

2024 -- H 7729

LC005201

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO AGRICULTURE AND FORESTRY -- AGRICULTURE FUNCTIONS OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Representatives Cotter, Tanzi, Cortvriend, Casimiro, Edwards,
Newberry, Speakman, Donovan, McEntee, and McGaw

Date Introduced: February 28, 2024

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 2-1-22 of the General Laws in Chapter 2-1 entitled "Agricultural
2 Functions of Department of Environmental Management" is hereby amended to read as follows:

3 **2-1-22. Procedure for approval by director — Notice of change of ownership —**
4 **Recordation of permit.**

5 (a) Application for approval of a project to the director of environmental management shall
6 be made in a form to be prescribed by the director and provided by the director upon request. Prior
7 to the application, a request may be made for preliminary determination as to whether this chapter
8 applies. A preliminary determination shall be made by the director only after an on-site review of
9 the project and the determination shall be made within thirty (30) days of the request. This chapter
10 shall be determined to apply if a significant alteration appears to be contemplated and an application
11 to alter a freshwater wetland, buffer, or floodplain will be required. Within fourteen (14) days after
12 receipt of the completed application accompanied by plans and drawings of the proposed project,
13 the plans and drawings to be prepared by the registered professional engineer to a scale of not less
14 than one inch (1") to one hundred feet (100'), the director shall notify all landowners whose
15 properties are within two hundred feet (200') of the proposed project and the director will also
16 notify the city or town council, the conservation commission, the planning board, the zoning board,
17 and any other individuals and agencies in any city or town within the borders of which the project
18 lies that may have reason, in the opinion of the director, to be concerned with the proposal. The

1 director may also establish a mailing list of all interested persons and agencies who or that may
2 wish to be notified of all applications.

3 (b) If the director receives any objection to the project within forty-five (45) days of the
4 mailing of the notice of application from his or her office, the objection to be in writing and of a
5 substantive nature, the director shall then schedule a public hearing in an appropriate place as
6 convenient as reasonably possible to the site of the proposed project. The director shall inform by
7 registered mail all objectors of the date, time, place, and subject of the hearing to be held. The
8 director shall further publish notice of the time, place, date, and subject of the hearing in one local
9 newspaper circulated in the area of the project and one statewide newspaper, the notices to appear
10 once per week for at least two (2) consecutive weeks prior to the week during which the hearing is
11 scheduled. The director shall establish a reasonable fee to cover the costs of the investigations,
12 notifications and publications, and hearing and the applicant shall be liable for the fee.

13 (c) If no public hearing is required, or following a public hearing, the director shall make
14 his or her decision on the application and notify the applicant by registered mail and the applicant's
15 attorney and any other agent or representative of the applicant by mail of this decision within a
16 period of six (6) weeks. If a public hearing was held, any persons who objected, in writing, during
17 the forty-five (45) day period provided for objections shall be notified of the director's decision by
18 first-class mail.

19 (d) In the event of a decision in favor of granting an application, the director shall issue a
20 permit for the applicant to proceed with the project and shall require the applicant to pay a permit
21 fee of one hundred dollars (\$100). The permit may be issued upon any terms and conditions,
22 including time for completion, that the director may require. Permits shall be valid for a period of
23 one year from the date of issue and shall expire at the end of that time unless renewed. A permit
24 may be renewed for up to three (3) additional one-year periods upon application by the original
25 permit holder or a subsequent transferee of the property subject to permit, unless the original permit
26 holder or transferee has failed to abide by the terms and conditions of the original permit or any
27 prior renewal. The director may require new hearings if, in his or her judgment, the original intent
28 of the permit is altered or extended by the renewal application or if the applicant has failed to abide
29 by the terms of the original permit in any way. In addition, in the event a project authorized by a
30 permit was not implemented by the permit holder or transferee because approval of the project by
31 a federal agency, for which application had been timely made, had not been received or a federal
32 agency had stopped the project from proceeding, prior to the expiration of the permit, the permit
33 holder or transferee may apply for a renewal of the permit at any time prior to the tenth (10th)
34 anniversary of the original issuance, and the application shall be deemed to be an insignificant

1 alteration subject to expedited treatment. The request for renewal of a permit shall be made
2 according to any procedures and form that the director may require.

3 (e) The original permittee or subsequent transferee shall notify the director, in writing, of
4 any change of ownership that occurs while an original or renewal permit is in effect by forwarding
5 a certified copy of the deed of transfer of the property subject to the permit to the director.

6 (f) A notice of permit and a notice of completion of work subject to permit shall be eligible
7 for recordation under chapter 13 of title 34 and shall be recorded at the expense of the applicant in
8 the land evidence records of the city or town where the property subject to permit is located and
9 any subsequent transferee of the property shall be responsible for complying with the terms and
10 conditions of the permit.

11 (g) The director shall notify the person requesting a preliminary determination and the
12 person's attorney, agent, and other representative of his or her decision by letter, copies of which
13 shall be sent by mail to the city or town clerk, the zoning board, the planning board, the building
14 official, and the conservation commission in the city or town within which the project lies.

15 (h) The director shall report to the general assembly on or before February 1 of each
16 calendar year on his or her compliance with the time provisions contained in this chapter.

17 (i) Normal farming activities shall be considered insignificant alterations and, as normal
18 farming activities, shall be exempted from the provisions of this chapter in accordance with the
19 following procedures:

20 (1) Normal farming and ranching activities are those carried out by farmers ~~as defined in~~
21 ~~this title~~, including plowing, seeding, cultivating, land clearing for routine agriculture purposes,
22 harvesting of agricultural products, pumping of existing farm ponds for agricultural purposes,
23 upland soil and water conservation practices, and maintenance of existing farm drainage structures,
24 existing farm ponds and existing farm roads are permissible at the discretion of farmers in
25 accordance with best farm management practices which assure that the adverse effects to the flow
26 and circulation patterns and chemical and biological characteristics of freshwater wetlands are
27 minimized and that any adverse effects on the aquatic environment are minimized.

28 (2) In the case of construction of new farm ponds, construction of new drainage structures,
29 and construction of new farm roads, the division of agriculture shall be notified by the filing of a
30 written application for the proposed construction by the property owner. The application shall
31 include a description of the proposed construction and the date upon which construction is
32 scheduled to begin, which date shall be no earlier than thirty (30) calendar days after the date of
33 the filing of the application. The division of agriculture shall review such applications to determine
34 that they are submitted for agricultural purposes and to ensure that adverse effects to the flow and

1 circulation patterns and chemical and biological characteristics of freshwater wetlands are
2 minimized and that any adverse effects on the aquatic environment are minimized and will not
3 result in a significant alteration to the freshwater wetlands. Pursuant to this review, the division
4 shall notify the applicant, in writing, whether the proposal is an insignificant alteration. This notice
5 shall be issued not later than thirty (30) days after the date that the application was filed with the
6 division. In the event notice is given by the division as required, the application shall be
7 conclusively presumed to be an insignificant alteration. If no notice is given as required, or if an
8 application is approved as an insignificant alteration, the applicant may cause construction to be
9 done in accordance with the application, and neither the applicant, nor the applicant's agents or
10 employees who cause or perform the construction in accordance with the application, shall be liable
11 for any criminal, civil, administrative or other fine, fee, or penalty, including restoration costs for
12 violations alleged to arise from the construction.

13 (3) The division of agriculture shall, in coordination with the agricultural council's
14 advisory committee, adopt regulations for subdivision (i)(2), and shall determine whether a
15 proposed activity, other than an activity listed in subdivision (i)(1), constitutes a normal farming
16 activity, or involves the best farm management practices. In making such a determination, the
17 division of agriculture shall consider the proposed activity on a case-by-case basis, relative to the
18 characteristics of the particular jurisdictional area in which the activity is proposed, and shall
19 consider whether the activity incorporates best farm management practices and ensures that adverse
20 effects to the flow and circulation patterns and chemical and biological characteristics of freshwater
21 wetlands, buffers, and floodplains are minimized and that any adverse effects on the aquatic
22 environment are minimized in each instance.

23 (4) Except as otherwise provided for farm road construction, filling of freshwater wetlands
24 conforms to the provisions of this chapter.

25 (j) ~~For the purposes of this section, a "farmer" is an individual, partnership, or corporation~~
26 ~~who operates a farm and has filed a 1040F U.S. Internal Revenue Form with the Internal Revenue~~
27 ~~Service, has a state farm tax number, and has earned ten thousand dollars (\$10,000) gross income~~
28 ~~on farm products in each of the preceding four (4) years.~~

29 (k) For the purposes of this section as applicable to normal farming and ranching activities
30 specified in §§ 2-1-22(i)(1) and (i)(2) above, freshwater wetlands shall be defined as: freshwater
31 wetlands, floodplains, areas subject to storm flowage, areas subject to flooding as defined in § 2-1-
32 20 and the land area within two hundred feet (200') of a flowing body of water having a width of
33 ten feet (10') or more during normal flow; the area of land within one hundred feet (100') of a
34 flowing body of water having a width of less than ten feet (10') during normal flow; and the area

1 of land within fifty feet (50') of a bog, marsh of one acre or greater, swamp of three (3) acres or
2 greater and pond not less than one quarter (1/4) acre in extent. These areas shall also serve as the
3 jurisdictional area.

4 [\(l\) For purposes of this section "agricultural land" means land used for forestry or timber](#)
5 [production.](#)

6 SECTION 2. This act shall take effect upon passage.

=====
LC005201
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO AGRICULTURE AND FORESTRY -- AGRICULTURE FUNCTIONS OF
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

1 This act would provide a definition for "agricultural land" and remove the definition of
2 "farmer" within the chapter on agricultural functions of the department of environmental
3 management.

4 This act would take effect upon passage.

=====
LC005201
=====