

**RHODE ISLAND GOVERNMENT REGISTER**  
**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Department of Environmental Management  
**DIVISION:** Water Resources  
**RULE IDENTIFIER:** ERLID #: 1965  
**REGULATION TITLE:** Rules and Regulations Governing the Issuance of Certificates of Approval for Non-State Revolving Fund Program Loans  
**RULEMAKING ACTION:** Direct Final

**Direct Final:** If no formal objection is received on or before Thursday, May 17, 2018 Department of Environmental Management will file the amendment without opportunity for public comment.

**TYPE OF FILING:** Repeal

**TIMETABLE FOR ACTION ON THE PROPOSED RULE:**

**Public Notice:** Tuesday, April 17, 2018.

**End of Comment Period Date:** Thursday, May 17, 2018.

**SUMMARY OF PROPOSED RULE:** The purpose of these regulations is to establish and implement procedures for the issuance of Certificates of Approval for the granting of financial assistance for water pollution abatement projects which contribute to removal, curtailment or mitigation of pollution of the waters of the state by the Rhode Island Clean Water Finance Agency (RICWFA) outside of the State Revolving Fund (SRF) program. The subject regulation is proposed to be repealed because changes to R.I. Gen. Laws Chapter 46-12.2 have rendered these regulations moot. Thus, consistent with the Governor's mandate to repeal unnecessary regulations, the Department proposes the repeal of the subject regulations.

**COMMENTS INVITED:** All interested parties are invited to submit written or oral comments concerning the proposed regulations by **Thursday, May 17, 2018**, to the addresses listed below.

**ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:**

**Mailing Address:** Jay Manning  
Department of Environmental Management  
Office of Water Resources  
235 Promenade Street  
Providence, RI 02908

**Email Address:** [jay.manning@dem.ri.gov](mailto:jay.manning@dem.ri.gov)

**WHERE COMMENTS AND PROPOSED REGULATION MAY BE INSPECTED:**

**Mailing Address:** Department of Environmental Management  
Office of Customer and Technical Assistance, 2<sup>nd</sup> Floor  
235 Promenade Street  
Providence, RI 02908  
(401) 222-6822

**FOR FURTHER INFORMATION CONTACT:**

Jay Manning  
Department of Environmental Management  
Office of Water Resources  
235 Promenade Street  
Providence, RI 02908  
(401) 222-4700, Ext. 76000  
[jay.manning@dem.ri.gov](mailto:jay.manning@dem.ri.gov)

**SUPPLEMENTARY INFORMATION:**

**Regulatory Analysis Summary and Supporting Documentation:** N/A

**Authority for This Rulemaking:** R.I. Gen. Laws Chapter 46-12.2

**Regulatory Findings:**

In the development of the proposed repeal consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

**The Proposed Amendment:** The purpose of this amendment is to repeal the regulation in full.

Department of Environmental Management proposes to repeal the Rules and Regulations Governing the Issuance of Certificates of Approval for Non-State Revolving Fund Program Loans (ERLID #: 1965).

Electronic copies of the proposed rulemaking are available at the Secretary of State and DEM's website at the following web addresses:

<http://sos.ri.gov/ProposedRules/>

<http://www.dem.ri.gov/documents/regulations/index.php>

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
Office of Water Resources

**Rules and Regulations Governing  
the Issuance of Certificates of Approval for  
Non-State Revolving Fund Program Loans**



April, 1997

AUTHORITY: These regulations are adopted in accordance with Chapter 42-35  
pursuant to Chapter 46-12.2 of the Rhode Island General Laws of 1956, as amended

R.I. DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
Office of Water Resources

Rules and Regulations Governing the Issuance of  
Certificates of Approval for Non-State Revolving Fund Program Loans

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R.I. DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
Office of Water Resources



**Rules and Regulations Governing the Issuance of  
Certificates of Approval for Non-State Revolving Fund Program Loans**

**Section 1. PURPOSE**

The purpose of these regulations is to establish and implement procedures for the issuance of Certificates of Approval for the granting of financial assistance for water pollution abatement projects which contribute to removal, curtailment or mitigation of pollution of the waters of the state by the Rhode Island Clean Water Finance Agency (RICWFA) outside of the State Revolving Fund (SRF) program. Establishment of these regulations is required and authorized by §46-12.2 of the General Laws of Rhode Island.

**Section 2. LEGAL AUTHORITY**

The creation of the Rhode Island Clean Water Finance Agency ("Agency") and the charge to work in conjunction with the Rhode Island Department of Environmental Management ("DEM") was established by Chapter 303 of the Rhode Island Public Laws of 1989. This chapter was codified as Chapter 12.2 of Title 46 of the Rhode Island General Laws (RIGL).

These regulations are adopted in accordance with Chapter 42-35 (the Administrative Procedures Act) pursuant to: the requirements of RIGL § 46-12.2; the Director's powers and duties under RIGL Chapters 42-17.1, 46-12.2 and 46-12-3.

These regulations are effective twenty (20) days from the date of filing with the Secretary of State.

**Section 3. SEVERABILITY**

If any provision of these rules and regulations or the application thereof to any local government unit, person, or circumstance is held invalid by a court of competent jurisdiction, 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 4. DEFINITIONS**

"Agency" means the Rhode Island Clean Water Finance Agency.

"Approved Project" means any project or portion thereof that has been issued a Certificate of Approval by the DEM for financial assistance from the Agency.

"Certificate of Approval (CA)" means the project Certificate of Approval per RIGL § 46-12.2-8. A Certificate of Approval must be issued by DEM prior to disbursement of loan funds by the Agency.

"Chief Executive Officer (CEO)" means the Mayor in any city, the President of the town council in any town and the Executive Director of any authority or commission, unless some other officer or body is designated to perform the functions of a chief executive officer under any bond act or under the provisions of a local charter or other law.

"Cost(s)" as applied to any approved project, any or all costs, whenever incurred, approved by DEM, as defined in RIGL 46-12.2-2.

"Cumulative Impact" means the impact on the environment which results from the incremental impact of project(s) when added to other past, present, and reasonably foreseeable future actions or projects, regardless of which agency or person undertakes such other actions or projects.

"DEM" means the Rhode Island Department of Environmental Management.

"Director" means the Director of DEM or his/her designee

"Division" means the Division of Water Resources, DEM or its successor.

"Effects" and "impacts", as used in these regulations, are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, and health, whether direct, indirect, or cumulative. The distinctions are:

- a) Direct effects are caused by project(s) and occur at the same time and place.
- b) Indirect effects are also caused by project(s) and may be later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- c) Cumulative effects are caused by both the direct and indirect effects of water pollution abatement projects, plus the effects of other projects which are planned in the planning area.

"Loan" means a loan as defined in RIGL 46-12.2 by the Agency to a local governmental unit or person for costs of an approved project.

"Local Governmental Unit" means any town, city, district, commission, agency, authority, board or other political subdivision or instrumentality of the state or of any political subdivision thereof responsible for the ownership or operation of a water pollution abatement project including the Narragansett Bay Water Quality Management District Commission.

"Person" means any natural or corporate person, including bodies politic and corporate, public departments, offices, agencies, authorities and political subdivisions of the state, corporations, societies, associations and partnerships, and subordinate instrumentalities of any one or more political subdivisions of the state.

"Project" or "water pollution abatement project" means any project that contributes to prevention, removal, curtailment or mitigation of pollution of the waters of the state, is consistent with state goals, policies and objectives expressed in the State Guide Plan and adopted elements thereof.

"RIGL" means the Rhode Island General Laws of 1956, as amended.

"State Guide Plan" shall mean goals, policies, or plan elements for the physical, economic, and social development of the state, adopted by the State Planning Council in accordance with §42-11-10 of the General Laws of Rhode Island, 1956, as amended.

"Wastewater" means all flows in sanitary or combined sewers and all septage.

"Waters of the state" shall include all surface waters including all waters of the territorial sea, tidewaters, all inland waters

of any river, stream, brook, pond or lake, and all ground waters and wetlands of the state of Rhode Island.

## **Section 5. ELIGIBILITY**

All water pollution abatement projects proposed by local governmental units and persons, to the extent permitted by Chapter 46-12.2 of Title 46 of the General Laws, which are consistent with the state's goals, policies, and objectives as expressed in the State Guide Plan are eligible for assistance from the Rhode Island Clean Water Finance Agency.

Additional eligibility restrictions shall apply to projects funded in whole or in part from funds awarded through the SRF program.

## **Section 6. CERTIFICATE OF APPROVAL PROCESS**

A Certificate of Approval for a project must be issued by DEM as the basis for receiving financial assistance from the Agency. Applications for a Certificate of Approval will be submitted to the DEM Division of Water Resources. Requirements for an application are contained in the Certificate of Approval Application Review Checklist which is included in these regulations as Appendix #1.

## **Section 7. LOAN PROGRAM**

All loan requirements are contained in rules, regulations, procedures and guidelines developed by the Agency in accordance with RIGL 46-12.2-8.

**APPENDIX 1: Non-SRF Certificate of Approval Application Review Checklist**

**APPENDIX 2: Requirements for Applicants for Non-SRF Certificates of Approval**

The foregoing "Rules and Regulations for the Governing the Issuance of Certificates of Approval for Non-State Revolving Fund (SRF) Program Loans", after due notice, are hereby adopted and filed with the Secretary of State this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, \_\_\_\_\_ to become effective twenty days thereafter, in accordance with the provisions of Chapters 42-35, 42-17.1 and 46-12 of the General Laws of Rhode Island of 1956, as amended.

\_\_\_\_\_  
Jan H. Reitsma, Director  
Department of Environmental Management

Public Notice Date: \_\_\_\_\_  
Public Hearing date: \_\_\_\_\_  
Filed with Secretary of State: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

PREPARED

**APPENDIX 1**

**R.I.D.E.M. Division of Water Resources  
Non-SRF Certificate of Approval Process**

**Application Review Checklist**

Applicant \_\_\_\_\_ Application No \_\_\_\_\_

Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_

1. List of Projects to be Funded which includes:
  - a. Project description
  - b. Project cost
  - c. Estimated start construction, initiate operation, and construction completion dates
2. A copy of the project plans and specifications (if available)
3. A description of the environmental effects of the project(s)
4. Certification of intent to comply with all applicable provisions of state laws (Appendix 2)

COMMENTS:

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Based on review of the contents of the application package, it is my opinion that all requirements for issuing a Non-SRF Certificate of Approval have been met.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

## APPENDIX 2

### R.I.D.E.M Office of Water Resources Certificate of Approval Process

#### Requirements for Applicants for Non-SRF Certificates of Approval

As the Chief Executive Officer of the \_\_\_\_\_, I hereby certify this local governmental unit will comply with the applicable statutory and/or regulatory requirements of the sections of the Rhode Island General Laws of 1956, as amended, cited below as a condition of award of a loan from the Rhode Island Clean Water Finance Agency. This certification is executed on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, CEO, \_\_\_\_\_ of \_\_\_\_\_

1. § 2-1, Fresh Water Wetlands
2. § 23-23, Air Pollution [R.I. Clean Air Act]
3. § 36-14, Code of Ethics
4. § 37-12, Contractor's Bonds
5. § 37-13, Labor and Payment of Debts by Contractors
6. § 37-14.1, Minority Business Enterprise
7. § 37-16, Public Works Arbitration Act
8. § 38-1, Custody and Protection [of public records]
9. § 38-2, Access to Public Records
10. § 38-3, Public Records Administration
11. § 42-10.1, Public Finance Management Board (debt issuance)
12. § 42-35, Administrative Procedures
13. § 42-45, Historical Preservation Commission (planning coordination)
14. § 42-46, Open Meetings
15. § 42-82, Farmland Preservation Act (eminent domain restrictions)
16. § 42-110, Licensing of Chemical Purchasing (metal finishing pretreatment)
17. § 45-14, Sewage Charges (user charge restrictions)
18. § 45-22.2, Comprehensive Planning and Land Use Regulation Act (planning consistency)
19. § 45-24.5, Wastewater Management Districts (septage management)
20. § 46-12, Water Pollution
21. § 46-12.1, Underground Storage Tanks (fuel tanks at WWTF's)
22. § 46-13, Public Drinking Water Supply (cross-connections, break tanks at WWTF's)
23. § 46-23, Coastal Resources Management Council