

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF AIR RESOURCES**

**AIR POLLUTION CONTROL REGULATION NO. 47**

**CO<sub>2</sub> Budget Trading Program Allowance Distribution**



*Effective: July 22, 2008*

**AUTHORITY:** These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

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**TABLE OF CONTENTS**

47.1.	Definitions.....	1
47.2	Method of Allowance Distribution.....	3
47.3	General Requirements.....	4
47.4	Implementation of CO <sub>2</sub> Allowance Auctions or Sales .....	4
47.5	Frequency and Quantity of CO <sub>2</sub> Allowances Offered For Auction.....	4
47.6	Frequency and Quantity of CO <sub>2</sub> Allowances Offered For Sale.....	5
47.7	Participant Eligibility.....	5
47.8	Notice of Auction and Sale.....	5
47.9	Participation Requirements.....	6
47.10	Auction or Sale Format.....	8
47.11	Transfer of CO <sub>2</sub> Allowances.....	8
47.12	Publication of Results .....	8
47.13	General Provisions .....	9
47.14	Severability .....	9
47.15	Effective Date .....	10

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**47.1 Definitions**

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in these regulations, the following terms shall, where the context permits, be construed as follows:

- 47.1.1        **“Account”** means the Rhode Island Auction/Sale Account to be established by the Department into which Rhode Island CO<sub>2</sub> allowances shall be allocated.
- 47.1.2        **“Agent”** means an independent contractor, United States Environmental Protection Agency (USEPA), consumer trustee, or other entity including a regional entity.
- 47.1.3        **“Applicant”** means a party submitting a qualification application.
- 47.1.4        **“Application”** means the application that a prospective bidder or buyer must complete to participate in an auction or sale.
- 47.1.5        **“Auction”** means a CO<sub>2</sub> Budget Allowance auction.
- 47.1.6        **“Beneficial Interest”** means profit, benefit, or advantage resulting from the ownership of a CO<sub>2</sub> allowance.
- 47.1.7        **“Central Auction Website”** means a website containing information regarding the CO<sub>2</sub> Budget Trading Program and auctions to be conducted pursuant to this regulation.
- 47.1.8        **“CO<sub>2</sub> Budget Trading Program”** means the program designed to stabilize and then reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources in an economically efficient manner.
- 47.1.9        **“Compliance Account”** means a compliance account established under APC Regulation No. 46 – “CO<sub>2</sub> Budget Trading Program”.
- 47.1.10       **“Consumer Price Index (CPI)”** means for purposes of the CO<sub>2</sub> Budget Trading Program, the U.S. Department of Labor, Bureau of

Labor Statistics unadjusted Consumer Price Index for All Urban Consumers for the U.S. city average, for all items on the latest reference base, or if such index is no longer published, such other index as the Department determines is appropriate. The CPI for any calendar year is the twelve-month average of the CPI published by the United States Department of Labor, as of the close of the twelve-month period ending on August thirty-first of the previous calendar year.

- 47.1.11      **“Control Period”** means the control period established in APC Regulation No. 46 – “CO<sub>2</sub> Budget Trading Program”.
- 47.1.12      **“Current Market Price”** means the volume-weighted average of (1) transaction prices reported to the Department or its agent, (2) prices as reported publicly through reputable sources, (3) CO<sub>2</sub> allowance award price(s) from preceding CO<sub>2</sub> Allowance Auction(s), or (4) any combination of these options.
- 47.1.13      **“Current Market Reserve Price (CMRP)”** means the monetary amount calculated to be 80 percent of the Current Market Price.
- 47.1.14      **“Department”** means the Rhode Island Department of Environmental Management.
- 47.1.15      **“General Account”** means a general account established under APC Regulation No. 46 – “CO<sub>2</sub> Budget Trading Program”.
- 47.1.16      **“Minimum Reserve Price (MRP)”** means the monetary amount of \$1.86 in 2008 and 2009. Thereafter, the monetary amount, established as of the first day of each calendar year, is derived annually from use of the following formula:
- $$\text{MRP}(2009+n) = \text{MRP}(2009+(n-1)) \times [1 + (\text{CPI}(2009+(n-1)) - \text{CPI}(2009+(n-2))) / \text{CPI}(2009+(n-2))]$$
- MRP = the minimum reserve price  
MRP(2009) = \$1.86  
n = the number of years since 2009, and  
CPI = the Consumer Price Index.
- 47.1.17      **“Participating State”** means a state that has established a corresponding regulation as part of the CO<sub>2</sub> Budget Trading Program.
- 47.1.18      **“Reserve Price”** means the minimum acceptable price for each CO<sub>2</sub> allowance in a specific auction. The monetary amount is the

higher of the MRP or CMRP unless the Department or its agent determines that there is not enough data to justify the calculation of a CMRP, in which case the Reserve Price will be the MRP. The Department or its agent will not be obligated to sell any CO<sub>2</sub> allowances unless the corresponding bid meets or exceeds the reserve price.

47.1.19        **“Sale”** means a CO<sub>2</sub> Budget Allowance sale.

47.1.20        **“Unsold Allowance”** means a CO<sub>2</sub> allowance that has been made available for sale in an auction or sale conducted by the Department or its agent, but not sold.

## **47.2 Method of Allowance Distribution**

- (a) The Department shall determine whether to participate in any of the following or combination thereof:
  - (1) a multi-state CO<sub>2</sub> allowance auction in coordination with other participating states,
  - (2) a CO<sub>2</sub> allowance auction separate from other participating states,  
or
  - (3) a sale of CO<sub>2</sub> allowances.
  
- (b) In making such a determination to participate in any of the above, the Department shall consider the following: whether
  - (1) the auction or sale will provide benefits that meet or exceed the purposes of the CO<sub>2</sub> Budget Trading Program,
  - (2) a multi-state auction capability and process is in place for the participating states,
  - (3) the timing of a multi-state auction advances the purposes of the CO<sub>2</sub> Budget Trading Program,
  - (4) the multi-state auction can provide benefits that meet or exceed the purposes of the CO<sub>2</sub> Budget Trading Program, and
  - (5) the multi-state auction process would be consistent with the process described in this regulation.
  
- (c) Prior to the end of each control period, CO<sub>2</sub> allowances in a quantity equal to the number of CO<sub>2</sub> allowances allocated to the Account for a given control period will be made available for auction or sale. The Department may make CO<sub>2</sub> allowances for future control periods available for auction or sale.

### **47.3 General Requirements**

- (a) The Department shall establish and administer the Account.
- (b) The Department shall convey the allowances from the Account to an agent that shall receive, hold, auction and/or sell allowances in accordance with this regulation and under the oversight of the Department.

### **47.4 Implementation of CO<sub>2</sub> Allowance Auctions or Sales**

- (a) Implementation and administrative support functions for any auction or sale conducted pursuant to this regulation may be delegated by the Department to an agent qualified to conduct auctions or sales, including a regional entity.
- (b) The auctions or sales will be administered in accordance with the purposes of this regulation and APC Regulation No. 46 – “CO<sub>2</sub> Budget Trading Program”.

### **47.5 Frequency and Quantity of CO<sub>2</sub> Allowances Offered for Auction**

- (a) The initial auction shall be conducted at such time and manner as determined by the Department.
- (b) Auctions will be held at least annually and may be held as often as necessary to effectuate the purposes of the CO<sub>2</sub> Budget Trading Program.
- (c) Prior to the auction the Department or its agent shall set a binding reserve price to be accepted for CO<sub>2</sub> allowances in any auction. Such reserve price shall be disclosed to the public or prospective bidders.
- (d) All unsold allowances of an allocation year will be made available in the succeeding auction of that allowance’s allocation year, or control period if its allocation year has ended, in which a reserve price greater than the MRP is in effect. At the end of each control period, the Department may retire any unsold allowances from the concluding control period or offer them in a subsequent auction(s) during the next control period(s) in which a reserve price greater than the MRP is in effect.
- (e) No bidder or combination of bidders that have related beneficial interest may bid on more than 25% of the allowances available in any given auction.
- (f) The Department or its agent shall make CO<sub>2</sub> allowances available for auction in lot sizes of 1,000 allowances, except where available supply requires a smaller lot size.

#### **47.6 Frequency and Quantity of CO<sub>2</sub> Allowances Offered for Sale**

- (a) The initial sale shall be conducted at such time and manner as determined by the Department.
- (b) Sales will be held at least annually and may be held as often as necessary to effectuate the purposes of the CO<sub>2</sub> Budget Trading Program.
- (c) Prior to each sale the Department or its agent shall set a price for allowances to be sold in the sale, which price shall be no lower than the reserve price at the prior multi-state auction.
- (d) Any CO<sub>2</sub> allowances left unsold in any sale may be made available for distribution in a subsequent sale, in quantities and in a manner determined by the Department. At the end of each control period, the Department may retire any unsold allowances from the concluding control period.
- (e) No buyer or combination of buyers that have related beneficial interest may buy more than 25% of the allowances available for sale in any given sale.
- (f) The Department or its agent shall make CO<sub>2</sub> allowances available for sale in lot sizes of 1,000 allowances, except where available supply requires a smaller lot size.

#### **47.7 Participant Eligibility**

- (a) Any auction or sale shall be open to all who wish to participate so long as they meet the requirements of section 47.9. However, any applicant that has been found to have violated any rule, regulation, or law associated with any commodity market or exchange may be denied eligibility or precluded from participation in CO<sub>2</sub> Allowance Auctions/Sales.

#### **47.8 Notice of Auction and Sale**

##### 47.8.1 Notice of Auction.

- (a) Notice of auctions shall be published on the central auction website or the Department's website, whichever is appropriate, no later than forty five (45) days prior to the date upon which each auction may be conducted. Such Notices may be transmitted electronically to parties requesting such notification.

- (b) Each Notice shall provide a specific description of the auction format, including all auction participation requirements, and shall include, but not be limited to, the following information: the date, time and location and/or electronic address of the auction, the quantity of CO<sub>2</sub> allowances to be auctioned (by allocation year), amount and type of security required, any limits on the amount of CO<sub>2</sub> allowances any one bidder or group of bidders may purchase, the required bid format, information regarding settling and clearing of allowance payments, application instructions, other pertinent rules of the auction, and identification of a contact person for further information.

#### 47.8.2 Notice of Sale.

- (a) Notice of sales shall be published on the Department's website no later than forty five (45) days prior to the date upon which each sale may be conducted. Such Notices may be transmitted electronically to parties requesting such notification.
- (b) Each Notice will provide a specific description of the sale format, including all sale participation requirements, and shall include but not be limited to the following information: the date, time and location and/or electronic address of the sale, the quantity of CO<sub>2</sub> allowances to be offered for sale (by allocation year), amount and type of security required, the price of the CO<sub>2</sub> allowances, any limits on the amount of CO<sub>2</sub> allowances any one buyer or group of buyers may purchase, application instructions, other pertinent rules of the sale, and identification of a contact person for further information.

### **47.9 Participation Requirements**

- (a) In order to participate in an auction or sale, any prospective bidder or buyer must provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Department. Financial security shall be provided in a form and manner as described in the Notice. A prospective bidder's eligibility to bid in any auction or a buyer's eligibility to buy allowances shall be limited to the level of financial security provided. Financial security may be forfeited to and retained by the Department or its agent in the event the bidder's offer is accepted in a CO<sub>2</sub> allowance auction and the bidder fails to tender payment of the full amount when due.
- (b) Bidders or buyers may request return of their financial security at any time prior to or following any CO<sub>2</sub> allowance auction or sale, and the Department or its agent shall return said financial security provided that the Department or its agent have no current or pending claim to such



security as a result of a successful bid or sale, or failure of a bidder or buyer to pay the full amount of its accepted bid when due.

- (c) Any party wishing to participate in an auction or sale shall be required to:
  - (1) Open and maintain a compliance account or a general account, and
  - (2) Complete an application. Prospective bidders and buyers must provide information and documentation relating to their ability and authority to execute bids and sales and honor contractual obligations. Such documentation may include, but may not be limited to, information and documentation regarding the corporate identity, ownership and capital structure of the applicant.
- (d) Applicants wishing to participate in an auction or sale shall submit an application in the form provided in the Notice to the Department or its agent on or before the deadline specified in the Notice. Such deadline shall be no sooner than fifteen (15) days following the date of publication of the Notice. Application information and forms shall be made available electronically on the central website or the Departments website, whichever is appropriate.
- (e) The Department or its agent will review each application and make a determination as to whether an applicant is deemed qualified. Failure to provide any information required by the Notice or this regulation may result in the application being denied.
- (f) Prospective bidders and buyers that qualify for participation under this subsection will be qualified for all subsequent CO<sub>2</sub> allowance auctions and sales, and will be eligible to bid in such auctions or buy in a sale provided that such party has complied with the financial security requirements of this subsection.
- (g) Prior to each CO<sub>2</sub> allowance auction or sale a prospective bidder or buyer that has qualified under this subsection must notify the Department of its intent to participate in the upcoming auction or sale. This notification shall include either a statement that there has been no material change to the information provided in the application, or a revised application if material changes have occurred. A material change is a substantial change of decisional significance.
- (h) The Department may suspend or revoke its approval of an application if the bidder or buyer fails to comply with requirements of this regulation and APC Regulation No. 46 – “CO<sub>2</sub> Budget Trading Program”.

- (i) All bids shall be submitted in a form prescribed by the Department or its agent, and shall be submitted in the manner prescribed by the Department or its agent. Such forms shall be made available electronically on the central auction website or the Department's website, whichever is appropriate based on the Department's determination under section 47.2. All bids submitted shall be considered binding offers for the purchase of allowances under the rules of the auction.
- (j) All sales shall be submitted in a form prescribed by the Department or its agent, and shall be submitted in the manner prescribed by the Department or its agent. Such forms shall be made available electronically on the Department's website. All sales shall be considered binding for the purchase of allowances under the rules of the sale.
- (k) If the Department or its agent determines that a bidder or buyer has provided false or misleading information, or has withheld pertinent information in its application, or has otherwise failed to comply with this regulation, the bidder or buyer may be prohibited from participating in any future auctions or sales.

#### **47.10 Auction or Sale Format**

- (a) The auction or sale format shall be announced in the Notice prior to the auction or sale.
- (b) Sale Criteria.

If the quantity of allowances available for purchase in a particular sale is less than the quantity of allowances sale participants want to buy, then the quantity of allowances made available to each prospective buyer shall be determined by a random process.

#### **47.11 Transfer of CO<sub>2</sub> Allowances**

After the Department's approval of the results of an auction or sale and upon receipt by the Department or its agent of payments from successful bidders or buyers, the Department shall transfer CO<sub>2</sub> allowances to the purchaser's compliance account or general account.

#### **47.12 Publication of Results**

The Department or its agent will publish on the central auction website or the Department's website, whichever is appropriate, the auction clearing price and the number of allowances sold in the auction.

### **47.13 General Provisions**

#### 47.13.1 Purpose.

This regulation establishes rules for administration of the distribution of CO<sub>2</sub> allowances as part of Rhode Island's component of the CO<sub>2</sub> Budget Trading Program. The CO<sub>2</sub> Budget Trading Program is designed to stabilize and then reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources. The distribution of allowances is to be managed in an economically efficient manner that maximizes Rhode Island's contribution to lowering carbon emissions while minimizing impacts on electric system reliability and costs to Rhode Island power consumers over the long term. This regulation complements the provisions of APC Regulation No. 46 – “CO<sub>2</sub> Budget Trading Program”.

#### 47.13.2 Authority.

These regulations are authorized pursuant to R.I. Gen. Laws §42-17.1-2(s), §23-23 and §23-82, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

#### 47.13.3 Application.

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

### **47.14 Severability**

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

#### **47.15 Effective Date**

The foregoing regulation, " CO<sub>2</sub> Budget Trading Program Allowance Distribution", after due notice, is hereby adopted and filed with the Secretary of State this 2nd day of July, 2008 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23, 42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

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W. Michael Sullivan, PhD., Director  
Department of Environmental Management

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