250-RICR-150-20-2

TITLE 250 – Department of Environmental Management

CHAPTER 150 – WATER RESOURCES

SUBCHAPTER 20 - FINANCIAL ASSISTANCE

PART 2 – Rules and Regulations for the Priority Determination System for Federal and State Assistance for Construction of Water Pollution Abatement Projects

2.1 Purpose

A. The Priority Determination System is designed to achieve optimum water quality management results from the Rhode Island Department of Environmental Management's (DEM) water pollution abatement project construction assistance programs, consistent with the powers and duties of the Department denoted in Chapters 42-17.1, 46-12, and 46-12.2 of the Rhode Island General Laws as amended, and the Federal Water Pollution Control Act [33 U.S.C. Sec. 1251 *et seq*., as amended], commonly called the Clean Water Act.

B. The Priority Determination System describes procedures for annually determining the priority rating and ranking of all categories of identified water pollution abatement projects proposed by local governmental units and persons, which may receive federal and/or state funding assistance from the State Revolving Fund (SRF) and the Interceptor Bond Fund (IBF) account of the Rhode Island Clean Water Act Environmental Trust Fund.

C. Eligibilities and actual assistance awards are determined by the criteria and methodology contained in the rules and regulations for each specific assistance program.

2.2 Authority

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws §§ 42-17.1-1 *et seq*., 46-12-1 *et seq*., and 46-12.2-1 *et seq*.; and in accordance with R.I. Gen. Laws §42-35-1 *et seq*.

2.3 Application

The terms and provisions of these Rules and Regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

2.4 Definitions

A. For the purposes of these Regulations, the following terms shall have the following meanings:

1. "Bank" or "RIIB" means the Rhode Island Infrastructure Bank established by R.I. Gen. Laws § 46-12.2-1 *et seq.*

2. "Areawide Waste Treatment Management Plan" or "208 Plan" means the plan prepared by the State pursuant to Section 208 of the Clean Water Act.

3. "Chief Executive Officer" means the mayor in any city, the president of the town council in any town, or 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 the provisions of a local charter or other law.

4. "Clean Water Act" or "CWA" means the Federal Water Pollution Control Act, codified at 33 U.S.C Sec. 1251 *et seq.*, as amended.

5. "Community Comprehensive Plan" or "CCP" means a plan prepared pursuant to the Rhode Island Comprehensive Planning and Land Use Regulation Act, R.I. Gen. Laws § 45-22.2-1 *et seq.*

6. "Comprehensive Conservation and Management Plan" or "CCMP" means a plan prepared pursuant to the requirements of Section 320 of the Clean Water Act.

7. "Construction" means any one or more of the following: Preliminary planning to determine the feasibility of treatment works, engineering, scientific, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, rehabilitation, improvement, or extension of treatment works, or the administration, inspection, or supervision of any of the foregoing items.

8. "Combined Sewer" means a sewer which serves as a sanitary sewer and a storm sewer.

9. "Combined Sewer Overflow" or "(CSO)" means flow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to a WWTF. A CSO occurs prior to reaching a WWTF and is distinguished from bypasses which are intentional diversions of waste streams from any portion of a WWTF.

10. "Costs" means any or all costs relating to the planning, designing, acquiring, constructing and carrying out and placing in operation a water

pollution abatement project including, but not limited to, the following: planning, design, acquisition, construction, expansion, improvement and rehabilitation of facilities; acquisition of real or personal property; demolitions and relocations; labor, materials, machinery and equipment; services of architects, engineers, scientists, environmental and financial experts and other consultants; feasibility studies; rate/cost recovery/user charge studies; borings, survey, and other preliminary engineering costs; plans and specifications; administrative costs; legal costs; all costs related to project financing; and any and all other expenses necessary or incidental to the financing and construction of a water pollution abatement project.

11. "Department" or "DEM" means the Department of Environmental Management of the State of Rhode Island.

12. "Director" means the Director of the Rhode Island Department of Environmental Management or his/her designee.

13. "Fiscal Year" means the State of Rhode Island fiscal year: 1 July to 30 June.

14. "Growth Center" means a designated area, consistent with the state-approved local Community Comprehensive Plan, where compact, mixed-use development is accommodated without depleting a community's natural, historic and cultural resources.

15. "Infiltration/Inflow" or "(I/I)" means the total flow from both infiltration and inflow without distinguishing the source.

16. "Landfill" means any site where the disposal of wastes and/or sludge occurs or has occurred by placing them in or on the land, compacting, and covering with a layer of soil.

17. "Local Governmental Unit" means any city, town, 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(s), including the Narragansett Bay Water Quality Management District Commission.

18. “Materials" means product(s) employed in or by-products generated by industrial, commercial, and/or agricultural processes.

19. "Materials Storage Area" means any pile, impoundment, compound, facility or other area where materials are contained, held or otherwise stored in such a manner which causes, contributes to, or contaminates runoff.

20. "Nonpoint Source Management Plan" or "NPS" means a plan prepared pursuant to the requirements of Section 319 of the Clean Water Act.

21. "Onsite Wastewater Treatment System" or "(OWTS)" means any system of piping, tanks, disposal areas, alternative toilets or other facilities designed to function as a unit to convey, store, treat and/or dispose of sanitary sewage by means other than discharge into a public sewage collection system.

22. "Person" means an individual, trust, firm, joint-stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, fire district, club, non-profit agency commission, or of any interstate body and any agent or employee thereof.

23. "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological, thermal, and radiological integrity of water.

24. "Project" or "Water Pollution Abatement Project" means any project that contributes to the prevention, removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms with any applicable planning document which has been approved and/or adopted. This definition shall be construed to include the planning, design, construction or any other distinct stage or phase of a project, as well as efforts to educate or raise the awareness of the general public towards pollution or a project.

25. "Project Priority List" or "PPL" means an annual ranked listing based on relative priority ratings of all water pollution abatement projects in all categories for which federal or state assistance is requested from DEM's assistance programs.

26. "Raw Sewage Discharge" means any discharge to a receiving water of untreated sanitary sewage.

27. "Runoff" means water that drains from an area as surface flow.

28. "Sanitary Sewer" means a sewer which conveys wastewater from residences, commercial buildings, industrial plants, and institutions.

29. "State Guide Plan" or "SGP" means goals, policies, or plan elements for the physical, economic, and social development of the state, adopted by the State Planning Council in accordance with R.I. Gen. Laws § 42-11-10.

30. "Storm Sewer" means a sewer intended to convey only storm waters, surface runoff, street wash waters, and drainage.

31. "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.

32. "Underground Storage Tank" means any one or a combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of petroleum product or hazardous materials, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground.

33. "Wastewater Facilities Plan" or "WWFP" means a plan prepared pursuant to the requirements of Section 201 of the federal Clean Water Act which is a detailed 20-year wastewater treatment, conveyance, and disposal plan, including an assessment of the environmental impacts of the plan, and which also contains information to meet the statutory and regulatory requirements of the DEM for systems to prevent pollution and the consistency requirements of the Comprehensive Planning and Land Use Regulation Act (R.I. Gen. Laws § 45-22.2).

34. "Wastewater Treatment Facility (WWTF)" means any equipment, devices, and systems for preventing, abating, reducing, storing, conveying, treating, separating, recycling, reclaiming, or disposing of sanitary or combined sewage.

35. "Watershed Action Plan" means a document that identifies watershed goals and management objectives along with specific action items that are needed. The plan is developed in consultation with all key stakeholders within the watershed including, but not limited to, federal, state and local governmental agencies, non-governmental organizations and the private sector.

2.5 Project Priority List

A. A project cannot receive funding from any DEM assistance program which utilizes the Priority Determination System unless it is on the approved Project Priority List. The DEM, Office of Water Resources must receive a letter of intent or equivalent document requesting that the proposed project be placed upon the Project Priority List. To be rated and ranked under the project priority system, the letter of intent for a requested project must include:

1. Documentation that the requested project is, at a minimum, not inconsistent with: the State Guide Plan; a Community Comprehensive Plan; the Non-Point Source Management Plan; the Areawide Waste Treatment Management Plan or Plans; the Comprehensive Conservation

and Management Plan; an approved Wastewater Facilities Plan. EXCEPTION: this requirement does not necessarily apply to request for assistance for planning or scientific investigations/studies.

2. A total cost estimate of all costs relating to the project.

3. A project description and schedule.

B. The Director shall annually prepare and publish a ranked priority list of all water pollution abatement projects for which assistance has been properly requested.

2.6 Project Rating

A. The Director shall rate each project according to the project rating criteria in Appendix I of these Regulations. In order to rate a project, the Director must determine that the project will contribute to achieving the State water quality policy goals and objectives. The numerical scores in Appendix I are based on the following:

1. The existing conditions that cause the pollution.

2. The benefits of the proposed project, including improvements in overall efficiency and service.

3. Improvements to water quality.

4. Intergovernmental needs, requirements, or mandates identified in: the State Guide Plan; a Community Comprehensive Plan; the Non-Point Source Management Plan; the Areawide Waste Treatment Management Plan; the Comprehensive Conservation and Management Plan; a Special Area Management Plan; an approved Total Maximum Daily Load or Watershed Action Plan, or an approved Wastewater Facilities Plan.

5. The degree to which a project is ready to proceed.

B. For every project, the Director shall assign points to each project rating criterion based upon the most current information available to the Department, including information received prior to or during the public notice period required under § 2.8 of this Part.

C. Point values have been assigned to subcategories based on needs and priorities identified in but not limited to: the State Guide Plan; a Community Comprehensive Plan; the Nonpoint Source Management Plan; the Areawide Waste Treatment Management Plan; the Comprehensive Conservation and Management Plan; DEM Water Quality Regulations; RIDEM Rules and Regulations for Groundwater Quality; and an approved Wastewater Facilities Plan.

D. The Director shall annually evaluate the rating of each project and make such changes as deemed necessary.

2.7 Project Ranking

Projects will be ranked based upon points accumulated pursuant to § 2.6 of this Part. The Director shall not place projects on the PPL and shall remove projects from the PPL when it is determined that the projects will not contribute to achieving applicable state water quality goals, policies, standards, or objectives.

2.8 Review and Adoption of Priority List

A. The Director shall make available for written comments the proposed PPL prior to its adoption.

B. Public notice of the availability of the proposed PPL shall be published in a newspaper of the State with statewide circulation, or on the Department's website, for up to thirty (30) calendar days, or as required by R.I. Gen. Laws § 42-35, to afford all interested persons reasonable opportunity to submit data, views, or arguments concerning the proposed PPL. The public notice shall indicate the location where copies of the draft PPL may be obtained and/or reviewed by interested parties.

C. The Director shall accept written comments on the draft PPL. The Director shall consider fully all written submissions respecting the proposed PPL, and make any changes deemed necessary to serve the purposes of these Regulations.

D. The Director will adopt a final PPL. Upon adoption of the final PPL, if requested to do so by an interested person, the Director will issue a concise statement of the principal reasons for and against its adoption, incorporating therein the reasons for overruling the considerations urged against its adoption.

E. The Director shall permanently retain a copy of the PPL development record which shall include a copy of the final PPL, copies of all comments, and any statement by the Director regarding the comments on or adoption of the final PPL.

F. The Director shall include such information in the PPL for each project as required by the EPA pursuant to the Clean Water Act and guidance issued pursuant thereto.

2.9 Project Priority List Revision

A. The Director shall review the PPL for changes in estimated project schedules, project costs and/or scope, annually. The Director may propose modification of the PPL at any time according to these procedures:

1. Addition to the list: projects can only be added to the PPL after a public notice period as described in Rule 2.8 (250-RICR-150-20-2).

2. Removal from the list:

    a. The Director may remove a project completely from the Project Priority List if is determined: that it is fully funded by other assistance programs; that it is not consistent with an approved WWFP or applicable comprehensive management plan; or that significant deficiencies exist in the project scope of work or costs analysis.

    b. The Director shall notify by certified mail the person or local governmental unit whose project will be removed and the basis for the removal. The person or local governmental unit shall have ten (10) calendar days from receipt of the letter to submit evidence to the DEM showing that its project should not be removed.

    c. The Director shall review his/her decision based on the information submitted by the person or local governmental unit and shall revise his/her decision if deemed necessary.

    d. A person or local governmental unit whose project is removed after such review by the Director may request that the Director reverse his/her decision to remove the project only if substantial rights of the applicant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are without factual basis or are an unfair interpretation of the Rules and Regulations.

3. Revisions of a Clerical Nature: Revisions of a clerical nature require neither a public hearing nor documentation.

2.10 Severability

If any provision of these Rules and Regulations, or the application thereof to any local governmental unit or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.

2.11 Superseded Rules and Regulations

On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of the Priority Determination System shall be superseded. However, any enforcement action taken by, or application submitted to, the Department prior to the effective date of these Rules and Regulations shall be governed by the Rules

and Regulations in effect at the time the enforcement action was taken, or application filed.

2.12 Appendix I - Project Rating Criteria

APPLICANT:			Point Values	Actual Rating	Item #
PROJECT:					
I.		EXISTING CONDITIONS CRITERIA †			
	A.	Direct Raw Sewage Discharge/Sanitary Sewer Overflow	7		A
	B-1	Failing OWTS. - Documented Water Quality Degradation	7		B-1
	B-2	Failing OWTS – Other	3		B-2
	C-1	Untreated/uncontrolled runoff - Documented Water Qual. Degrad. (Pathogen impacts)	5		C-1
	C-2	Untreated/uncontrolled runoff - Documented Water Qual. Degrad. (Non-path. impacts)	3		C-2
	C-3	Untreated/uncontrolled runoff – Other	2		C-3
	D-1	Wastewater Treatment Facility	3		D-1
	D-2	Collection System/Pump Station	1		D-2
	E.	Combined Sewer Overflows	10		E
	F.	Landfill - Closure imminent or closed	3		F
	G-1	Underground Storage Tank – Leaking	3		G-1

	G-2	Underground Storage Tank - Potential to leak (single wall construction)	2		G-2
	H.	Materials Storage Area	3		H
	I-1	Sub-surface Discharge - non-sanitary wastewater	2		I-1
	I-2	Sub-surface Discharge - stormwater only	1		I-2
	J.	Stormwater treatment/management facility	3		J
	K.	Atmospheric Deposition	1		K
	L.	Excessive Flows - exceeds design flow or operational capacity	3		L
	M.	Streambank erosion or scouring	3		M
	N.	Stream continuity/connectivity impaired	3		N
	O.	Drinking water well contamination	3		O
		Section I - Total Points		_____	
II.		PROPOSED PROJECT BENEFITS CRITERIA † *			
	A.	Regional Project (i.e. project serves more than one community)	5		A
	B	Treatment of Septage at Existing WWTF	3		B
	C.	Operational Reliability Improvement	2		C

	D.	Project helps to alleviate a Sewer Connection/Extension Ban in the area served	5		D
	E.	Demonstration or Pilot Projects	2		E
	F.	Project incorporates pollution prevention/waste minimization techniques	2		F
	G.	Project protects or restores a critical aquatic habitat or resource	3		G
	H.	Project provides technical assistance/public education	2		H
	I.	Project improves permitted discharge from interim to final limits (discharge is presently in compliance with interim limits)	3		I
	J.	Project addresses/prevents water pollution within a growth center	5		J
	K.	Project incorporates green infrastructure, energy conservation or other sustainable measures	5		K
	L.	Project implements climate change resiliency measures	5		L
		Section II - Total Points		_____	
III.		WATER QUALITY IMPROVEMENT CRITERIA ‡			

A.		Surface Water Restoration † [Use Integrated 305(b)/303(d) Report]			
	A-1	Project affects a Category 4.A or 4.B waterbody	8		A-1
	A-2	Project affects a Category 5 waterbody	6		A-2
	A-3	Project affects a Category 4.C waterbody	4		A-3
		Subtotal III A		_____	
B.		Surface Water Protection † [Use RIDEM Water Qual. Regs. & 305(b)/303(d) Report]			
	B-1	Project affects an SRPW drinking water supply waterbody	8		B-1
	B-2	Project affects another SRPW or Category 2 waterbody	6		B-2
		Subtotal III B		_____	
C.		Groundwater Protection Factor [Use Rules and Regulations for Groundwater Quality] †			
	C-1	Project affects a Wellhead Protection Area for Community Water System Well	6		C-1
	C-2	Project affects an area of GAA Groundwater	4		C-2
	C-3	Project affects an area of GA Groundwater	2		C-3

	C-4	Project affects an area of GB Groundwater	1		C-4
		Subtotal III C		_____	
		Section III - Total Points		_____	
IV.		INTERGOVERNMENTAL NEEDS CRITERIA ††			
	A.	Project is consistent with Community Comprehensive Plan/State Guide Plan	3		A
	B.	Project is consistent with an approved Wastewater Facilities Plan or OWMP	3		B
	C.	Project is consistent with a Special Area Management (SAM) Plan	3		C
	D.	Project is consistent with the Areawide Waste Management Plan (208 Plan)	1		D
	E.	Project is consistent with the Nonpoint Source Management Plan (319 Plan)	3		E
	F.	Project is consistent with the Comp. Conservation and Management Plan (CCMP)	3		F
	G.	Project is consistent with TMDL or Watershed Action Plan	3		G
	H.	Project is consistent with the local Stormwater Management Plan	3		H

	I.	Project is consistent with the Implications for Climate Change for RI Wastewater Collection and Treatment Infrastructure	3		I
	J.	Population Served by the Project †			J.
	J-1	1 – 14,999	1		J-1
	J-2	15,000 – 49,999	2		J-2
	J-3	≥ 50,000	3		J-3
		Section IV – Total Points		_____	
V.		READINESS TO PROCEED CRITERIA			
A.		Planning †			
	A-1	Remedial Action Work Plan has been approved	2		A-1
	A-2	Wastewater Facilities Plan or OWMP approved or reaffirmed	2		A-2
	A-3	Environmental Assessment or Categorical Exclusion Approved	2		A-3
	A-4	Lake Management Plan Approved	2		A-4
		Subtotal V A		_____	

B.		Design			
	B-1	Plans and Specifications approved	2		B-1
		Subtotal V B		_____	
C.		Financial/Other ††			
	C-1	Local bonding authority approved, system revenues pledged or other local funds committed	2		C-1
	C-2	Pre-application for SRF Funding complete (i.e. qualified for loan by RIIB)	2		C-2
	C-3	Grant funding has been secured	2		C-3
	C-4	Local ordinance/zoning passed in support of the project	2		C-4
		Subtotal V C		_____	
		Section V - Total Points		_____	

† - Select one criterion, at most, for each category. For example, choose A-1, A-2 or neither as applicable.

†† - Select each and every criterion which applies.

* - Points are awarded for projects at the project site if the criterion is included in the proposed project.
‡ - For water bodies that are included on the surface water reclamation and protection lists, the highest total point rating under either of those lists must be used, but not both.

250-RICR-150-20-2

TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 150 - WATER RESOURCES

SUBCHAPTER 20 - FINANCIAL ASSISTANCE

PART 2 - RULES AND REGULATIONS FOR THE PRIORITY DETERMINATION SYSTEM FOR FEDERAL AND STATE ASSISTANCE TO LOCAL GOVERNMENTAL UNITS FOR CONSTRUCTION OF WATER POLLUTION ABATEMENT PROJECTS (250-RICR-150-20-2)

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