. Pascoag Reservoir Upper Dam identified as Dam State Identification Number 016 and located in Burrillville, Rhode Island. The Dam has the capacity to store 5,000 normal storage Acre feet.
 - b. Flat River Reservoir Dam identified as Dam State Identification Number 167 and located in Coventry, Rhode Island. The Dam has the capacity to store 4,195 normal storage Acre feet.
 - c. Waterman Lake Dam identified as Dam State Identification Number 111 and located in Smithfield, Rhode Island. The Dam has the capacity to store 2,430 normal storage Acre feet.

- d. Stillwater Reservoir Dam identified as Dam State Identification Number 108 and located in Smithfield, Rhode Island. The Dam has the capacity to store 2,400 normal storage Acre feet.
 - e. Slatersville Reservoir Upper Dam identified as Dam State Identification Number 043 and located in North Smithfield, Rhode Island. The Dam has the capacity to store 1,970 normal storage Acre feet.
 - f. Olney Pond Dam identified as Dam State Identification Number 102 and located in Lincoln, Rhode Island. The Dam has the capacity to store 1,490 normal storage Acre feet.
- 2. The Owners or Operators of the Dams identified in §1.3(A)(1) of this Part have historically raised or lowered the water level behind the Dam.
 - 3. Every Owner or Operator of the Dams identified in §1.3(A)(1) of this Part requires a Dam operation permit from the Department to raise or lower the water level behind the Dam.

1.4 Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

1.5 Definitions

- A. For the purposes of these rules and regulations the following terms shall have the following meanings:
 - 1. "Acre feet" means a unit of volume equal to forty-three thousand five hundred sixty cubic feet or three hundred twenty-five thousand eight hundred thirty gallons (a measure that would cover one acre to a depth of one foot).
 - 2. "Control structure" means a permanent feature of a Dam that allows the water behind the Dam to be raised or lowered. Examples of a Control structure include, but are not limited to, a low-level outlet, gate, valve or removeable boards.
 - 3. "Dam" means any barrier made by humans that impounds or diverts water.
 - 4. "Dam Management District" means a legal entity created pursuant to R.I. Gen. Laws Chapter 45-62.

5. "Dam operation permit" means a written authorization to raise or lower the water level behind a Dam that is issued by the Department under these rules and regulations.
6. "Dam Safety Rules" means the Rules and Regulations for Dam Safety (Subchapter 05 Part 1 of this Chapter), as amended.
7. "Department" means the Department of Environmental Management.
8. "Extreme events" means occurrences of unusually severe weather that can result in failure of a Dam. Weather-related Extreme events are often short-lived and include, but are not limited to hurricanes, tornadoes, tropical cyclones, and floods.
9. "FWW Rules" means the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (Part 150-15-3 of this Title), as amended.
10. "Historically" or "Historic" means between July 1971 and June 2022.
11. "Historic use" means the use that has consistently occurred in the operation of the dam between July 1971 and June 2022.
12. "Jurisdictional Dam" means a Dam that has the capacity to store greater than one thousand four hundred (1,400) normal storage Acre feet of water and has a Control structure and does not impound water for a public water supply system as defined in R.I. Gen. Laws § 46-13-2.
13. "Operator" means the Person in control of or having responsibility for operating the Dam.
14. "Owner" means the Person or Persons, including any individual, firm, partnership, association, syndicate, company, trust, corporation, municipality, agency, political or administrative subdivision of the state or any legal entity of any kind holding legal title to a Dam.
15. "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), limited liability company, partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department, bureau, agency, or department of state or federal government (including any quasi-governmental corporation) or of any interstate body.
16. "Qualified engineer" means a professional engineer fully registered in the State of Rhode Island, who is experienced with Dam inspection, design, construction, and repair.

17. "R.I. Gen. Laws" means the Rhode Island General Laws.
18. "WQ Rules" means the Water Quality Regulations (Part 150-5-1 of this Title), as amended.

1.6 Jurisdictional Dams Owned and/or Operated by a Dam Management District

- A. For these rules and regulations, a city or town that created a Dam Management District in accordance with R.I. Gen. Laws Chapter 45-62 for a Jurisdictional Dam can substitute itself for the Dam Management District and accept all responsibility and liability for compliance with these rules and regulations.
- B. The city or town shall notify the Department in writing that it:
 1. Created the Dam Management District in accordance with R.I. Gen. Laws Chapter 45-62 for the Jurisdictional Dam;
 2. Is formally substituting itself for the Dam Management District for the purposes of compliance with these rules and regulations; and
 3. Accepts all responsibility and liability for compliance with these rules and regulations.

1.7 Prohibition

- A. No Owner or Operator of a Jurisdictional Dam shall operate the Dam in a manner that is inconsistent with its historic use, as determined by the Department, until such time as a Dam operation permit is issued.
- B. No Owner or Operator of a Jurisdictional Dam shall operate the Dam in a manner that does not comply with the terms and conditions of a Dam operation permit.

1.8 Dam Operation Permit

- A. Application Submittal Requirements
 1. Within sixty days of the effective date of these rules and regulations the Owner and Operator of a Jurisdictional Dam shall jointly apply to the Department for a Dam operation permit, except if an Owner cannot be legally identified, in which case the Operator shall apply solely. Applications shall be in writing and on a form prescribed by the Department and shall contain such documentation and information as the Department may require, which shall include, but is not limited to, the following:
 - a. A locus map indicating the location of the Dam in relation to other fixed infrastructure in the community such as roads, etc.

- b. An operating plan that describes how water will be managed behind and below the Dam, to achieve as nearly as is practicable overall Historic Use, which must include, but is not limited to, release rates from the Dam, water levels behind the Dam, and time periods and criteria for raising and lowering water levels behind the Dam, including downstream release rates and rates of surface elevation changes. The plan must also include:
 - (1) How the water will be managed during Extreme events to maintain the Dam in a safe condition and an assessment by a Qualified engineer (or at the discretion of the Department, a Department dam engineer) that the operation will not affect the safety of the Dam.
 - (2) How the water will be managed during low flows and drought.
- c. Documentation that identifies how water has Historically been managed behind and below the Dam.
- d. Documentation that identifies recreational activities that have Historically occurred behind and below the Dam.
- e. Contact name and telephone number of Person(s) responsible for the management of the water behind and below the Dam.
- f. Monitoring that will be performed and records that will be maintained to document how water will be managed behind and below the Dam.

B. Review by the Department

- 1. The following review criteria will be used by the Department to determine whether the proposed use is consistent with the Historic use:
 - a. The proposed use shows a pattern of overall Historic consistency during periods other than Extreme events or low flows or droughts, during Extreme events, and during low flows or droughts.
 - b. Information received from parties who have knowledge of the operation of the dam support that the proposed use is accordant with the pattern of overall Historic consistency described in §1.8(B)(1)(a) of this Part.
- 2. At any time during the review, the Department may:
 - a. Require that the Owner or Operator provide such information as the Department deems necessary for the review of the application.

- b. Issue a Dam operation permit requiring such terms, conditions, management practices and operation and maintenance requirements as deemed necessary to comply with the requirements of applicable federal or state laws.
- c. Deny the application for failure to satisfy the requirements of applicable laws and advise the Owner or Operator of the right to appeal under § 1.11 of this Part. A denial may be based on, but is not limited to, any of the following:
 - (1) Failure to submit any information required by the Department.
 - (2) Failure to be compliant with a notice of violation or other enforcement action issued by the Department involving the FWW Rules, Part 150-15-3 of this Title, or the Dam Safety Rules, Subchapter 05 Part 1 of this Chapter.
- d. Require the Owner or Operator to file a separate application pursuant to the FWW Rules, Part 150-15-3 of this Title and WQ Rules, Subchapter 05 Part 1 of this Chapter if the Department determines that the Owner or Operator propose to operate the Dam in a manner that is inconsistent with its Historic use. If the Department makes this determination, review of a Dam operation permit under these rules and regulations will be suspended and the Owner or Operator will be directed to apply for the appropriate permit. The Owner or Operator has the right to appeal this determination under § 1.11 of this Part.

C. Effect of Dam Operation Permit

- 1. A Dam operation permit shall be effective for as long as operation of the Dam remains consistent with the terms and conditions of the permit.
- 2. A Dam operation permit is automatically transferred to any subsequent Owner or Operator of the Dam and the subsequent Owner and Operator must comply with the terms of the Dam operation permit.
- 3. The issuance of a Dam operation permit mandates compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in the Dam operation permit.
- 4. The issuance of a Dam operation permit does not relieve any Person of the continuing responsibility to comply with any other applicable federal, state, or local law or regulation.

5. The issuance of a Dam operation permit does not relieve any Person of the responsibility for obtaining any other necessary permits or approvals from any federal, state, regional, or local agency.
6. The issuance of a Dam operation permit does not authorize any injury to Persons or property or invasion of other private rights, or any infringement of federal, state, or local laws or regulations.

D. Modification, Suspension or Revocation of Dam Operation Permit

1. The Department may modify, suspend, or revoke, in whole or in part, a Dam operation permit for cause, including, but not limited to, the following:
 - a. The existence of a factor or factors which, if properly and timely brought to the attention of the Department, would have justified the application of more or less stringent conditions than required by these regulations.
 - b. Where circumstances on which the Dam operation permit was based have materially and substantially changed since the Dam operation permit was issued, including but not limited to pertinent amendment of these rules and regulations.
 - c. The information or data submitted by the Owner or Operator either on the form required or in any other material in support of the application is found to be false, misleading, or erroneous.
 - d. The Owner or Operator fails to comply with the conditions or provisions of the Dam operation permit.
 - e. The Department is in receipt of reliable information that, without immediate action to suspend or revoke the Dam operation permit, the management of the water behind or below the Dam is likely to harm the environment or pose a threat to the health, safety, or welfare of the public.
2. A notice of revocation/suspension of a Dam operation permit will be in the form of a certified letter notifying the Owner or Operator of the revocation or suspension and the reasons why the Dam operation permit is being revoked or suspended. Such notice shall be in conformance with the Administrative Procedures Act, R.I. Gen. Laws §§ 42-35-9(b) and 42-35-14.
3. The Owner or Operator issued a notice of revocation/suspension of a Dam operation permit may request an adjudicatory hearing to contest the revocation as set forth in the provisions of § 1.11 of this Part. A notice of revocation/suspension of a Dam operation permit automatically becomes

a final order of the Department enforceable in Superior Court upon failure to request said adjudicatory hearing.

4. Modification of a Dam operation permit shall be in accordance with § 1.8 of this Part.

1.9 Access

The Department shall conduct all inspections in accordance with the Administrative Inspection Guidelines (Part 20-00-3 of this Title), as amended.

1.10 Enforcement

Pursuant to R.I. Gen. Laws §§ 42-17.1-2 *et seq.*, 42-17.6-1 *et seq.*, and the Rules and Regulations for Assessment of Administrative Penalties (Subchapter 00 of Part 1 of this Chapter), the Department has the authority to issue enforcement notices, orders, administrative penalties, or other requirements to ensure compliance with these rules and regulations. The Department may also provide written or verbal warning of its intent to undertake enforcement action but is not required to do so. Nothing in these rules and regulations shall limit the authority of the Attorney General to prosecute offenders as required by law. The Department shall forward a copy of the enforcement notices and/or orders to recognized watershed councils in accordance with Watershed Council Grants and Notification of Proposed Actions to Watershed Councils (660-RICR-00-00-1), as amended, and the municipality wherein the Dam is located.

1.11 Appeals

- A. The procedures for appeal of Department decisions pursuant to the provisions of R.I. Gen. Laws Chapter 42-35 are contained in the Rules and Regulations for the Administration Adjudication Division (Part 10-00-1 of this Title).
- B. Within thirty days of the receipt of a decision from the Department regarding an application for a Dam operation permit, the Owner or Operator may request an adjudicatory hearing to appeal the decision, or portions thereof. The request for an adjudicatory hearing must be in writing, must comply in form and content for such requests as required by Rules and Regulations for the Administration Adjudication Division (Part 10-00-1 of this Title) and must be filed directly with the Administrative Adjudication Division of the Department. A request for an adjudicatory hearing automatically stays any contested Dam operation permit. It shall be the burden of the Owner or Operator to demonstrate by a preponderance of the evidence that the application as proposed is consistent with the purposes of the law, complies with applicable rules and regulations and protects the public, real property, and natural resources.
- C. Any Person who receives a notice of violation alleging violation of these rules and regulations, or whose Dam operation permit has been suspended or

revoked, may appeal to the Department for review of the decision on which the notice of violation, suspension or revocation is based by filing an appeal in accordance with the Rules and Regulations for the Administration Adjudication Division (Part 10-00-1 of this Title).

1.12 Public Access to Records

- A. Information, forms, or other materials related to these rules and regulations and actions taken are available at the Department.
- B. Access to records on file shall be in accordance with R.I. Gen. Laws § 38-2-1 et seq. A fee shall be required to cover the costs of copying and may be required to cover the costs of search and retrieval of documents.

250-RICR-130-10-1

TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 130 - COMPLIANCE & INSPECTION

SUBCHAPTER 10 - DAM OPERATION PERMITS

PART 1 - RULES AND REGULATIONS FOR DAM OPERATION PERMITS

Type of Filing: Adoption

Agency Signature

Agency Head Signature

Agency Signing Date

Department of State

Regulation Effective Date

Department of State Initials

Department of State Date