

250-RICR-170-05-2

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 170 – RESILIENCE AND CLIMATE CHANGE

SUBCHAPTER 05 – FINANCIAL ASSISTANCE

PART 2 – Rules and Regulations for the Wastewater Treatment Facility Resiliency Fund

2.1 Purpose

The purpose of these regulations is to create a Wastewater Treatment Facility Resiliency Fund to receive, hold, and administer the use of the \$5,000,000 portion of the '2018 RI Green Economy and Clean Water Bond' allotted for wastewater treatment facility resiliency improvements at municipal or other government owned facilities vulnerable to increased flooding, major storm events, and environmental degradation, as well as any future bond allocations, State or Federal appropriations, or other funds deposited into the Fund earmarked for similar and related purposes.

2.2 Authority

These rules and regulations are promulgated pursuant to the authority provided by R.I. Gen. Laws Chapters 42-6.2 and 42-17.1.

2.3 Administrative Findings

Wastewater treatment facility climate resilience projects shall be subject to all applicable state and federal permitting requirements. This Fund is meant to provide funding assistance for design, construction, and implementation of approved climate resilience projects and associated work at the discretion of the Director.

2.4 Definitions

A. For the purposes of this regulation, the following terms are defined as follows:

1. "Applicant" means any governmental entity applying for monies under these rules and regulations.
2. "Bank" means the Rhode Island Infrastructure Bank as established by R.I. Gen. Laws Chapter 46-12.2.
3. "Clean Water State Revolving Fund" or "CWSRF" means Title VI of the federal Clean Water Act, 33 U.S.C. § 1383.

4. "Climate resilience project" means projects that protect wastewater collection or treatment assets and property from the impacts of climate change and severe weather events and shall include hardening of existing systems or those currently planned for construction or the removal or relocation of existing infrastructure.
5. "Construction" means the building, alteration, rehabilitation, improvement, or extension of a project, including the necessary planning, design, and engineering associated with the specific project.
6. "Department" means the Rhode Island Department of Environmental Management.
7. "Director" means the Director of the Department of Environmental Management or the designee(s) to whom the Director has delegated powers and duties vested in the Director by these regulations.
8. "Fund" means the Wastewater Treatment Facility Resiliency Fund as established by these regulations.
9. "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, R.I. state or local government for governmental purposes.
10. "Grant" means money given to eligible entities with no repayment due if the grantee is in substantial compliance with all terms of the grant.
11. "Grant match" means the required 50% match on Wastewater Treatment Facility Resiliency Fund monies. At the sole discretion of the Review Committee, in-kind services may be considered as credit towards the 50% match.
12. "Permit" means an authorization, license, approval, or equivalent control document issued by the Department or another governmental entity.
13. "Recipient" means any party (or parties), municipal or quasi-state, that has been awarded funding pursuant to these regulations and is responsible for the implementation of a climate resilience project.
14. "Resilience" means the capacity of individuals, institutions, business, and natural systems within Rhode Island to survive, adapt, and grow no matter what chronic stresses and weather events they experience.
15. "Wastewater" means human waste from any receptacles intended to receive or retain bodily waste products, and any organic or non-biological wastes from residences, businesses, institutions, and industries, or any combination of the above, as well as any water used as a means of

conveyance of such wastes, which is intended to enter a Wastewater Treatment Facility for collection, conveyance, treatment, and discharge in accordance with a Rhode Island Pollution Discharge Elimination permit issued by the Department.

16. “Wastewater treatment facility” or “Wastewater infrastructure” means a municipally or quasi-state-owned group or assemblage of processes, devices, and structures for the conveyance, treatment, or removal of objectionable constituents of Wastewater. A Wastewater Treatment Facility shall include, but not be limited to, all physically connected Wastewater collection system piping, pumping, storage, physical, chemical and/or biological treatment, filtering, sludge composting or incineration, and disinfection systems. For the purposes of these rules and regulations, a Wastewater Treatment Facility shall not be:
- a. An Onsite Wastewater Treatment System, which does not discharge into surface waters but discharges into subsurface waters; or,
 - b. Any privately owned plumbing, low-pressure grinder pumps, or sewers.

2.5 Fund Established

There is hereby established a fund entitled the “Wastewater Treatment Facility Resiliency Fund” (“Fund”). The Fund is initially capitalized by \$5,000,000 from the 2018 Green Economy and Clean Water Bond for the designated use of “wastewater treatment facility resiliency improvements for facilities vulnerable to increased flooding, major storm events and environmental degradation.” The Fund can be further capitalized through, but not limited to, future State and Federal appropriations, and voter-approved bond referendums.

2.6 Sub-Fund Establishment

- A. The Fund is hereby allocated into two (2) sub-funds: The Wastewater Treatment Facility Resiliency Fund Small Projects Sub-Fund and the Wastewater Treatment Facility Resiliency Fund Large Projects Sub-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 project costs. Applicants must be able to match at least fifty percent (50%) of eligible project costs.
- B. Wastewater Treatment Facilities Resiliency Fund Small Projects Sub-Fund
- 1. The monies allocated to the Wastewater Treatment Facility Resiliency Fund Small Projects Sub-Fund shall be available for construction projects proposed by governmental entities involving:

- a. Hardening—Protection from the effects of flooding by constructing walls, dikes, etc.; or waterproofing equipment by installing submersible pumps, water resistant electrical enclosures, general waterproofing; or installing floodproof doors/windows; or temporary flood barriers.
 - b. Relocating—Reducing the risk of flooding/hazards by elevating equipment or relocating systems or equipment to higher points on or off site.
 - c. Repairability/Replaceability—Improving operational resiliency through the construction of new or physically enhancing existing systems for faster replaceability or repair in the event of flooding or other damage.
 - d. Redundancy—Maintaining the ability to maintain forward flow and treatment through the construction of multiple or backup systems.
2. This Sub-Fund shall provide fifty percent (50%) matching grant funds up to \$250,000 for projects estimated to be \$500,000 or less. Matching funds shall come from applicant's own financial resources or force account work, or financing provided by the Bank.

C. Wastewater Treatment Facility Resiliency Fund Large Projects Sub-Fund

1. The monies allocated to the Wastewater Treatment Facility Resiliency Fund Large Projects Sub-Fund shall be available for construction projects proposed by governmental entities involving:
 - a. Hardening—Protection from the effects of flooding by constructing walls, dikes, etc.; or waterproofing equipment by installing submersible pumps, water resistant electrical enclosures, general waterproofing; or installing floodproof doors/windows; or temporary flood barriers.
 - b. Relocating—Reducing the risk of flooding/hazards by elevating equipment or relocating systems or equipment to higher points on or off site.
 - c. Repairability/Replaceability—Improving operational resiliency through the construction of new or physically enhancing existing systems for faster replaceability or repair in the event of flooding or other damage.
 - d. Redundancy—Maintaining the ability to maintain forward flow and treatment through the construction of multiple or backup systems.

2. This Sub-Fund shall provide fifty percent (50%) matching grant funds up to \$1,250,000 for projects estimated to be greater than \$500,000. Matching funds will come from the CWSRF and the applicant/project must comply with all CWSRF rules. Matching funds may also come from other financing programs administered by the Bank.

2.7 Notification of Available Funds

- A. The Director shall announce via Request for Proposals the availability of all funds under the Wastewater Treatment Facility Resiliency Fund. During each announcement of availability of funds, the Director may allocate portions of the available funding to sub-funds identified in § 2.6 of this Part. At a minimum the announcement will state:
 1. The approximate amount of money available under the fund;
 2. The deadline for all applications; and
 3. Any other information that the Director determines necessary and pertinent.

2.8 Application Requirements

- A. Applications shall be submitted to the Department on a template provided by the Department and shall be signed by the applicant's chief executive or chief financial officer, or other designated and qualified representative.
- B. Applications shall be submitted to the Department via: R.I. Department of Environmental Management, Office of Water Resources, 2nd Floor, 235 Promenade Street, Providence, RI 02908.
- C. In the alternative, the Department may provide mechanisms for electronic submission of grant applications.

2.9 Project Categories and Eligible Costs

- A. Proposed wastewater treatment facility climate resilience projects must be related to the categories in §§ 2.6(B) and (C) of this Part. While minor and related engineering costs necessary for construction/hardening may be considered as part of the costs of the proposed project, research or planning for future work will not be considered. Climate resilience projects shall be designed to demonstrate tangible, physical solutions to climate-driven challenges facing Rhode Island wastewater infrastructure, both inland and coastal.
- B. Climate resilience projects should show a clear nexus between climate change impacts being experienced, or expected/projected, in Rhode Island wastewater infrastructure and the proposed resilience actions and outcomes.

- C. Climate resilience projects whose primary purpose is to undertake scientific research, data analyses, or vulnerability assessments will not be considered.
- D. Specifically, the following types of costs are eligible to receive grant monies from the Fund pursuant to these regulations:
1. Engineering consulting necessary to proceed with project construction/installation, etc.;
 2. Construction
 3. Materials
- E. Costs that are ineligible to receive grant monies from the Fund but may be considered for matching cost purposes include but shall not be limited to:
1. Pre-award costs considered by the Director to be associated with the proposed project.
 2. Administrative costs including clerical support, monthly utility expenses, the purchase of office equipment, and personnel costs directly related to the project.
 3. Land acquisition activities considered by the Director to be directly associated with the proposed project.
 4. Survey work.
- F. Costs that are ineligible to receive grant monies from the Fund nor shall be considered eligible for matching cost purposes include but shall not be limited to:
1. State or federal lobbying costs, penalties, or fines.
 2. Response costs for emergency response actions caused or exacerbated solely by the applicant or their agents or assigns.
 3. 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).

2.10 Application Review and Selection

2.10.1 Application Review

- A. The Director shall establish a Review Committee to review the completed applications. All complete applications shall be subject to review by up to four (4)

members of the Department, and at least one (1) member selected by the Director from outside the Department.

B. The Review Committee 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 as outlined in this Part.

2. Projects accepted by the Department as complete and consistent with these regulations will be ranked in a manner specified in the announced Request for Proposals based upon the following criteria, which shall be applied to promote the goals and requirements of this Part.

a. The extent to which the project addresses climate change impacts and improves community resilience;

b. Readiness and timeliness to proceed;

c. The extent to which the project conforms to approved plans and relevant studies;

d. The extent to which the project has been vetted with facility operations and maintenance staff;

e. The beneficial environmental impact to the land and waters of the State;

f. The estimated costs, and cost effectiveness, of the project in its entirety.

3. Recommendations for awards will be made to the Director based on a majority vote of the Review Committee. The final decision on any award shall be made by the Director.

2.11 Grant Awards

A. Grant Award - Successful applicants will receive a grant agreement specifying the amount, duration, and conditions of the award. The agreement will be in the form of a binding contract. Other requirements to secure funding shall be:

1. Recipients will be required to sign, accept, and return the agreement 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 and may result in these funds being awarded to the next highest rated project.

2. 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 upon request.
 3. All grant payments will be paid in the form of reimbursement payments for eligible expenses incurred in accordance with an approved project. In general, up-front costs or prepayment will not be allowed, however, if at the sole discretion of the Director, such costs are small compared to the overall value of the project or are clearly demonstrated to be necessary for the success of the project, and sufficient documentation and collateral are presented, they may be considered. 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. Suspension, modification, or revocation - 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, reimbursement request, plan, or sketch to be incorrect or not in compliance with these regulations.
- C. Stop Payment - 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.