

State of Rhode Island and Providence Plantations
Department of Environmental Management

**NOTICE OF THE PUBLICATION OF A PROPOSED
DIRECT FINAL RULE**

Rhode Island Aqua Fund Rules and Regulations (ERLID # 940)

Pursuant to the provisions of Chapters 42-106, 42-17.1, 42-17.2 and 42-17.6 of the General Laws of Rhode Island as amended, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws of 1956, as amended, and specifically Section 42-35-2.11 of the amended Administrative Procedures Act, the Director of the Department of Environmental Management (the “Department” or “DEM”) hereby proposes to file a Direct Final Rule pursuant to Section 42-35-2.11 of the General Laws of 1956, as amended. The Director believes that this proposed action is noncontroversial and anticipates that no objections will be received to the proposed repeal of the *Rhode Island Aqua Fund Rules and Regulations*. The subject regulations are proposed to be repealed because they were designed to establish the process for award of grants from the Rhode Island Aqua Fund, and the entirety of the allocation to the Aqua Fund has been expended.

Pursuant to the requirements of Section 42-35-2.6 and 42-35-2.7 of the Rhode Island General Laws, DEM has made the following determinations: DEM has considered alternative approaches to the proposed dismissal and has determined that there is no alternative approach among the alternatives considered that would be as effective and less burdensome.

A copy of the subject regulations will be available for examination from January 30, 2017 through March 1, 2017 by mail or at the Office of Customer and Technical Assistance at 235 Promenade Street, Providence, RI 02908, weekdays from 8:30 - 4:00 PM or by calling the Office at (401) 222-6800. Electronic copies of the proposed regulations to be repealed will also be available on the DEM website.

DEM encourages the submission of written objections to the proposed repeal of the *Rhode Island Aqua Fund Rules and Regulations* (ERLID # 940), via a Direct Final Rule pursuant to Section 42-35-2.11 of the General Laws of 1956, as amended. If no objection is received on or before March 1, 2017, DEM will file the repeal without opportunity for public comment. All written objections should be sent to the Department at the Office of Water Resources located at 235 Promenade Street, Providence, RI 02908 or via e-mail to alicia.good@dem.ri.gov and must be received no later than 11:59 PM on **March 1, 2017**.

Janet L. Coit
Director, Department of Environmental Management

Posted

~~STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS~~

~~DEPARTMENT OF ENVIRONMENTAL MANAGEMENT~~

~~DIVISION OF WATER RESOURCES~~

~~**RHODE ISLAND AQUA FUND
RULES AND REGULATIONS**~~

~~March 12, 1990~~

~~AUTHORITY: Regulations adopted pursuant to Chapter 42-106, 42-17.1 and 42-35 of
the General Laws of Rhode Island 1956, as amended.~~

~~RHODE ISLAND AQUA FUND~~

~~RULES AND REGULATIONS~~

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~~RHODE ISLAND AQUA FUND~~

~~RULES AND REGULATIONS~~

Section 1. ~~ADMINISTRATIVE FINDINGS~~

~~Since this fund is not restricted as are most other funds for water pollution control, its application can be directed to projects that may not fit into existing traditional schemes for environmental spending. Aqua Fund monies may be spent on projects that are environmentally significant and for which no other monies are available due to restrictions on funds or placement on an existing priority list.~~

~~Priority will be given to those projects that meet the Advisory Council's definition of areas of the bay that best fit the legislative findings which are to provide a multiple purpose, comprehensive and concentrated application of federal and state resources to projects with the greatest potential for improving water quality.~~

Section 2. ~~AUTHORITY~~

- ~~a. The Rhode Island Aqua Fund and Aqua Fund Advisory Council were created pursuant to Title 42, Chapter 106 of the General Laws of the state of Rhode Island.~~
- ~~b. These regulations are adopted pursuant to Title 42, Chapters 35, 17.1-2 and 106 of the Rhode Island general laws, 1956, as amended.~~

Section 3. ~~PURPOSE and GOALS~~

- ~~a. The purpose of these regulations is to govern the operation of the Aqua Fund Advisory Council.~~
- ~~b. The purpose of the Advisory Council is to advise the director on the use of the Aqua Fund to produce pollution reduction and environmental protection of Narragansett Bay and its tributaries in accordance with the legislative findings in Title 42 Chapter 106.~~
- ~~c. The goal of the fund is to remedy existing pollution of Narragansett Bay and to prevent future pollution of the Bay. The state shall finance such projects and programs with the proceeds of the Aqua Fund bonds at the direction of the Director of the Department of Environmental Management (DEM) with the advice of the Aqua Fund Advisory Council.~~

Section 4. APPLICABILITY

~~These regulations provide guidelines for the operations of the Aqua Fund Advisory Council, procedures for application for Aqua Fund monies and criteria for selection of projects.~~

Section 5. DEFINITIONS

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

~~**bay**—Narragansett Bay, the waters north of a line from Point Judith Point to Brenton Point and easterly to Sakonnet Point, including the Bay's tributaries and watershed.~~

~~**CSO**—combined sewer overflows, the effluent from combined storm and sanitary sewers.~~

~~**director**—the Director of the Department of Environmental Management (DEM).~~

~~**governmental entity**—any Rhode Island state or Rhode Island local governmental body or Rhode Island state agency and any entity publicly funded, appointed or otherwise organized by federal, Rhode Island state or Rhode Island local government for governmental purposes.~~

~~**grants**—money given to certain Rhode Island governmental entities with no repayment due if the grantee is in substantial compliance with all terms of the grant.~~

~~**industrial wastewater**—all wastewater except for sanitary wastewater (defined as the wastewater and water-carried wastes from residences and from toilet and lavatory fixtures when used for the purpose of personal hygiene).~~

~~**member**—an Advisory Council member as defined in Rhode Island General Laws 1956, as amended, Section 42-106-3, or a designee named by an *ex-officio* member in writing to serve in his or her place.~~

~~**non-point source**—failing individual subsurface disposal systems; erosion from construction sites and agricultural fields; 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.~~

~~**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**—dredged material, solid waste, incinerator residue, sewage, garbage, sewage sludge, urban runoff, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, or industrial, municipal, agricultural or other waste.~~

~~**pollution**—man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the water.~~

~~**pretreatment of industrial waste**—the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a publicly-owned treatment facility (POTW). The reduction or alteration may be obtained by physical, chemical or biological processes,—process changes or by other means except as prohibited by Rule 8(d) of the RI Pretreatment Regulations.~~

~~**remedy**—an action or facility that corrects, substantially reduces or prevents—pollution.~~

~~**revolving loans**—money loaned to selected applicants subject to repayment on terms and schedules set by the Rhode Island Clean Water Protection—Finance Agency.~~

~~**sanitary wastewater**—wastewater derived principally from dwellings, business buildings, institutions, and the like. It may or may not contain groundwater, surface water, or stormwater.~~

~~**sediment abatement and remedy**—activities related to removal of contaminated materials that have settled in open water areas such as coves; capping, and biological or chemical alteration of polluting properties.~~

~~**sewage**—any wastes, including wastes from human households, commercial establishments, industries, vessels and stormwater runoff, that are discharged to or otherwise enter the waters of the state.~~

~~**sludge**—residue, partially solid, or solid, treated or untreated, resulting from the treatment of sewage, including such residues from the cleaning of sewers, by processes, such as settling, floatation, filtration and centrifugation, and shall not meet the criteria for a hazardous waste as found in "Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal Rules and Regulations" the Rules and Regulations for Hazardous Waste Management, Rhode Island Department of Environmental Management, effective July, 1984, as amended.~~

~~**sludge abatement and remedy**—activities in accordance with state regulations that will promote environmentally beneficial uses of sludge.~~

~~**stormwater sewer retrofitting**—furnishing existing stormwater sewers with new parts or equipment not available at the time of manufacture, or employing techniques not common at the time of installation, including separating, combining with in-line storage, combining with in-line storage and treatment and installation of pollution abatement systems that will improve the water quality of the effluent.~~

~~**urban runoff**—any overland flow from any developed or human altered surface area which may contain pollutants such as nutrients, sediments, pathogens, toxic organisms, herbicides, pesticides, heavy metals or toxic contaminants, oil and grease, salts, and with the potential to cause hydrologic, chemical, biological and/or thermal alteration of the receiving waters.~~

~~**wastewater treatment facility**—an arrangement of devices and structures, excluding individual sewage disposal systems, constructed and installed for the purpose of treatment of wastewater from domestic, commercial and industrial sources or combinations thereof.~~

Section 6. **POWERS AND DUTIES**

- ~~a. In accordance with the goals of the fund, the Advisory Council may identify an area or areas of the bay with the greatest need for protection or potential for improvement with the application of a comprehensive and concentrated pollution control effort.~~
- ~~b. In accordance with the goals of the fund, the Council may identify a water quality-related issue or issues of concern that show(s) potential for improvement.~~
- ~~c. The Director, with the advice of the Advisory Council, shall issue a Request for Proposals (RFP) once per year.~~

- d. ~~The Advisory Council shall review projects and prioritize them for funding in accordance with the criteria listed in Section 11 of these regulations.~~
- e. ~~In addition, the Advisory Council shall prioritize proposals and recommend to the Director which projects to fund in each (state) fiscal year.~~
- f. ~~The Advisory Council shall recommend, prior to the issuance of RFPs, a maximum amount of money to be granted or lent each fiscal year. This amount may be increased or decreased by the Advisory Council.~~

Section 7. **ADVISORY COUNCIL MEETINGS AND ATTENDANCE**

~~The Aqua Fund Advisory Council consists of 21 members who serve without compensation and meets at the call of the Director or the Chairman.~~

~~a. Operations~~

- 1. ~~The Advisory Council shall annually elect a Chairman and a Vice Chairman.~~
- 2. ~~Each *ex-officio* member shall name an alternate in writing to attend meetings if the member cannot attend to keep the member abreast of current business.~~
- 3. ~~If a member misses two consecutive meetings without explanation the Council chairman will ask the respective appointing authority to replace him or her.~~
- 4. ~~Alternates of *ex-officio* members shall have the full voting authority given a regularly appointed member.~~

~~b. Decisions~~

- 1. ~~A quorum consists of eleven members.~~
- 2. ~~The votes of a majority of a quorum are required for any action or recommendation.~~
- 3. ~~The Chairman shall be responsible for preparing and distributing minutes of each meeting.~~
- 4. ~~The Chairman shall advise the Director of all decisions and recommendations of the Advisory Council within 14 days of the meeting at which such decisions are reached.~~

- ~~5. The Director shall notify the Council of his or her decision in writing within 14 days of receipt of the Council's recommendation.~~
- ~~6. When a situation arises where the interests of any Council member appear before the Aqua Fund Advisory Council the member should (A) advise the Council, in writing, of the nature of his or her interest in the matter, and, (B) refrain from voting on or participating in the discussion of any such matter.~~

Section 8. USE OF THE FUND

~~All monies in the fund shall be expended in accordance with the general laws of the state of Rhode Island and are hereby restricted to providing grants and loans for activities that will result in pollution reduction, pollution prevention and/or protection of Narragansett Bay and its tributaries, in accordance with the legislative findings of Title 42, Chapter 106.~~

Section 9. PROJECT ACTIVITIES

- ~~a. The \$15,000,000 Fund is divided into five categories, called Projects.~~

- ~~1. Project A- Planning and Program Implementation~~

- ~~i. Two hundred and fifty thousand dollars (\$250,000.00).~~

- ~~ii. The Planning and Program Implementation monies will be used for the preparation of statewide programs and policies and implementation of anti-pollution projects and the administration thereof.~~

- ~~A. Pretreatment~~

- ~~B. Sediment and sludge abatement and remedy~~

- ~~C. Urban Runoff~~

- ~~D. Water supply to wastewater treatment ability~~

- ~~2. Project B- Pilot and Prototypical Projects~~

- ~~i. Seven hundred and fifty thousand dollars (\$750,000.00).~~

- ~~ii. The \$750,000 will be used for pilot or prototypical projects identified in the final documents being produced under the projects in (A) above and the administration thereof.~~

~~3. Project C- Wastewater Treatment~~

- ~~i. Seven million dollars (\$7,000,000.00).~~
- ~~ii. The wastewater treatment monies will be used for revolving low-interest loan funds to private entities for wastewater treatment and sewage disposal and revolving low-interest loan funds and grants to governmental entities for municipal wastewater treatment projects and the administration thereof.~~
 - ~~A. Municipalities and other governmental entities are eligible for projects to produce water pollution abatement. Such projects may include studies, planning and design activities, as well as the construction of facilities that will result in water pollution abatement or provide water pollution control through wastewater treatment.~~
 - ~~B. Non-governmental entities are eligible for revolving low-interest loans for the repair or improvement of sewer lines and disposal systems which directly contaminate the bay or its tributaries, serve more than 20 dwellings or the equivalent or; the construction of facilities that will result in water pollution abatement or provide water pollution control through wastewater treatment.~~

~~4. Project D- Pretreatment, Facilities and Equipment~~

- ~~i. Four million dollars (\$4,000,000.00).~~
- ~~ii. The pretreatment monies will be used for revolving low-interest loans to governmental entities and to private entities for pretreatment, pretreatment facilities and equipment, and monitoring, enforcement and administration thereof.~~

~~5. Project E- Urban Runoff Abatement~~

- ~~i. Three million dollars (\$3,000,000.00).~~
- ~~ii. The urban runoff monies will be used for revolving low-interest loans and grants to governmental entities for urban runoff and other related non-point source pollution abatement programs and the administration thereof, one-half (\$1.5 million) for loans and one-half (\$1.5 million) for grants.~~

~~iii. Urban runoff prevention projects may include studies, planning, design and construction for control or abatement of pollution resulting from urban runoff or other non-point sources.~~

~~b. Administration~~

~~1. The administration of any individual project may not exceed four percent (4%) of the sum allocated to that project.~~

~~2. The Director will submit a budget for the administrative costs to the Advisory Council at the beginning of each year.~~

~~3. The Director may spend not more than \$50,000 each fiscal year to engage such professional and other support staff as it may deem necessary.~~

~~4. Not more than five per cent (5%) of the total bond proceeds may be used to finance non-governmental projects consistent with federal tax laws.~~

Section 10. ELIGIBILITY

~~a. Grants may be given for up to ninety per cent (90%) of the costs of projects under \$500,000.~~

~~b. Projects with costs exceeding \$500,000 may receive grants of up to fifty per cent of amounts over the \$500,000.~~

~~c. The following criteria will be used to evaluate all projects on a matrix developed and adopted by the Council:~~

~~1. The project is in a location identified as a priority by the Advisory Council using the State Clean Water Strategy, the Rhode Island Nonpoint Source Management Plan or any other statewide planning document available to the Council.~~

~~2. The project addresses a topic or issue of water pollution concern as identified by the Council using any state planning document available to it.~~

~~3. The project will produce measurable water quality improvement or abatement of a significant threat of degradation to water quality, or water quality protection measures.~~

- ~~4. The project represents a unique opportunity; timing is critical and no other source of funding is available.~~
 - ~~5. The project is required by federal or state statute or regulation or court order.~~
 - ~~6. The project provides significant benefits in waste minimization, development of new pollution control technology or reclamation of used resources from the wastewater treatment process.~~
 - ~~7. The applicant has demonstrated the ability to accomplish the project.~~
 - ~~8. If the applicant is in noncompliance with relevant federal and state environmental laws and regulations, whether:
 - ~~i. the applicant took steps to promptly come into compliance;~~
 - ~~ii. the applicant took steps to remedy and mitigate whatever harm might have been done as a result of the noncompliance;~~
 - ~~iii. the noncompliance was intentional, willful or knowing.~~~~
- ~~d. The following will be required of all projects:~~
- ~~1. The application must be complete.~~
 - ~~2. The applicant has proven financial integrity.~~
 - ~~3. The applicant shall demonstrate proper procurement procedures and the selected contractor must have proven experience in the type of project for which funds are requested.~~
 - ~~4. The project must conform with the State Guide Plan.~~
- ~~e. Restrictions on the use of the Fund~~
- ~~1. Any innovative or alternative processes that are proposed by profit-making enterprises and funded by the DEM from this fund will grant the DEM a share in the patent and/or profits resulting from the undertaking. Any proceeds realized under this section will go into the Rhode Island Aqua Fund.~~
 - ~~2. Connections of sewer lines to new multi-family dwellings or subdivisions will not be financed directly or indirectly by the Fund.~~

- ~~3. Land acquisition will not be financed directly or indirectly by the Fund.~~
- ~~4. Aqua Fund monies shall not be used to pay fines or penalties for violation of any environmental regulations.~~

Section 11. **APPLICATION FOR ELIGIBILITY DETERMINATION**

a. ~~Required elements of applications:~~

- ~~1. Completed application materials, to include: application form, budget form, instructions, project priority determination criteria rating form, administrative procedures, and contract are available from the Aqua Fund, Division Office of Water Resources, Department of Environmental Management, 291 235 Promenade Street, Providence, RI 02908.~~
- ~~2. All applicants must submit a letter requesting consideration for funds with a summary description of the project.~~
- ~~3. Applicants must submit a statement of the purpose of the project and why it is eligible under the Aqua Fund.~~
- ~~4. For studies, pilot and prototypical projects the objectives and criteria for evaluating how the criteria will be met.~~
- ~~5. For projects involving more than one community a Copy of an intergovernmental agreement.~~
- ~~6. An explanation, with documentation, of the method of procurement for selection of a contractor.~~

~~Where applicable, and before final determination can be made, the following additional elements are required.~~

- ~~7. Plans and specifications approved by the Director are required for any engineering projects (engineering studies, design work or construction projects).~~
- ~~8. An Operation & Maintenance Plan is required for any projects involving construction or purchase of equipment.~~
- ~~9. A timetable for completion of the project.~~

- ~~10. Evidence of an established dedicated source of income for repayment of the Aqua Fund loan.~~
- ~~b. All proposals shall be subject to technical review.~~
- ~~c. Such terms and conditions may be imposed by the Director as may necessary to carry out the purposes of the Act.~~

Section 12. **ADMINISTRATION OF FUNDS**

- ~~a. Grants monies approved for grants will be administered by DEM.~~
 - ~~1. A grant may be converted to a loan to be repaid to the Aqua Fund if the implementation of a project for which a grant has been awarded does not begin within 6 months of the grant award, except in cases where the applicant can demonstrate that the delay was "for good cause shown."~~
- ~~b. Loans monies approved for loans will be administered by the Rhode Island Clean Water Protection Finance Agency.~~
 - ~~1. Payments shall commence no later than one year after the completion of the project.~~
 - ~~2. All principal and interest payments will be returned to the Aqua Fund to constitute a continuing revolving fund for the purposes stated above.~~
 - ~~3. Loan interest rates will be subsidized at a rate to be determined by the bond market at the time of the bond sales.~~
- ~~c. Award the Director will award grants and loans with formal determination of eligible costs when all pre-award requirements and conditions have been met.~~
- ~~d. Upon award of funds, the recipient must be ready and able to award the design engineering or construction contract within six months, except when a delay is "for good cause shown."~~
- ~~e. Payments payments under this program are on a reimbursable basis. The recipient must submit source documents to prove incurred costs. DEM will review and certify payment for eligible costs.~~
- ~~f. Closeout The grants and loans may be closed out when all the following requirements have been met:~~

- ~~i. Final construction inspection is satisfactory to the State.~~
- ~~ii. Work is accepted by the municipality.~~
- ~~iii. Final payments are made and releases from all contractors are signed.~~
- ~~iv. Final Aqua Fund payments have been made.~~
- ~~g. Release—By its acceptance of final grant or loan payments, the recipient releases and discharges the State of Rhode Island, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work under the funds provided.~~
- ~~h. In the event of non-compliance with these regulations the director may take appropriate actions. Such actions may include the suspension of payment, recovery by DEM of all project costs and institution of judicial proceedings.~~

~~Section 13. **PUBLIC ACCESS TO INFORMATION**~~

- ~~a. Any application shall be available to the public for inspection and copying.~~
- ~~b. Other records, reports or information obtained under this chapter also may be made available to the public for inspection and copying; provided that upon a showing satisfactory to the director by any person that such records, reports or information, or any part thereof, except as provided in paragraph (a) of this section, would, if made public, divulge methods, processes or other information entitled to protection under RIGL 38-2-2. The director shall consider, treat, and protect such record, report or information, or part thereof, as confidential; provided, however, that any such records, reports or information accorded confidential treatment may be disclosed or transmitted to other officers, employees, or authorized representatives of this state or of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.~~

~~Section 14. **SEVERABILITY**~~

~~If any provisions of these regulations or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, the remainder of the 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 regulations.~~