

250-RICR-150-20-7

## **TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

### **CHAPTER 150 - WATER RESOURCES**

#### **SUBCHAPTER 20 - FINANCIAL ASSISTANCE**

PART 7 - Rules and Regulations for RI Clean Vessel Act Pumpout Grant Program

#### **7.1 Authority and Purpose**

- A. Statutory Basis. These regulations are adopted pursuant to R.I. Gen. Laws Chapters 20-1, 42-17.1, 46-12, and 42-35.
- B. Purpose. These regulations are intended to:
  - 1. Assure the protection of public health, safety, and welfare as well as improve water quality and the fish and wildlife of the state; and,
  - 2. Establish a means by which the Department of Environmental Management may administer to qualified marina owner/operators partial funding in the form of grants for the purpose of the construction, renovation, operation, and maintenance of marine pumpout and dump stations designed to service Type III marine sanitation devices installed on recreational vessels.

#### **7.2 Definitions**

- A. Whenever used in these regulations, the following terms shall have the following meanings:
  - 1. "Department" means the Rhode Island Department of Environmental Management (DEM);
  - 2. "Director" means the Director of the Department of Environmental Management or his/her subordinates to whom the Director has delegated the powers and duties vested in the Director by these regulations. The terms Department and Director may be used interchangeably unless clearly indicated otherwise by the context of the sentence in which it appears;

3. “Dump station” means an upland or floating facility specifically designed to receive wastes from portable toilets carried on recreational vessels, and does not include restroom facilities;
4. “Marina” means a berthing, mooring, or boat service facility, whether publicly or privately held;
5. “Non-transient” or “parking lot harbor” means a harbor that is home port to many boats kept on swing moorings or in marine docks. Most of the time, most of the boats are unoccupied and unused;
6. “Office” means the Office of Water Resources of the Department of Environmental Management;
7. “Portable toilet” means toilets that are not installed toilets. They are designed to be removed from a vessel and their contents emptied into shoreside receptacles;
8. “Project” means any expenditure described in §§ 7.3(A) through (D) of this Part inclusive for which financial assistance is provided pursuant to these regulations;
9. “Pumpout station” means a stationary (fixed base) facility that pumps or receives human body wastes out of Type III marine sanitation devices installed onboard recreational vessels, provided that certain mobile pumpout vessels may be employed to convey waste from moored vessels to the stationary facility;
10. “Recreational vessel” means a vessel:
  - a. Manufactured for operation, or operated, primarily for pleasure; or,
  - b. Leased, rented, or chartered to another for the latter’s pleasure;
11. “Transient harbor” means a “destination” harbor where boaters go during the day trips or berth overnight;
12. “Type III marine sanitation device (holding tank)” means any equipment for installation onboard a recreational vessel which is specifically designed to receive and retain human body wastes;
13. “Responsible party” means any person, partnership, corporation, or other legal entity which is the recipient of financial assistance pursuant to these Regulations or any person, partnership, corporation or other legal entity which is an owner, devisee and/or transferee of a Project, during the

project period as defined in §§ 7.9(A) through (J) of this Part inclusive of these Regulations.

### **7.3 Allocation between Projects**

- A. Construction of New Pumpout Facilities and Dump Stations. In the awarding of grants, priority will be given to the funding of projects which provide for construction, operation, and maintenance of new marine pumpout facilities and dump stations in waterbodies identified as having unmet needs for such facilities in Harbor Management Plans approved by CRMC pursuant to 650-RICR-20-00-1.3.1(O)(1).
- B. Renovation/Expansion of Existing Pumpout Stations. Second priority will be given to funding projects which expand the capacity of existing marine pumpout facilities and dump stations located on water bodies identified as having unmet needs for such facilities in Harbor Management Plans approved by CRMC pursuant to 650-RICR-20-00-1.3.1(O)(1).
- C. Operating and Maintenance Subsidies. Third priority will be given to the funding of projects which support the cost of operating and maintaining existing marine pumpout facilities or dump stations which comply with the eligibility requirements of this program, are operating at a net loss, and are located on waterbodies identified as having unmet needs for such facilities in Harbor Management Plans approved by CRMC pursuant to 650-RICR-20-00-1.3.1(O)(1).
- D. All Other Eligible Projects. Fourth priority will be given to projects which are otherwise eligible, but which are located in waterbodies already serviced by at least the minimum number of necessary pumpout facilities and dump stations as identified in Harbor Management Plans approved by CRMC pursuant to 650-RICR-20-00-1.3.1(O)(1).

### **7.4 Allocation of Funds**

- A. Maximum Grant Award. The maximum amount that may be awarded for any single project shall not exceed the lesser of fifteen thousand dollars (\$15,000), or 75% of the total costs of a project whose eligible components shall not exceed twenty thousand dollars (\$20,000) in the aggregate. The Director may, however, at his or her sole discretion, award additional sums, not to exceed 75% of total approved project costs, where so doing is required to affect the purposes of these regulations as set forth in § 7.1(B) of this Part.
- B. Allocation by Selection Round. For the period ending on October 31, 1993, a total of thirty thousand dollars (\$30,000) shall be available to support grants under these regulations. The maximum amount of grant funds available to

support subsequent annual grant rounds will be determined based on the amount of funds awarded to the Department of Environmental Management by the U.S. Fish and Wildlife Service for the purposes set forth in § 7.1(B) of this Part.

## **7.5 Application Procedures**

- A. Forms and Instructions. Applications for grants shall be submitted to the Office on forms approved by it. These shall be available upon request from the Office at 235 Promenade St., Providence, RI 02908.
- B. Filing. Applications must be filed with and received by the Office within the prescribed period for each selection round.
- C. Recording. Applications will be accepted by the Office any business day between 8:30 AM and 4:00 PM, up to the filing deadline, and shall be date and time stamped upon receipt. Applications may be hand delivered or mailed, and will be deemed filed on the date received and time stamped.
- D. Filing Deadline. The Director shall set a filing deadline for receipt of applications for each selection round. Applications received after the filing deadline will not be considered for funding during that round and will be returned to the applicant without prejudice. Such applications may be resubmitted during a subsequent selection round.

## **7.6 Eligibility**

- A. Eligible Projects and Costs. The following projects and costs are eligible for funding pursuant to these regulations:
  - 1. The engineering design, construction, renovation, operation, and maintenance of marine pumpout stations and/or dump stations, which are open to all members of the recreational boating public on a non-discriminatory and equal basis.
  - 2. Equipment and materials necessary to hold sewage collected at pumpout and dump stations and/or employed to connect such stations to the nearest sewers, including holding tanks, pumps, and piping, provided that when ineligible facilities such as restrooms or showers are serviced by the same holding tanks or sewer connections only that pro rata share of capacity required by the pumpout or dump station is eligible for funding.
  - 3. Equipment necessary to allow public sewage treatment plants to accept such sewage, except for bleed-in facilities.

4. For approved projects only, the cost of preparing plans and/or obtaining required regulatory permits, including permit fees, for any of the above.

B. Ineligible Projects and Costs. The following projects and costs are ineligible for funding pursuant to these regulations:

1. Pumpout and dump stations which are operated for the exclusive use of marina patrons or members of a club or association and which are not accessible to the general public on an equitable basis.
2. Portable dockside pumpout units, carts or tanks.
3. Construction, renovation, operation, and/or maintenance of restroom facilities and/or showers.
4. Construction, renovation, operation, and/or maintenance of on-site septage disposal systems such as package treatment facilities or conventional septic tanks, fields and/or galleys.
5. Truck hauling of septage wastes from holding tanks to public sewage treatment plants.
6. Extensions of existing public sewage systems.
7. Bleed-in facilities at public sewage treatment plants.
8. Construction, renovation, operation, and/or maintenance of any dock, pier, or other improvement not dedicated to, nor directly required to support the operation of an eligible pumpout or dump station.
9. Dredging and/or dredge spoil disposal.
10. Landscaping.
11. Any cost, except those provided for under § 7.6(A)(4) of this Part, incurred by an applicant prior to a grant award.

C. Eligible Applicants

Only owners of any Rhode Island marinas, as herein defined, may apply for grants to support projects, which must be located at that marina. A non-owner operator may apply for such a grant, but only if the owner countersigns the application and the Grant Award Agreement.

## 7.7 Application Review and Grant Award Criteria

- A. Review. The staff of the Office of Water Resources, will review applications and may return or disqualify those that are incomplete or which fail to meet eligibility criteria set forth in these regulations.
- B. Criteria. An Awards Advisory Committee shall be appointed by the Director and shall consist of a representative of the Division of Fish and Wildlife, the Office of Water Resources, and the Rhode Island Marine Trades Association. The committee shall review all complete applications according to the following criteria:
1. Is the proposed facility located in a waterbody identified as requiring additional pumpout capacity in a Harbor Management Plan approved by CRMC pursuant to 650-RICR-20-00-1.3.1(O)(1)?
  2. Have the projected pumpout needs of that waterbody as identified in a Harbor Management Plan approved by CRMC pursuant to 650-RICR-20-00-1.3.1(O)(1) already been met? In other words, are a sufficient number of pumpouts already in place?
  3. Is the application for a new facility?
  4. Is the application for renovating an existing facility?
  5. Is the application for a pumpout?
  6. Is the application for a dump station?
  7. Is the application for operating and maintenance funding only?
  8. In situations where a direct connection to a sewer line is possible, is it proposed?
  9. Are facility components, particularly those which could limit capacity such as pumps and holding tanks, large enough to accommodate projected demand (based on industry standards and norms)?
  10. Has a safe, reliable and sanitary means of collecting, storing, and transporting waste been identified?
  11. Is the proposed facility conveniently located relative to concentrations of recreational vessels?
  12. Is channel access, maneuvering room, and water depth sufficient to accommodate the maximum range of vessel size and draft?

13. Are proposed days and hours of operation sufficient and convenient? Will the facility be available during a substantial portion of the normal boating season?
14. Does the project incorporate unnecessary or ineligible components or frills?
15. Will the facility be available on a fair and equitable basis to all members of the recreational boating public?
16. Have necessary permits been obtained?
17. Will significant numbers of recreational fishermen be accommodated?
18. Have adequate and appropriate operating and maintenance procedures been identified?

## **7.8 Grant Award Procedures**

- A. **Final Determination.** The Awards Advisory Committee shall forward its recommendations to the Director, who may reject, adopt or adopt with modifications the committee's recommendation.
- B. **Adjustments.** The Director, with the advice of the Committee, shall have the authority to adjust grant awards so that no one community, waterbody, or marina receives a disproportionate amount of the funds available and so that a reasonable geographic distribution of funds is achieved.
- C. **Grant Award Agreement.** The Notice of Award shall be by registered mail, return receipt, and shall be accompanied by a Grant Award Agreement which will set forth grant terms, schedules and conditions consistent with these regulations. The Grant Award Agreement shall be signed by the applicant before a notary and shall be a binding legal contract, enforceable at law.
- D. **Engineering and Design.** Upon receipt by the Office of the signed Grant Award Agreement, the applicant may retain engineering or design services which will be reimbursed as provided for in the Grant Award Agreement.
- E. **Final Design.** Prior to ordering or purchasing equipment or contracting for construction services, the applicant must submit and the Office must approve construction-ready design drawings, detailed equipment specifications, projected costs for all project components, and copies of all required permits. Cost projections must have been obtained in accordance with the procurement procedures that are described in § 7.9(l) of this Part.

## 7.9 Grant Terms and Conditions

### A. Project Period

1. The beginning date of a project will normally be the date of approval by the Director. The Grant Award Agreement will specify the date by which the construction phase of the project must be completed. The operations phase of the project shall expire ten years after the date on which construction is completed.
2. The grantee's obligations during the project period shall be binding upon subsequent owners, devisees and/or transferees until the project period expires.

### B. Fees

1. No more than five dollars (\$5.00) may be charged for a single use of a pumpout or dump station funded by this program, up to a maximum of 30 gallons of sewage discharged.
2. Vessels discharging more than thirty (30) gallons of sewage may be charged higher fees based on the volume of sewage received, provided that such fees must first have been approved by the Office as reasonable and posted at the pumpout station.
3. Pumpout vessels must have entered into contracts with one or more pumpout stations, with the fee to be charged per gallon of sewage negotiated between the parties.
4. All users must be charged the same fee per gallon of waste discharged.

### C. Availability

1. Facilities must be equally available, to all recreational boaters, including those with physical handicaps, on a non-discriminatory first-come, first-served basis.
2. Facilities must be conveniently located, open according to a posted schedule during convenient hours, and for a substantial portion of the normal boating season as to reasonably accommodate the boating public and encourage use.

### D. Design

1. All funded improvements must be designed and constructed so as to be capable of being operated and maintained in a reliable, efficient, convenient, safe, sanitary, and environmentally benign manner during a ten year useful lifetime.
2. All components must be adequately sized to accommodate projected peak demands.

E. Operation and Maintenance

1. An operations and maintenance plan and schedule must be submitted and approved.
2. Maintenance includes both routine recurring custodial care and upkeep and non-routine cyclical (major) maintenance, as well as the supplies, materials, and tools necessary to carry out such work.
3. The grantee must obtain the prior approval of the state before revising the scope or objectives of an approved project, regardless of whether this would affect budgeted expenditures.

F. Regulations and Permits

1. It remains the applicant's responsibility to obtain all appropriate and required federal, state, and local permits and approvals before commencing any construction or alteration funded under this program.
2. Approval of a grant does not constitute a waiver of any regulatory requirement or a finding of regulatory compliance.
3. The applicant must certify compliance with applicable federal laws, regulations, and policies, as identified in OMB Circular No. 4040-0009.

G. Signage

1. All facilities must be properly identified with appropriate signage that indicates necessary operational information such as fees, hours of operation, operating instructions, contact names and phone numbers.
2. Signs must acknowledge funding support pursuant to the Clean Vessel Act and the Sport Fish Restoration Act.

H. Financial Management and Record Keeping

1. Grant recipients will be required to maintain accurate, current, and complete financial records, which are sufficient in detail and substance to

clearly establish that grant funds have been properly expended for approved grant purposes. Recipients are required to present these financial records to the Office upon request.

2. Accounting records must be supported by source documentation, which shall include but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, contract and sub-contract award documents, etc.
3. Actual grant expenditures or outlays must reflect budgeted amounts. Prior approval is required before revising the approved project budget in any way that would result in the need for additional funds.
4. All fees charged to users are to be retained, separately accounted for, and used exclusively to defray operation and maintenance costs of the facility and equipment funded by a grant under this program. Additional financial assistance to defray operating and maintenance costs may be provided, but only where the applicant's financial records establish that such costs exceed fee revenues. Fee revenues in excess of funds necessary to operate and maintain facilities and equipment in any given calendar year shall revert to the state at the end of that calendar year for reinvestment in this grant program.
5. All grant project records must be retained and available on reasonable notice for inspection by state or federal auditors for three years after the final grant disbursement (reimbursement) has been made. However, if any litigation, claim, negotiation, audit, or other action involving such records has been started prior to the expiration of this three-year period, the records must be maintained until that action is completed. Records of fee receipts and/or ongoing expenditures for operations and maintenance must be retained for three years after the year in which the fees were collected and/or expenditures incurred.

#### I. Procurement of Goods and Services

1. The applicant will be required to demonstrate that he has pursued all reasonable and prudent measures to obtain the best available price for any equipment, goods, or services, including construction services, proposed to be funded under this grant program.
2. Purchase of engineering and design services must be supported by written proposals and rate quotations obtained from as many qualified sources as practical. However, the selection of the preferred vendor may be based on an evaluation of qualifications as well as price for service.

3. Purchase of equipment, fixtures, materials, and/or supplies must be supported by rate quotations obtained from as many qualified sources as practical. Single source price quotations will only be accepted where no other qualified source is available.
4. Purchase of construction services must be supported by written and binding cost estimates or bids obtained from as many qualified sources as practical. These estimates or bids must clearly set forth the cost to be charged for labor and, separately, for all equipment and fixtures to be installed and materials employed by the contractor. Single source bids will only be accepted where no other qualified bidder is available.
5. Qualified minority enterprises must be afforded an opportunity to submit proposals, rate quotations, and/or bids for any equipment, goods, or services funded under this grant program. A list of qualified minority enterprises, by specialty area, will be provided to applicants.

#### J. Penalties

1. If a grantee materially fails to comply with any term of an award, including most particularly those which are described in this document, the state may, at its discretion, take one or more of the following actions, as appropriate in the circumstances:
  - a. Cash payments (reimbursements) may be temporarily withheld pending correction of the deficiency;
  - b. Reimbursement for all or part of the cost of a non-complying, unapproved, or ineligible activity or action may be disallowed (denied);
  - c. The grant award may be wholly or partly suspended or terminated and efforts initiated to recover grant funds already expended in cases of serious or deliberate non-compliance, fraud, or abuse.
2. The grantee will be afforded a reasonable opportunity to come into compliance before any of these sanctions are applied and will have an opportunity for administrative appeal through the Office of Administrative Adjudication before any payment or award is permanently terminated or effort at cost recovery initiated.
3. The Department may take the steps described in §§ 7.9(J)(1) through (2) of this Part without prejudice to the initiation of administrative and/or criminal proceedings based upon a grant recipient's alleged violation of

his/her obligations pursuant to these regulations or the Grant Award Agreement.

## **7.10 Reimbursements Procedures**

- A. Reimbursements. Grant awards will be paid out on a reimbursable installment as opposed to up front or lump sum basis. One hundred percent (100%) of the cost of any eligible project expenditure must have been paid out and documented by the grantee prior to submitting a request for reimbursement of seventy-five percent (75%) of those costs.
- B. Reimbursement Rate. Reimbursement will be at the rate of seventy-five percent (75%) of actual documented cost, or estimated cost as identified in the approved project description (§ 7.8(E) of this Part), whichever is less.
- C. Cost Overruns. Reimbursements in excess of estimated costs will only be processed where a compelling reason for the cost overrun can be shown to exist, and then, only with the prior approval of the Office.
- D. Documentation. Documentation of expenditures for reimbursement purposes includes invoices marked as "Paid In Full" and signed by an authorized representative of the vendor, and/or copies of cancelled checks attached to the invoice which they paid, payroll records, and the like. Unpaid bills may not be submitted for direct reimbursement to either vendor or grantee.

## **7.11 Disclaimer**

- A. Ownership. By awarding grants under these regulations neither the State of Rhode Island, nor the Office of Water Resources assumes any ownership interest in a marina, its equipment or facilities.
- B. Liability. Similarly, neither the State nor the Office assume any liability, expressed or implied, for property damage, injury, or death caused by or incidental to the construction, operation, maintenance and/or use of any facility or equipment built or purchased with the assistance of grant funds.

## **7.12 Education and Information**

- A. The Department, through its various Offices, will initiate all necessary and appropriate measures to educate and inform marine operators as to the benefits of installing marine pumpouts and dump stations, and as to the proper procedures for operating and maintaining such facilities.

- B. The Department will similarly educate and inform members of the recreational boating public of the availability of marine pumpouts and dump stations and the benefits of using such facilities on a regular basis.
- C. The Department will cooperate with and to the maximum extent possible, coordinate its education and information efforts and programs with recreational boating, environmental, and marina operator groups and organizations.

### **7.13 Severability**

If any section, paragraph, phrase, sentence, or clause of these rules and regulations is declared invalid or unconstitutional for any reason, the remainder of the rules shall not be affected thereby.

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