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TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 150 - WATER RESOURCES

SUBCHAPTER 20 - FINANCIAL ASSISTANCE

PART 5 – RULES AND REGULATIONS FOR THE NARRAGANSETT BAY AND WATERSHED RESTORATION BOND FUND

5.1 Purpose

The purpose of these regulations is to create a Narragansett Bay and Watershed Restoration Fund to receive, hold and administer 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", \$4,000,000 from the 2012 Environmental Management Bond allotted 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", \$3,000,000 from the 2014 Clean Water, Open Space and Healthy Communities Bond allotted for flood prevention projects and \$3,000,000 from the 2016 Green Economy Bond allotted for the prevention and reduction of stormwater pollution.

5.2 Legal Authority

These rules and regulations are promulgated pursuant to the authority provided by R.I. Gen. Laws §§ 42-17.1-1, 42-17.1-2(34), 42-17.1-2.3, 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.

5.3 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.

5.4 Severability

If any provision of these rules and regulations or the application thereof is held to be invalid by a court of competent jurisdiction, the validity of 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.

5.5 Administrative Findings

The goal of the Narragansett Bay and Watershed Restoration Fund is to restore and protect the water quality, and enhance the economic viability, environmental sustainability and resiliency 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; riparian buffer and aquatic habitat restoration projects; and projects which prevent or mitigate flooding while providing ecosystem benefits and other co-benefits as applicable. In order to achieve its goal the monies from Narragansett Bay and Watershed Restoration Fund are apportioned between four 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 stormwater management, riparian buffer, and aquatic habitat restoration activities that will result in water pollution reduction, or water quality protection of the waters of the state, or flood prevention and mitigation actions and actions to improve inland and coastal resiliency that are carried out in a manner that provides ecosystem benefits.

5.6 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 his or her designee 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.

“Flood” means an unusual accumulation of water above the ground caused by high tide, heavy rain, melting snow or rapid runoff from paved areas.

“Flood mitigation” means the implementation of actions to reduce or eliminate the long-term risk of flood-damage to buildings, other structures and infrastructure.

“Floodplain” means the land area adjacent to a river, stream or flowing body of water that is, on average, likely to be covered with flood waters resulting from a one hundred (100) year frequency storm. A one-hundred year storm is one that is to be expected to be equaled or exceeded once in one hundred years; or may be said to have a one percent (1%) probability of being equaled or exceeded in any given year.

“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” means 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, or increases the resiliency of natural habitats to prevent and mitigate flooding.

“Resiliency” means the capacity of a system potentially exposed to hazards to adapt in order to reach and maintain an acceptable level of functioning.

“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.

5.7 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.", \$4,000,000 from the 2012 Environmental Management Bond that has been designated 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”, \$3,000,000 from the 2014 Clean Water, Open Space and Healthy Communities Bond that has been designated for certain flood prevention projects and \$3,000,000 from the 2016 Green Economy Bond that has been designated for projects to prevent and reduce stormwater pollution. The Department in accordance with these regulations will administer the Fund.

5.8 Sub-Fund Establishment

The Fund is hereby allocated into four (4) sub-funds: the Governmental Entities Nonpoint Source Water Pollution Control Fund, the Non-Governmental Nonpoint Source Water Pollution Control Fund, the Riparian Buffer and Aquatic Habitat Restoration Fund,

and the Flood Prevention and Mitigation 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, grant for up to seventy-five percent (75%) of eligible costs may be awarded.

A. Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund

1. The monies allocated to the Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund shall be available for projects proposed by governmental entities involving:
 - a. Construction of projects that mitigate, control or eliminate the effects of nonpoint source pollution or stormwater pollution, to the waters of the state.
 - b. Capital expenditures for additional or upgraded equipment to enhance implementation of best management practices identified in Department approved local stormwater management program plans.
 - c. The identification, mitigation, control or elimination of illicit point source connections to storm water collection systems.
 - d. The evaluation and/or development of a dedicated sustainable funding mechanism for stormwater pollution abatement.
2. 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.

B. Non-Governmental Entities Nonpoint Source & Stormwater Pollution Control Fund

1. 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:
 - a. Construction of projects that mitigate, control or eliminate the effects of nonpoint source pollution or stormwater pollution, to the waters of the state.
 - b. Construction of projects that mitigate, control or eliminate point source illicit connections to the storm water collection system.
2. 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.

C. Riparian Buffer & Aquatic Habitat Restoration Fund

1. 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 accomplish the following:
 - a. 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.
2. 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.

D. Flood Prevention and Mitigation Fund

1. The monies allocated to the Flood Prevention and Mitigation Fund shall be available for projects proposed by governmental or non-profit entities for the design and construction of projects that will reduce or eliminate the long-term risk of flooding and enhance ecological functioning of natural ecosystems. Such projects may include the following:
 - a. Restoration of floodplains, rivers and streams in a manner that returns ecosystem structure and functions to a more natural condition. This includes but is not limited to restoration of stream channels, streambank stabilization, revegetation of riparian buffers and other projects that reduce peak flows and/or peak velocities to sustain a more natural hydrologic regime.
 - b. Removal of impervious surface and revegetation in coastal and riparian area locations to increase retention of stormwater runoff and reduce contributing flows to flood-prone lands.
 - c. Replacement of culverts associated with crossings of rivers and streams in a manner that prevents flooding through improved management of peak flows and improves river or stream continuity upstream and downstream to enhance the free passage of wildlife.
 - d. Creation of increased storage capacity in floodplains to mitigate downstream flooding provided such storage areas are naturally vegetated.
 - e. Aquifer recharge projects in locations where the diversion of surface waters results in reduced flooding while maintaining a more natural hydrologic regime in rivers and streams.

- f. Repairs to dams that result in increased capacity for flood mitigation including flood storage.
 - g. Dam removal in locations where it is demonstrated that the project will reduce the risk of flooding in known flood-prone areas.
 - h. Projects that enhance the resiliency of vulnerable coastal and inland habitats in locations that mitigate flooding risks.
- 2. Flood prevention and mitigation projects shall be consistent with approved local hazard mitigation plans or an updated local hazard mitigation plan that has been formally submitted to the Federal Emergency Management Agency and is pending approval as applicable.
 - 3. 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.

5.9 Notification of Available Funds

- A. Unless acting in accordance with § 5.8 (A)(2), § 5.8 (B)(2), § 5.8(C)(2) or § 5.8 (D)(3) of this Part 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.
- B. At a minimum the announcement will state:
 - 1. The sub-fund(s) receiving applications,
 - 2. The approximate amount of money available under the sub-fund(s),
 - 3. The deadline for all applications,
 - 4. Any other information that the Director determines necessary and pertinent.

5.10 Application Requirements

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:
 - 1. A statement of the purpose of the project,

2. The expected environmental benefit(s) of the project,
 3. The specific sub-fund to which application is being made and why it is eligible for funding under said sub-fund, and
 4. 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.

5.11 Eligibility

- A. The following projects are ineligible to receive grant monies from the Fund pursuant to these regulations:
1. Projects using experimental technology.

2. Projects whose primary results will be improvement in business operations and/or productivity rather than pollution reduction.
 3. Research projects.
 4. Land acquisition projects.
 5. Sewage disposal systems serving single-family residences.
 6. The replacement of equipment to enhance implementation of best management practices identified in Department approved local stormwater management program plans.
- B. 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:
1. 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).
 2. Operation and maintenance costs.
 3. 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.).
 4. Costs associated with the performance of a Supplemental Environmental Project ("SEP").
- C. Applicants or 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).
- D. 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.

5.12 Application Review and Selection

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 § 5.10, § 5.11 and § 5.12 of this Part.
 2. The proposed projects must provide a reliable means of meeting the intended reduction or restoration goals consistent with § 5.8 of this Part.
- 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 § 5.12(A)(1) and § 5.12(A)(2) of this Part, 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 being addressed by the project (e.g. water quality, habitat, flooding).
 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. The flood mitigation or resiliency benefits (required for flood prevention and mitigation fund projects).
 5. Technical merit of the project (i.e. ability to solve the problem).
 6. Consistency with approved plans (e.g. SWMPP, TMDL recommendations etc.).
 7. 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.

5.13 Grant Awards

- A. Grant Award

1. 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.
 2. 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.
 3. 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.
 4. 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.
 5. 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.
- B. 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 is incorrect or not in compliance with these regulations.
- C. The Director may take appropriate action to stop payment of and/or seek the return of grant funds expended for any project where:
1. The applicant has obtained said grant based upon incomplete, false, misleading or erroneous information; or
 2. 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.