

**NOTICE OF PROPOSED AMENDMENTS OF THE BROWNFIELDS REMEDIATION
AND ECONOMIC DEVELOPMENT FUND**

July 11, 2017

The Director of the Rhode Island Department of Environmental Management (DEM) is proposing amendments to the "**Rules and Regulations for the Brownfields Remediation and Economic Development Fund**", effective September 2015. Unless requested by 25 or more individuals a public hearing will not be held.

The changes that were made to Brownfields Remediation and Economic Development Fund were drafted to add information regarding a new Revolving Loan Fund being administered by the Rhode Island Infrastructure Bank. This information was added under § 2.6 Definitions, and Section 2.7 FUND ESTABLISHMENT AND PROJECT PRIORITY LIST FOR RI BROWNFIELDS REVOLVING LOAN FUND.

An electronic copy of the current regulation is available on the DEM website at www.dem.ri.gov/programs/benviron/waste/pdf/pnbfield17.pdf.

Pursuant to the requirements of Section 42-35-1 et seq. of the Rhode Island General Laws, as amended, DEM has made the following determinations:

DEM has considered alternative approaches to the proposed regulations and has determined that none of the alternatives would be as effective and less burdensome. DEM has determined that the proposed regulations do not overlap or duplicate other regulatory or statutory provisions nor will they result in significant adverse economic impact on small businesses or any city or town.

The DEM encourages the submission of written comments on the proposed regulations. All written comments should be sent to the attention of: Matthew DeStefano, RIDEM/Office of Waste Management, 235 Promenade Street, Providence, RI 02908 or by email to matthew.destefano@dem.ri.gov no later than 4:00 PM on Friday, August 11, 2017.

Signed this 11th day of July, 2017

Leo Hellested, Chief
Office of Waste Management
Department of Environmental Management

250-RICR-140-30-2

TITLE 250-DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 140- WASTE AND MATERIALS MANAGEMENT

SUBCHAPTER 30- SITE REMEDIATION

PART 2- Rules and Regulations for the Brownfields Remediation and Economic Development Fund

2.1 Purpose

- A. The purpose of these regulations is to create a Brownfields Remediation and Economic Development Fund to receive, hold and administer the use of the \$5,000,000 portion of the 2014 RI Clean Water, Open Space, and Healthy Communities Bond. The funds will provide grants to public, private, and non-profit entities for brownfield remediation projects with specific priority given to projects involving job creation and economic development.
- B. Although an exact number is not known, it is estimated that over 10,000 brownfield sites are located in towns and cities across Rhode Island. Many acres of brownfields occupy prime commercial/industrial locations within the state's urban corridor. Remediation and redevelopment of these sites mitigates the threat to public health and the environment from exposure to uncontrolled contamination, creates and attracts jobs, reduces the use of "greenfields" outside urban areas and increases local tax base. Specifically, the EPA estimates that 7.30 jobs are leveraged per \$100,000 of funding expended on brownfields remediation and other economic studies indicate that for every brownfields acre "recycled," up to four acres of open space is spared from development.
- C. The grants issued pursuant to these regulations will stimulate the clean-up and redevelopment of Brownfields sites across Rhode Island. The grant program, and specifically the criteria for evaluating and prioritizing applications, is designed to provide a one-stop resource for owners and developers for funding support and technical assistance to facilitate and accelerate the return of brownfields to productive re-use and strengthen Rhode Island's economic base. In general, these funds should be used to clean up sites in Rhode Island, create jobs, small businesses, and add to the tax base of the communities where they are utilized.

2.2 Authority

These rules and regulations are promulgated pursuant to the authority provided by R.I. Gen. Laws Chapter 46-17.1, Chapter 23-19.1, Chapter 23-19.14, Chapter 46-12, Chapter 46-13.1, and §§ 46-12-3 and 46-12-5 of those Laws, as amended in accordance with R.I. Gen. Laws 46-35, the Administrative Procedures Act.

2.3 Liberal Application

The terms and provisions of these rules and regulations shall be liberally construed to allow the Rhode Island Department of Environmental Management (the Department; RIDEM) to effectuate the purposes of state law, goals, and policies.

2.4 Severability

If a court of competent jurisdiction thereof holds any provision of these rules and regulations or the application invalid, 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.

2.5 Administrative Findings

The Brownfields Remediation and Economic Development Fund was created to encourage the reuse of brownfields throughout Rhode Island. Brownfields are vacant, abandoned, or underutilized industrial or commercial properties where expansion, redevelopment, or improvement is complicated by real or perceived environmental contamination and liability. All projects, specifically the investigation, assessment, remediation and other activities at contaminated sites, shall be subject to the requirements of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations). This Fund is meant to provide funding assistance for pre-development planning, remedial investigation, redevelopment and marketing plans, remedial design, construction of remedies, and associated work at the discretion of the Review Committee.

2.6 Definitions

As used in these rules and regulations the following definitions will apply:

"40 CFR ..." means that section or subsection of the Code of Federal Regulations, Title 40, Protection of Environment, Chapter I, Environmental Protection Agency. References to the Administrator, appearing therein, shall be interpreted as referring to the Director.

"Applicant" means any person or persons applying for monies under these rules and regulations.

"Brownfields site" means a property where a known or suspected release of petroleum and/or hazardous material presents a barrier to the sale, reuse, or redevelopment of the site, or where uncertainty on the costs of remediation adversely impacts the value of the property.

"Construction" means the building, alteration, rehabilitation, improvement, or extension of a project, including the necessary planning, design and engineering associated with the specific project.

"Contaminated-Site" means any Source Area or series of Source Areas that have not reached final resolution under the Remediation Regulations. A Contaminated-Site may include unimpacted land between multiple Source Areas in close proximity to one another. A Contaminated-Site shall be considered to be independent of property lines.

"Department" means the Rhode Island Department of Environmental Management (RIDEM).

"Director" means the Director of the Department of Environmental Management or the subordinate(s) to whom the Director has delegated powers and duties vested in the Director by these regulations.

"Fund" means the Brownfields Remediation and Economic Redevelopment Fund, as established by these regulations.

"Groundwater" means water found underground which completely fills the open spaces between particles of sand, gravel, clay, silt and bedrock fractures. The zone of materials filled with groundwater is called the zone of saturation.

"Grant" means money given to eligible entities with no repayment due if the grantee is in substantial compliance with all terms of the grant.

"Grant match" means the required 20% match on Bond Funding. At the sole discretion of the Review Committee, in-kind services may be considered as credit towards the 20% match.

"Office of Waste Management (OWM)" means the organizational unit with the Department of Environmental Management responsible for the regulation of waste management activities and the investigation and remediation of contaminated sites.

"Performing party (Parties)" means any Bona Fide Prospective Purchaser, Responsible Party, voluntary party or any other party (or parties) conducting an investigation of and/or Remediation at a Contaminated-Site.

"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, fiduciary, legal entity, the Federal Government or any agency or sub-division thereof, a state, municipality, commission, political sub-division of a state, or any interstate body.

"Release" means it will be defined by 40 CFR 300.5 (2017), incorporated by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations. This (incorporated by reference and attached as Appendix A of the Remediation Regulations), but shall exclude any of the following:

- A. Any Release from a process, activity or Contaminated-Site allowed under a permit, license or approval by any regulatory process or legal authority;
- B. Any Release of Hazardous Materials solely derived from common household materials and occurring at the household; or
- C. Any Release that is completely contained within an area or structure designed and engineered to contain such materials.
- D. Release shall also include an actual or potential threat of Release.
- E. Concentrations of PCBs greater than 10 micrograms/100 cm², as measured by a standard wipe test, on any surface shall constitute a Release. The Director may determine that an area with PCB contamination at concentrations lower than specified above requires investigation and/or remediation due to site-specific circumstances.

"Remediation" means the act of implementing, operating and maintaining a Remedy or Remedial Action.

"Revolving Loan Fund" means the Brownfields Revolving Fund established by R.I. Gen. Laws 23-19-16.

"Small Business" means an independently owned and operated company that is limited in size and in revenue depending on the industry as defined by the U.S. Small Business Association (SBA).

"Source Area" means the horizontal and vertical extent of natural or man-made media impacted by a Release of Hazardous Materials or causing a Release of Hazardous Materials at concentrations in excess of the reportable concentrations described in Rule 5.01.B (Reportable Concentrations for Soil) and Rule 5.01.C (Reportable Concentrations for Groundwater), and determined by the Department to pose a potential threat to human health and the environment. For purposes of these regulations, sanitary landfills licensed under the Rules and Regulations for Solid Waste Management Facilities on or after 18 June 1992 are not Source Areas.

2.7 FUND ESTABLISHMENT -AND PROJECT PRIORITY LIST FOR RI BROWNFIELDS REVOLVING LOAN FUND

- A. There is hereby established a fund entitled the "The Brownfields Remediation and Economic Development Fund." The Fund is created in order to enable the Department to receive \$5,000,000 from the 2014 RI Clean Water, Open Space, and Healthy Communities Bond to provide grants to public, private, and/or non-profit entities for brownfields remediation projects whose end use pertains to economic development. The Department will administer the Fund in accordance with these regulations.
- B. Project Priority List for RI Brownfields Revolving Loan Fund

1. The RI Brownfields Revolving Loan Fund is administered by the RI Infrastructure Bank pursuant to R.I. Gen. Law §§ 23-19 and 16-3. Persons wishing to apply for financing from the RI Brownfields Revolving Loan Fund must first apply to the Department for inclusion on the Project Priority List established pursuant to R.I. Gen. Law §§ 23-19 and 16-6. The Department shall update the Project Priority List not less than once per month unless no new applications have been received during a particular month.
2. Applications for inclusion on the Project Priority List may be submitted at any time and shall be submitted to the RIDEM and shall be signed by the applicant's chief executive or chief financial officer, or other designated and qualified representative. Eligible borrowers include local governmental units, non-profit organizations and private, for-profit entities.
3. Applications shall be submitted to RIDEM via mail to RI Department of Environmental Management, Permit Application Center, 2nd Floor, 235 Promenade Street, Providence, RI 02908. In the alternative, the Department may provide mechanisms for electronic submission of grant applications.
4. Projects proposed for inclusion on the Project Priority List must be on a Brownfields site known to the Department. If a proposal is submitted on a property not known to the Department, the application must be accompanied by a notification of Release pursuant to the Remediation Regulations.
5. Applications for inclusion on the Project Priority List shall be submitted to the Department and include the name and address of the subject site as well as a brief description of current site conditions.
6. Following inclusion on the Project Priority List, the applicant must submit an application to Rhode Island Infrastructure Bank to seek financing. Subsequent narrative statements will be required to initiate the financing process. This may include, but not be limited to:
 - a. The beneficial environmental impact to the land and waters of the State through remediation;
 - b. The estimated costs of assessing and remediating the Brownfield to get it to redevelopment;
 - c. Ability of applicant/developer to complete the project, including financial solvency, past experience of similar projects, and likelihood of success;
 - d. Readiness and timeliness to proceed.

7. The materials regarding the financing process shall be submitted to RI Infrastructure Bank, 235 Promenade Street, First Floor, Providence, RI 02908.

2.8 NOTIFICATION OF AVAILABLE FUNDS

- A. Availability of Funds - The Director shall announce the availability of all funds under the Brownfields Remediation and Economic Development Fund. During each announcement of availability of funds, the Director may allocate portions of the available funding for either Governmental, Public and Non-Profit Entities or Private Party/Non-Governmental Entities in the Brownfields Remediation and Economic Development Fund. The funds will be available to eligible applicants in the form of grants of up to eighty percent (80%) of eligible costs. Applicants must be able to match at least twenty percent (20%) of eligible costs. At the Director's discretion, a grant for less than eighty percent (80%) of eligible costs may be awarded based on site remediation and redevelopment characteristics. The announcement of the availability of funds issued per this rule may include the weighting of the evaluation criteria listed in Rule 11.01 (c) for the round of grants being offered.
- B. Frequency of Awards and Announcements - Grants using these funds will be made periodically, but not less than bi-annually (twice every fiscal year) on a competitive basis, based on announcements regarding requests for applications pursuant to Section 9.01. 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.

2.9 APPLICATION REQUIREMENTS

- A. Applications shall be submitted to the RIDEM on a form 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 RIDEM via: RI Department of Environmental Management, Permit Application Center, 2nd Floor, 235 Promenade Street, Providence, RI 02908
- C. In the alternative, the Department may provide mechanisms for electronic submission of grant applications.

2.10 PROJECT CATEGORIES AND ELIGIBLE COSTS

- A. Proposed projects must be on a Brownfields site known to the Department. If a proposal is submitted on a property not known to the Department, the application must be accompanied by a notification of Release pursuant to the Remediation Regulations.
- B. Projects should have real economic development impact, create jobs, leverage private funds, and return under-utilized properties to beneficial re-use. Further, those projects that benefit human health and the environment while achieving the goals above will be scored favorably by the Review Committee.

2.10.1 Project Categories: The following categories of grants will be considered:

- A. Pre-Development Planning Grants – small/mini grant requests for initial efforts to build off past investigations and assessments to determine the options and costs of remediation and/or the feasibility of redevelopment.
- B. Redevelopment Grants – for projects with a completed site investigation and approved Remedial Action Work Plan or Order of Approval, these grants support the development of detailed marketing and redevelopment plans focused on bringing the site back to productive reuse.
- C. Site Preparation Grants—Site preparation grant applications may include support for site investigation and assessment of environmental contamination, remediation activities, other environmental investigations, design, or site work required to support reuse/redevelopment of the Brownfields site, research and compilation of key information on a Brownfields site to support redevelopment, and/or redevelopment planning/marketing support for a Brownfields site.
- D. Small Business Assistance Grants – for small businesses which are existing companies located on Brownfields sites without the resources to address contamination. The goal of small business assistance grants is to provide the capital to investigate and clean up the site in a manner protective of public health and the environment while simultaneously restoring the value of the underlying property asset and supporting the long-term financial viability of the existing small business.
 - 1. Specifically, the following types of costs are eligible to receive grant monies from the Fund pursuant to these regulations:
 - a. Soil, groundwater, soil gas, indoor air, and infrastructure/building materials investigation.
 - b. Site Assessment.
 - c. Remediation.

- d. Hazardous material abatement and/or waste disposal.
 - e. Long term groundwater, indoor air, soil gas and other environmental monitoring.
 - f. Institutional controls.
 - f. Environmental consulting costs
 - g. Other environmental investigations, compilation of information, marketing materials, design, or site work required to support reuse/redevelopment of the Brownfields site
2. Examples of types of costs that are ineligible to receive grant monies from the Fund from these regulations include:
- a. Pre-award costs, unless incurred within 90 days of application approval and have been pre-approved by the Department.
 - b. Administrative costs including clerical support, monthly utility expenses, the purchase of office equipment, personnel costs associated with fund raising for the nongovernmental entity, etc.
 - c. Costs associated with the performance of a Supplemental Environmental Project (“SEP”). A SEP shall be consistent with the Rhode Island Department of Environmental Management Policy on Supplemental Environmental Projects. Specifically, a SEP is a project, beyond that required by law, that produces environmental or public health and safety benefits that a Respondent agrees to undertake in settlement of an enforcement action. An acceptable SEP is also a project for which a credit may be granted by the DEM to offset a portion of the assessed gravity penalty in the settlement of an enforcement action.
 - d. State or Federal lobbying costs, penalties or fines.
 - e. Land acquisition projects that do not have tangible public health or environmental benefits and physical construction or redevelopment.
 - f. Response costs for emergency response actions caused or exacerbated solely by the applicant or their agents or assigns.
 - g. 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).

2.11 APPLICATION REVIEW AND SELECTION

2.11.1 Application Review - 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:

- A. The applicants and their proposed projects must meet the requirements of §§ 2.9 and 2.10 of this Part.
- B. The Director shall establish a Review Committee to review the completed applications. All complete applications shall be subject to review by, up to (3) members of the Department, and at least one (1) member selected by the Director from outside the Department.
- C. Projects accepted by the Department as complete and consistent with these regulations will be ranked based upon the following criteria, which shall be applied so as to promote the goals and requirements of these Regulations:
 - 1. The economic impact, applicant/private funds leveraged, potential permanent jobs created, tax revenues enhanced and the public benefits derived from the project;
 - 2. The beneficial environmental impact to the land and waters of the State through remediation;
 - 3. The estimated costs, and cost effectiveness, of assessing and remediating the Brownfield to get it to redevelopment;
 - 4. Expansion of existing businesses that create more permanent jobs, tax revenue, and environmental benefit;
 - 5. Ability of applicant/developer to complete the project, including financial solvency, past experience of similar projects, and likelihood of success;
 - 6. Readiness and timeliness to proceed.
- D. Applicants may request a de-briefing on their application package scoring after awards are announced. At least one member of the Review Committee shall be present for the de-briefing and requests for de-briefings must be made in writing within thirty (30) days of the relevant grant announcement and shall be accommodated within ninety (90) days of the request.
- E. Recommendations for awards will be made to the Director on the basis of a majority vote of the Review Committee. The final decision on any award shall be made by the Director.

2.12 GRANT AWARDS

- A. Grant Award - Successful applicants will receive a grant offer specifying the amount, duration and conditions of the award. The offer 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 offer 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. Recipients will have ninety (90) days from the date of the acceptance of the grant offer to provide proof of the necessary grant match by letters of credit, loan agreements, dedicated escrow accounts or any other pre-approved proof of matching funds by the Department.
 3. 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 for inclusion in the project file before the first payment request.
 4. 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.