

**490-RICR-00-00-7**

## **TITLE 490 – WATER RESOURCES BOARD**

### **CHAPTER 00 – N/A**

### **SUBCHAPTER 00 – N/A**

#### **PART 7 – Water Quality Protection Charges**

### **7.1 Purpose and Authority**

This section prescribes procedures and requirements for the imposition, collection, remittance and distribution of the water quality protection charge, authorized by R.I. Gen. Laws Chapter 46-15.3, as amended.

### **7.2 Definitions**

- A. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:
1. "Act" means R.I. Gen. Laws Chapter 46-15.3, as amended.
  2. "Bank" means Rhode Island Infrastructure Bank as established by R.I. Gen. Laws Chapter 46-12.2, as amended.
  3. "Board" means the Rhode Island Water Resources Board as established by R.I. Gen. Laws Chapters 46-15 and 15.1, as amended.
  4. "Eligible expenditure" means the acquisition of a fee simple interest or of a conservation restriction, as that term is defined in R.I. Gen. Laws § 34-39-2(a) and as further detailed in R.I. Gen. Laws § 46-15.3-4 and by the Board.
  5. "Bank WQPC Fund" means the water quality protection fund, which shall be in the custody of the Rhode Island Infrastructure Bank. Such fund shall consist of such amounts as may be remitted to the Bank by water suppliers of all water quality protection charges other than:
    - a. the six and nine-tenths percent (6.9%) of the charges collected and retained by each water supplier for any purpose relating to the operation of the supplier, and
    - b. the fifty seven percent (57%) of the charges collected and remitted by each supplier to the General Treasurer, pursuant to the Act and R.I. Gen. Laws Chapter 46-12.2.

6. "State WQPC Fund" means the water quality protection fund which shall be in the custody of the General Treasurer. Such fund shall consist of such amounts as may be remitted to the state by water suppliers of all water quality protection charges other than:
  - a. the six and nine-tenths percent (6.9%) of the charges collected and retained by each water supplier for any purpose relating to the operation of the supplier, and
  - b. the thirty-six and one-tenths percent (36.1%) of the charges collected and remitted by each supplier to Rhode Island Infrastructure Bank, pursuant to the Act and R.I. Gen. Laws Chapter 46-12.2.
7. "Receipt of sale" means acknowledgement that public drinking water has been exchanged for an agreed sum of money, or other consideration of any kind.
8. "Sale" means all retail sales of potable water to end users for any purpose in the ordinary course of business by a supplier, except for sales subject to the 65 years of age and older exemption, the commercial agricultural producer exemption, or the out-of-state potable water source exemption as set forth in the Act.
9. "Supplier(s) of public drinking water" or "Water supplier and suppliers" means any city, town, district, or other municipal, quasi-municipal or public or private corporation or company engaged in the sale of potable water and the water supply business in Rhode Island.
10. "Water quality protection charge" means a water quality protection charge imposed upon suppliers of public drinking water pursuant to the Act.
11. "WQPC eligible project list" means the list of projects approved by the Board as eligible for funding from the Bank WQPC Fund and as published by the Board.

### **7.3 Applicability**

- A. The water quality protection charge shall be imposed per R.I. Gen. Laws § 46-15.3-5, as amended.
  1. Exemptions from water quality protection charges for elderly customers shall be made only upon proper application and qualifications. These exemptions shall be applied prospectively only to billings rendered after application and qualification and the attainment of age 65.
  2. Suppliers shall require proof of age in the same manner as the supplier requires proof of age to support applications for exemptions from or

freezes on local property taxes, if applicable. If not applicable, suppliers shall require proof of age by means such as a driver's license or a birth certificate. To be eligible for the elderly exemption, the property for which the exemption is sought must be occupied by the elderly person seeking the exemption and water service must be in the name of the elderly person seeking the exemption. The elderly exemption shall apply only to that portion of the property occupied by the elderly person and the members of the elderly person's household. "Household" as used herein means one or more persons occupying a dwelling unit and living as a single non-profit housekeeping unit. "Household" does not include bona fide lessees, tenants or roomers, and boarders on contract.

3. The water quality protection charge shall be pro-rated by the number of living units to provide for only such portion of the premises occupied by the elderly person or his or her household to benefit from the exemption. For example, if an elderly person seeking an exemption occupies one unit of a three-unit apartment house metered in the name of the elderly person, the elderly person will qualify for an exemption from only 1/3 of the water quality protection charge.
  4. Elderly exemptions shall continue only so long as qualification for exemption continues in all respects.
- B. All commercial agriculture producers shall be exempt from the imposition of the water quality protection charge for that amount of water used to irrigate commercial crops either in the fields or green houses provided that said producers have a conservation plan on file with their respective conservation district.
- C. No water quality protection charge shall be imposed on that portion of a supplier's retail billing representing potable water furnished to customers by purchase of water in its finished, potable form from sources outside the state. The water quality protection charge imposed on a supplier purchasing water from outside the state shall be pro rata imposed on such supplier's retail billings for that portion of potable water supplied from within the state. For each billing, suppliers shall provide the Board such supplier's gross water production, distribution, and other data demonstrating to the Board the reasonableness of the supplier's apportionment of finished potable water generated from sources within and outside the state. The Board shall notify the Bank of any contested matters arising between the Board and a supplier under this section.

## **7.4 Collection of Water Quality Protection Charge**

- A. Water Quality Protection Charges collected and remitted shall be based on supplier billings. Amount "due for supplier's billings" in these rules means amount due from customers at such time customers may pay without the imposition of penalties or interest or such other time as customer bills will not be overdue. The

supplier's billings subject to remittance are deemed to be the billings due from the supplier's customers in the amounts and at such times the billings are due to the supplier from its customers, pursuant to R.I. Gen. Laws § 46-15.3-9.

- B. The supplier shall remit all amounts due for supplier's billings to the Bank and the Board respectively on or before the twentieth (20th) day of the second month following the month of billing.
- C. Each remittance to the Bank and the Board shall be accompanied by a completed remittance form provided by the Bank and the Board for their respective funds.
- D. A record of billings shall be maintained by every supplier, showing:
  - 1. The amount of water billed, amount of water quality protection charges billed, and amounts of water quality protection charges remitted to the Bank and the Board.
  - 2. The number of exemptions from the water quality protection charge granted to a purchaser who is 65 years of age and over.
  - 3. The number of exemptions from the water quality protection charge granted to a commercial agricultural producer.
  - 4. Suppliers shall maintain their records regarding water consumption, billings, sales, and exemptions for at least a 6-year period. Suppliers shall for the same period maintain their records regarding elderly and commercial agricultural exemption applications. Suppliers shall provide the Bank and the Board with full access to their books and records and any other information reasonably required by the Bank and the Board to insure proper remittance of water quality protection charges to the Bank and the Board and compliance with the Act, R.I. Gen. Laws Chapter 46-12.2, and any policies of the Bank related to the administration of water quality protection charges.
- E. Suppliers shall provide the Bank and the Board with a copy of their audited financial statements within 180 days of the end of supplier's fiscal year. Suppliers shall provide the Bank and the Board with a copy of any annual report filings with the Division of Public Utilities and Carriers regarding billings and consumption. Such materials shall be filed with the Bank and the Board at the same time the filing is made with the Division of Public Utilities and Carriers.
- F. If any supplier fails to pay the water quality protection charge imposed upon it, under the Act, the Bank and the Board shall notify such supplier in writing specifying the amount of charge due and the date by which payment is demanded. If supplier shall contest the amount due, the Bank and the Board shall consider any materials presented by the supplier to support its claim. Upon a determination by the Bank or the Board of the amount due and the failure to

pay, the Bank or the Board may invoke the state aid intercept provisions under the Act.

## **7.5 Project Eligibility Process**

- A. Suppliers interested in seeking funding Bank WQPC Fund may submit an application to the Board according the procedure delineated below. The application is available at the Board's offices or as published by the Board. There are two types of projects the Board may consider. First, applications to acquire and permanently protect water supply land. Second, applications to construct physical improvements that directly protect drinking water quality.
  - 1. Applications to construct physical improvements that directly protect drinking water quality must meet the eligibility requirements as set forth in § 7.6(D)(3) of this Part.
- B. A Supplier shall submit to the Board one copy of the complete application, additional narrative, and any maps or plans or other related documents in digital form or as a paper copy to the address specified on the application.
- C. The Board staff shall review each application and make a determination of eligibility in accordance with the Act, these regulations, and any further guidance on project eligibility established by the Board.
- D. Upon a determination by the Board staff that a project is not eligible for funding from the Bank WQPC Fund, the Supplier may appeal that determination to the Board, which may hear, in its sole discretion, such appeal with sixty (60) days from the date of submission of same.
- E. The Board staff shall forward a letter of project eligibility to Bank. Only those projects approved by the Board and/or Board Staff pursuant to these regulations are eligible for funding from the Bank's WQPC Fund.

## **7.6 Eligible Expenditures from the Bank Water Quality Protection Charge Fund**

- A. This section applies to water quality protection charge funds remitted to the Rhode Island Infrastructure Bank pursuant to the Act and R.I. Gen. Laws Chapter 46-12.2, which shall be held by the Bank in the Bank WQPC Fund.
- B. The Bank may withdraw, and the Board and/or Board Staff may request from time to time, from the Bank WQPC Fund such amounts as are necessary for the administration of the Fund including but not limited to the costs of issuance of notes or bonds or other forms of indebtedness.

- C. Only Suppliers that withdraw water from wells, reservoirs, springs, or other original sources in potable quality shall be entitled to disbursement of funds from the Bank WQPC Fund pursuant to the Act.
- D. Eligible Expenditures for Suppliers
1. Suppliers shall be required to expend Bank WQPC Fund monies and related bond proceeds in accordance with the Act.
  2. Not less than 55% of Bank WQPC Fund monies shall be spent for the acquisition of land or rights in land or physical improvements to acquired land required to protect the quality of raw water in the water supply system. The following costs shall be included as part of the 55% requirement:
    - a. Expenditures for maintenance, administration, related property surveys and appraisals, and payment of taxes.
    - b. Acquisition of watershed lands located within or outside the state.
    - c. Reimbursements for a maximum of 40% of the total cost to prepare water supply system management plans.
    - d. Reimbursements for monies spent for eligible projects under this section which closed on or after March 1, 2015 shall be eligible for funding from the Bank WQPC Fund and shall be included as part of the 55% requirement.
  3. Any remaining funds may be used for the construction of physical improvements that directly protect the quality and safety of public drinking water supply:
    - a. As set forth on a Board approved water quality improvements project list, which may be amended from time to time by the Board.
    - b. A supplier may appeal to the Board for consideration of projects not on the list. The Board or the Board Staff as set forth in these regulations shall make the final determination regarding the eligibility of water safety and quality improvements.
    - c. No funds shall be used to extend service lines, to expand system capacity, or to install and maintain customarily applied water supply improvements.
  4. Preparation and updates of water supply system management plans and property surveys and appraisals related to eligible land acquisition may be reimbursed or paid from the Bank WQPC Fund monies.

- E. Prior to disbursement of Bank WQPC Fund monies including related note or bond proceeds to a supplier, the supplier must fully comply with the Water Supply System Management Planning Act. R.I. Gen. Laws Chapter 46-15.3, as amended.

## **7.7 Requirements for Water Quality Protection Funds**

- A. The following requirements, in addition to any terms and conditions established by the Bank, as may be applicable to each supplier through the proceedings authorizing the issuance of bonds or through any supplier agreements related thereto, are conditions for approval of each disbursement of funds to a supplier from the Bank WQPC Fund and precedent to each expenditure made pursuant to a supplier agreement:
  - 1. The supplier shall certify that they have completed and kept current a water quality protection component consistent with and in compliance with the requirements of R.I. Gen. Laws §§ 46-15.3-7 and 46-15.3-5.1, as amended.
  - 2. All expenditures financed through the Bank WQPC Fund shall conform to all applicable requirements of federal, state, and local laws, ordinances, rules and regulations.
  - 3. For acquisition of land or rights in land, the supplier must submit the following required documentation to the Board for approval:
    - a. Supplier Time Schedule - Each supplier must submit an initial acquisition time schedule to the Board and the Bank. The schedule must set forth the proposed acquisitions and the approximate period in which each acquisition will be completed. The schedule shall be updated by the supplier from time to time as said schedule changes or as may be requested by the Board or the Bank.
    - b. Appraisal - A real property appraisal, conducted by a real estate appraiser licensed by the state in which the real property is located, which establishes the fair market value for the land the supplier is seeking disbursement of funds for. The appraisal must comply with the Uniform Standards of Professional Appraisal Practice, as established by the Appraisal Standards Board of the Appraisal Foundation, and the Uniform Appraisal Standards for Federal Land Acquisitions, if applicable. The Board or its designee shall conduct a review of the appraisal and shall notify the supplier of acceptance or rejection of the appraisal. Any rejection shall clearly set forth the reasons for such rejection and the Board or its designee shall be available to discuss any such appraisal with a supplier.

- c. Purchase and Sale Contract - A fully executed purchase and sale contract by and between the supplier and all sellers involved in an acquisition shall be submitted to the Board. The purchase and sale contract shall contain warranties that certify that the property is compliant with all federal, State and local environmental requirements, which warranties shall survive the closing on the property. The purchase and sale contract shall otherwise be in form and substance satisfactory to the Board. A Certificate of Disclosure, identifying all individuals and entities having a legal interest in the property must accompany the purchase and sale contract.
- d. Survey - A Class I Survey performed by a registered land surveyor shall be submitted to the Board. The survey shall show the property bounds of the property to be acquired, identifying any deletions from the property, easements, rights-of-way or encumbrances. The registered surveyor shall stamp the survey. The survey must be conducted in conformance with the Procedural and Technical Standards for the Practice of Land Surveyors in the state in which the property is located. Three (3) survey copies will be submitted to the Board.
  - (1) The survey map shall:
    - (AA) Have a traverse closure of 1:10,000 feet.
    - (BB) Provide sufficient documentation to reproduce the survey.
    - (CC) Meet all requirements of the respective city or town zoning ordinance and any applicable subdivision regulations.
    - (DD) Be submitted in a form suitable for recording in the land evidence records of the respective city or town.
      - (i) The surveyor must also supply a metes-and-bounds property description and a Surveyor's Report adequate in form and substance for issuance of title insurance for the property.
- e. Title Insurance Commitment – A title insurance commitment from a title insurance company providing for clear title to the supplier upon acquisition of the property. The commitment shall set forth all encumbrances that do not have a material effect upon the interest the supplier is acquiring.
- f. Deed or Easement Documentation – The proposed deed or conservation easement for the proposed acquisition. The deed or



easement must provide that the land being acquired shall be maintained in perpetuity in a manner that protects the quality of raw water of the supplier's water supply system. The deed or easement shall perpetually restrict the property to ensure that the property is conserved for the purposes set forth herein and shall permit a transfer of the property only to a successor in function of the supplier.

- g. Supplier Resolution – A Certified Resolution or other similar authorizing document of the governing board of the supplier authorizing the acquisition.
  - h. Environmental Site Assessment – In the sole discretion of the Board, the supplier may be required to submit an environmental site assessment. The site assessment must meet the guidelines set by the Rhode Island Society of Environmental Professionals or the applicable state regulatory requirements if the property is not located in Rhode Island. The Board shall approve or reject any documentation submitted pursuant to this subsection within 30 days of submission.
- 4. For acquisition of land or rights in land under § 7.6(D)(2) of this Part which are reimbursements, the Supplier shall submit documentation to the Board sufficient to evidence the closing of the acquisition of the land or rights in land by the Supplier.
  - 5. For non-land acquisition projects, the supplier must submit documentation acceptable to the board.

## **7.8 Supplier Agreements**

- A. The Bank shall enter into supplier agreements with suppliers to provide funding from the Bank WQPC Fund for eligible projects as determined by the Board.
- B. Suppliers shall comply with all terms and conditions of such supplier agreements. The Bank will be under no obligation whatsoever to approve supplier's requisitions of funds from the Bank WQPC Fund if such supplier is not current on all water quality protection charges owed to the Bank or Board in the Bank or Board's determination.

## **7.9 Access**

The supplier and the supplier's contractors, consultants and all others employed through expenditure of Bank WQPC Fund monies shall give and provide to the Bank and Board's personnel and/or representatives access to the facilities, premises, and records related to the disbursement and expenditure of Bank WQPC Fund monies. The supplier shall submit to the Board such documents

and information as requested by the Bank or the Board. The supplier shall retain all records related to the disbursement and expenditure of Bank WQPC Fund monies.

## **7.10 Non-compliance**

In addition to any other rights or remedies available to the Bank and the Board whether pursuant to law, or equity, or agreement, in the event of non-compliance by a supplier with any provision(s) of the Act, or other applicable Rhode Island General Laws, or applicable regulations, or the specific requirements of these procedures, or any supplier agreement, the Bank or the Board may issue a notice of non-compliance, withhold or terminate disbursement of funds, and/or terminate or annul the supplier agreement.

## **7.11 Notice of Non-compliance**

When the Board determines that the supplier is in non-compliance with any condition and/or requirement of any law, regulation, and/or the supplier agreement, the Bank or the Board shall notify the supplier of the non-compliance. The Bank or the Board may require the supplier, its consultants, contractors, or others employed through the expenditure of Bank WQPC Fund monies to take and complete corrective action within 30 days of receipt of notice of non-compliance. If the supplier, its consultants, contractors, and others employed through the expenditure of Bank WQPC Fund monies do not take corrective action or if such action is not deemed adequate by the Bank or the Board, the Bank may withhold disbursement of funds. Notwithstanding the foregoing, the Bank may withhold disbursement of funds without issuing a notice pursuant to this section.

## **7.12 Severability**

If any section, subsection, provision, clause or portion of these rules is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these rules shall not be affected thereby.

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