

**State of Rhode Island and Providence Plantations
Department of Environmental Management
Office of Water Resources**

**Rules and Regulations for the NARRAGANSETT BAY AND
WATERSHED RESTORATION BOND FUND**



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These rules and regulations are promulgated pursuant to the authority provided by R.I. Gen. Laws Sections 42-17.1-2(2), 42-17.1-34, 46-12-3(2), 46-12-3(4), 46-12-24 and 46-12-24.1, and adopted pursuant to the procedures set forth in R.I. Gen. Laws Chapter 42-35, as amended.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**RULES AND REGULATIONS FOR THE
NARRAGANSETT BAY AND WATERSHED RESTORATION BOND FUND**

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

RULES AND REGULATIONS GOVERNING THE NARRAGANSETT BAY AND WATERSHED
RESTORATION BOND FUND

SECTION 1.00 PURPOSE

The purpose of these regulations is to create a Narragansett Bay and Watershed Restoration Fund to receive, hold and administer the use of the \$8,500,000 portion of the 2004 RI Open Space, Recreation, Bay and Watershed Protection Bond allotted for "anti-pollution projects and restoration activities benefiting Narragansett Bay and state watersheds" and \$4,000,000 from the 2012 Environmental Management Bond for "activities to restore and protect the water quality and enhance the economic viability and environmental sustainability of Narragansett Bay and the State of Rhode Island's watersheds".

SECTION 2.00 LEGAL AUTHORITY

These rules and regulations are promulgated pursuant to the authority provided by R.I. Gen. Laws Sections 42-17.1-2(2), 42-17.1-2(34), 46-12-3(2), 46-12-3(4), 46-12-24 and 46-12-24.1, and adopted pursuant to the procedures set forth in R.I. Gen. Laws Chapter 42-35, as amended.

SECTION 3.00 LIBERAL APPLICATION

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

SECTION 4.00 SEVERABILITY

If a court of competent jurisdiction thereof holds any provision of these rules and regulations or the application invalid, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of these rules and regulations.

SECTION 5.00 ADMINISTRATIVE FINDINGS

The goal of the Narragansett Bay and Watershed Restoration Fund is to restore and protect the water quality, enhance the economic viability and environmental sustainability of Narragansett Bay and the state's watersheds. This Fund is meant to provide funding assistance for the feasibility analysis, design, construction and/or rehabilitation of nonpoint source water pollution control facilities, stormwater pollution control projects including the evaluation and/or development of a dedicated sustainable funding mechanism for stormwater pollution abatement, and riparian buffer and aquatic habitat restoration projects. In order to achieve its goal the monies from Narragansett Bay and Watershed Restoration Fund are apportioned between three sub-funds.

All monies in the Narragansett Bay and Watershed Restoration Fund shall be expended in accordance with the general laws of the State of Rhode Island and are hereby restricted to providing grants for nonpoint source water pollution abatement, stormwater pollution abatement including the evaluation and/or development of a dedicated sustainable funding mechanism for, and riparian buffer and aquatic habitat restoration activities that will result in water pollution reduction and/or water quality protection of the waters of the state.

SECTION 6.00 DEFINITIONS

As used in these rules and regulations the following definitions will apply:

Applicant - means any person or persons applying for monies under these rules and regulations.

Aquatic Habitat – means an area where water is present and provides direct support for a given species, population or community. An aquatic habitat can be classified as non-flowing waters such as pools, ponds and lakes, slowly flowing such as marshes and swamps, or flowing such as streams and rivers. Aquatic habitats can be freshwater, saltwater or brackish in nature.

Construction – means the building, alteration, rehabilitation, improvement, or extension of a project, including the necessary planning, design and engineering associated with the specific project.

Department - means the Department of Environmental Management (DEM).

Director - means the Director of the Department of Environmental Management or the subordinate(s) to whom the Director has delegated powers and duties vested in the Director by these regulations.

Facility – means any building, structure and operation, including land or appurtenances thereto, on one contiguous site.

Fund – means the Narragansett Bay and Watershed Restoration Fund, as established by these regulations.

Governmental Entity - means any Rhode Island state or local governmental body or Rhode Island state agency and any entity publicly funded, appointed or otherwise organized by federal, RI state or local government for governmental purposes.

Grant - means money given to eligible entities with no repayment due if the grantee is in substantial compliance with all terms of the grant.

Non-Governmental Entity – means any for-profit business, non-profit organization, private college or university, public utility and incorporated individual located in Rhode Island.

Nonpoint Source Pollution – means pollution from failing or sub-standard individual subsurface disposal systems; erosion from construction sites, agricultural fields and other disturbed areas; leachate and runoff from streets and other paved areas, landfills, lawns, agricultural fields, silviculture and livestock operations and other such pollution originating from diffuse sources.

Permit - means an authorization, license or equivalent control document issued by the Department to implement regulations promulgated by the Department.

Person- an individual, trust, firm, joint-stock company, corporation (including a quasi-governmental corporation), 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 quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

Pollutant - means any material or effluent which may alter the aesthetic, chemical, physical, biological, or radiological characteristic and/or integrity of water, including but not limited to, dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, or agricultural waste, and other wastes, petroleum or petroleum products, including but not limited to oil.

Pollution - means the manmade or man-induced non-beneficial alteration of the aesthetic, physical, chemical, biological, radiological or thermal integrity of an aquatic ecosystem.

Project - means an action or facility that corrects, substantially reduces, or prevents pollution, or restores a riparian buffer or aquatic habitat.

Riparian Buffer – means an area of land adjacent to rivers, streams, lakes, ponds and coastal waters that is maintained in a natural condition and is integral to the ecology of aquatic systems.

Stormwater – means precipitation induced runoff or snowmelt.

Total Maximum Daily Load or TMDL – means the amount of a pollutant that may be discharged into a waterbody and still maintain water quality standards. The TMDL is the sum of the individual wasteload allocations for point sources and the load allocations for nonpoint sources and natural background taking into account a margin of safety.

SECTION 7.00 FUND ESTABLISHED

There is hereby established a fund entitled the “Narragansett Bay and Watershed Restoration Fund.” The Fund is created in order to enable the Department to receive \$8,500,000 from the RI Open Space, Recreation, Bay and Watershed Protection Bond that has been designated for use on “anti-pollution projects and restoration activities benefiting Narragansett Bay and state watersheds.” and \$4,000,000 from the 2012 Environmental Management Bond for “activities to restore and protect the water quality and enhance the economic viability and environmental sustainability of Narragansett Bay and the State of Rhode Island’s watersheds”. The Department in accordance with these regulations will administer the Fund.

SECTION 8.00 SUB-FUND ESTABLISHMENT

The Fund is hereby allocated into three (3) sub-funds: the Governmental Entities Nonpoint Source Water Pollution Control Fund, the Non-Governmental Nonpoint Source Water Pollution Control Fund and the Riparian Buffer Restoration Fund. The monies allocated to each sub-fund will be done at the discretion of the Director and will be available to eligible applicants in the form of grants of up to fifty percent (50%) of eligible costs. Applicants must be able to match at least fifty percent (50%) of eligible costs. At the Director's discretion, a grant for up to seventy-five percent (75%) of eligible costs may be awarded.

8.01 Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund

- a. The monies allocated to the Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund shall be available for projects proposed by governmental entities involving:
 - i. Construction of projects that mitigate, control or eliminate the effects of nonpoint source pollution or stormwater pollution, to the waters of the state shall be eligible for this fund.
 - ii. Capital expenditures for additional or upgraded equipment to enhance implementation of best management practices identified in Department approved local stormwater management program plans.
 - iii. The identification, mitigation, control or elimination of illicit point source connections to storm water collection systems.
 - iv. The evaluation and/or development of a dedicated sustainable funding mechanism for stormwater pollution abatement.
- b. At the Director's discretion, the monies allocated to this sub-fund may be used to secure other funding to carry out the purposes of this sub-fund.

8.02 Non-Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund

- a. The monies allocated to the Non-Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund shall be available for projects proposed by non-governmental entities involving:
 - i. Construction of projects that mitigate, control or eliminate the effects of nonpoint source pollution or stormwater pollution, to the waters of the state shall be eligible for this fund.
 - ii. Construction of projects that mitigate, control or eliminate point source illicit connections to the storm water collection system.
- b. At the Director's discretion, the monies allocated to this sub-fund may be used to secure other funding to carry out the purposes of this sub-fund.

8.03 Riparian Buffer & Aquatic Habitat Restoration Fund

- a. The monies allocated to the Riparian Buffer & Aquatic Habitat Restoration Fund shall be available for projects proposed by any person(s) for construction, re-establishment of native species or other improvement projects that will establish or restore riparian habitats to their natural condition, or enhance the overall effectiveness of riparian buffers for water quality improvement/protection.
- b. Projects that install fish passages to re-establish native fish species.
- c. The control or removal of invasive species from aquatic habitats.
- d. At the Director's discretion, the monies allocated to this sub-fund may be used to secure other funding to carry out the purposes of this sub-fund.

SECTION 9.00 NOTIFICATION OF AVAILABLE FUNDS

- 9.01 Unless acting in accordance with Sections 8.01b, 8.02b, or 8.03d, above, the Director shall announce the availability of all funds under the Narragansett Bay and Watershed Restoration Bond Fund in a newspaper of statewide circulation. The announcement may also be posted on the appropriate state of Rhode Island websites.
- 9.02 At a minimum the announcement will state:
- a. The sub-fund(s) receiving applications
 - b. The approximate amount of money available under the sub-fund(s)
 - c. The deadline for all applications
 - d. Any other information that the director determines necessary and pertinent

SECTION 10.00 APPLICATION REQUIREMENTS

- 10.01. Applications shall be submitted to Department of Environmental Management, Office of Water Resources, 235 Promenade Street, Providence, RI 02908 and shall be signed by the applicant's chief executive or chief financial officer. All applications shall include the following:
- a. A letter requesting consideration for funding with a concise project description consisting of:
 - i. A statement of the purpose of the project,
 - ii. The expected water quality improvement(s) and other environmental benefit(s),
 - iii. The specific sub-fund to which application is being made and why it is eligible for funding under said sub-fund,
 - iv. Such other information as may be pertinent to the project.
 - b. A project schedule and budget;
 - c. Where applicable, any and all local, state, and federal permits which have been issued to the applicant or the subject facility and a statement of compliance with said permits;
 - d. Any and all compliance schedules, or consent agreements/decrees, final decrees or orders, or any form of approval with conditions attendant thereto, which may have been issued to or entered into by the applicant or the subject facility and a statement of compliance with said compliance schedules, or consent agreements/decrees, final decrees or orders, or any form of approval with conditions attendant thereto;
 - e. Where the proposed project is on property not owned by the applicant, a signed statement by the property owner granting the applicant permission to participate in the project.

- f. Documentation confirming that the applicant has secured funding for or has otherwise made arrangements for the performance of its match for the grant. The applicant can meet its match requirement through one or more of the following means, including: the direct expenditure of the applicant's own funds, funding acquired through other third-party sources such as grants or loans, in-kind services performed by the applicant or a third-party that are directly related to the performance of the project. All actual project expenses (100%) must be tracked and properly documented during the performance of the project in order to qualify the applicant for reimbursement of eligible grant expenses. For projects involving construction, DEM, at its discretion, may accept as matching funds the recently incurred costs related to the design of a project. DEM reserves the right to disqualify any ineligible projects or expenses.
- g. Any other supporting materials and information that may be required by the Department to evaluate the application.

SECTION 11.00 ELIGIBILITY

11.01 The following **projects** are ineligible to receive grant monies from the Fund pursuant to these regulations:

- a. Projects using experimental technology.
- b. Projects whose primary results will be improvement in business operations and/or productivity rather than pollution reduction.
- c. Research projects.
- d. Land acquisition projects.
- e. Sewage disposal systems serving single-family residences.
- f. The replacement of equipment to enhance implementation of best management practices identified in Department approved local stormwater management program plans.

11.02 The following **expenses** are ineligible for inclusion in project costs either as expenses to be covered by Fund monies or as expenses to be counted as part of the applicant's match requirement:

- a. Land acquisition costs (except cash expenditures to purchase land not owned by the applicant at the time of application, in which the land is essential to and directly related to the performance of the proposed project).
- b. Operation and maintenance costs.
- c. Personnel costs not directly related to the performance of the project (e.g. indirect personnel and administrative costs such as clerical support, monthly utility expenses, the purchase of office equipment, personnel costs associated with fund raising for the nongovernmental entity, etc.).

- d. Costs associated with the performance of a Supplemental Environmental Project ("SEP").
- 11.03 Proposed projects associated with unresolved litigation (administrative or judicial) with the Department or conditions or activities that have violated or are violating statutes or regulations administered by the Department shall be ineligible to receive Fund monies without the express written consent of the Director and the resolution of said litigation or violation(s).
- 11.04 Water pollution abatement projects funded in whole or in part by Fund monies shall not result in the violation of any federal, state, local statutes or regulations.

SECTION 12.00 APPLICATION REVIEW AND SELECTION

12.01 Application Review

- a. The Department shall review all applications to determine eligibility and completeness. In order to satisfy the eligibility determination, the following criteria will be considered:
 - 1. The applicants and their proposed projects must meet the requirements of Sections 9.00, 10.00 and 11.00 of these Regulations.
 - 2. The proposed projects must provide a reliable means of meeting the intended reduction or restoration goals consistent with Section 8.00.
- b. The Director shall establish a review team for each sub-fund to review the completed applications. All complete applications to a sub-fund shall be subject to review by, at least three (3) members of the Department, one of whom must be from the Office of Water Resources, and at least one (1) member selected by the Director from outside the Department. Individuals may serve as members of more than one review team.
- c. If the Department determines that the application is complete and satisfies the requirements of 12.01(a)(1) and 12.01(a)(2), then the review team will proceed to rank the projects within each sub-fund based upon the following criteria, which shall be applied so as to promote the goals and requirements of these Regulations to the fullest extent possible:
 - 1. The severity and magnitude of the problem (for NPS projects only);
 - 2. The value of the resources to be protected or restored by the project and the public benefits derived;
 - 3. The beneficial impact to the waters of the State;
 - 4. Technical merit of the project (i.e. ability to solve the problem);
 - 5. Consistency with approved plans (e.g. SWMPP, TMDL recommendations etc.);
 - 6. Readiness to proceed.

- d. Recommendations for awards will be made on the basis of a majority vote of the sub-fund review team. The final determination for funding will be made by the Assistant Director for Water Resources to be forwarded to the Director for approval.

SECTION 13.00 GRANT AWARDS

13.01 Grant Award

- a. Successful applicants will receive a grant offer specifying the amount, duration and conditions of the award. The offer will be in the form of a binding contract.
- b. Recipients will be required to sign, accept and return the offer to the Department within forty-five (45) days of the date of mailing. Failure to execute the agreement within the forty-five (45) days may result in the cancellation of the grant award. The Director may award these monies to the next highest rated project.
- c. Recipients will have ninety (90) days from the date of the acceptance of the grant offer to provide proof of the necessary grant match by letters of credit, loan agreements, dedicated escrow accounts or any pre-approved proof of matching funds by the Department.
- d. The recipient is responsible for obtaining all necessary permits or approvals from any federal, state, or local agency with authority over the project or project area. Copies of these permits/approvals must be submitted to the Department for inclusion in the project file before the first payment request.
- e. All grant payments will be paid in the form of reimbursement payments for eligible expenses incurred in accordance with an approved project. Requests for reimbursement must include documentation of the incurred, eligible costs. Such type of documentation required to receive reimbursement will be detailed in the grant offer and/or grant agreement.

13.02 The Director may suspend, modify or revoke any awards granted pursuant to these regulations in the event that subsequent examination reveals any data included in an application form, submittal, plan or sketch to be incorrect or not in compliance with these regulations.

13.03 The Director may take appropriate action to stop payment of and/or seek the return of grant funds expended for any project where: (a) the applicant has obtained said grant based upon incomplete, false, misleading or erroneous information; or (b) the applicant has not completed the work approved under the grant in accordance with any and all conditions of approval issued by the Director in the grant award.

The foregoing "Rules and Regulations for the Narragansett Bay and Watershed Restoration Bond Fund", after due notice, are hereby adopted and filed with the Secretary of State on _____, _____ and shall become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 42-35, 42-17.1 and 42-17.6 of the General Laws of Rhode Island of 1956, as amended.

Janet L. Coit., Director
Department of Environmental Management

Notice Given on: 2/7/14

Public Hearing held: 3/10/14

Filing Date: 3/24/14

Effective Date: 4/14/14

The above sworn and signed before me on the _____ th day of _____, 2014.

_____, Notary Public.

My commission expires on the _____ th day of _____, 2014.