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**250-RICR-80-00-4**

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

### **CHAPTER 80 – LAW ENFORCEMENT**

#### **SUBCHAPTER 00 - N/A**

PART 4 – Derelict and Abandoned Vessel and Obstruction Removal Commission Rules and Regulations

#### **4.1 Definitions**

For the purposes of these regulations, the following terms shall have the following meanings:

- A. “Abandoned vessel” means a vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of the owner, manager, or lessee of the submerged lands or waters below or on which the vessel is located for more than 45 (forty-five) consecutive days or for more than a total of 90 (ninety) days in any 365 (three hundred sixty-five) day period, and the vessel's owner is: (i) not known or cannot be located; or (ii) known and located but unwilling to take control of the vessel. Examples of abandoned vessels shall include, but not be limited to, the following:
  - 1. Any vessel that is left unattended or has remained illegally on public property, including docks, boat launching ramps, or moorings for more than 45 (forty-five) days; or
  - 2. Any vessel that has been found adrift or unattended in or upon the waters or submerged lands of the State and is found in a condition of disrepair as to constitute a hazard or obstruction to the use of the waters and submerged lands of the State or presents a potential health or environmental hazard.
- B. “Account” means the derelict and abandoned vessel and obstruction removal account established pursuant to R. I. Gen. Laws § 46-6-10.3.
- C. "Authorized public entity" means the Department of Environmental Management or any municipality with jurisdiction or management authority over the harbor areas where an abandoned or derelict vessel or other obstruction is located.
- D. "Department" means the Department of Environmental Management.
- E. "Derelict vessel" means a vessel whose owner is known and can be located, and who is able to exert control of a vessel that:

1. Has been moored, anchored, or otherwise left in the waters or submerged lands of the State or on public property contrary to the rules adopted by an authorized public entity;
  2. Is sunk or in danger of sinking;
  3. Is obstructing a waterway; and/or
  4. Is endangering life or property.
- F. "Director" means the Director of the Department of Environmental Management.
- G. "Mean high water" means a line of contour representing the eighteen and six-tenths "18.6" year average as determined by the metonic cycle and/or its equivalent as evidenced by the records, tidal datum, and methodology of the United States Coastal Geodetic Survey within the National Oceanic and Atmospheric Administration.
- H. "Obstruction" means any unlawful or unauthorized structure or thing that is deposited or suffered to be or remain in the tidal waters or upon the tidal lands of the State, and in the judgment of the Director is, or is liable to cause or become, an obstruction to the safe and convenient use of the waters and submerged lands of the State for navigation and other lawful purposes.
- I. "Owner" means a person other than a lienholder having a property interest in, or title to a vessel, or other obstruction. The term includes a person entitled to use or have possession of a vessel or other obstruction subject to an interest in another person, reserved, or created by agreement and securing payment or performance of an obligation, but it does not include a lessee under a lease not intended as security.
- J. "Salvage value" means the estimated residual value of a depreciable asset or property at the end of its economical or useful life.
- K. "Species of special concern" means those species that are listed as threatened or of special concern under the Department of Environmental Management's Rhode Island Natural Heritage Program, by the Department of Environmental Management's Division of Fish and Wildlife, or by the U.S. Fish and Wildlife Service.
- L. "State" means the State of Rhode Island and Providence Plantations.
- M. "Tidal lands" means those lands that are below the mean high water.
- N. "Tidal waters" means all waters seaward of mean high water.
- O. "Vessel" means every description of watercraft other than a seaplane on the water used or capable of being used as a means of transportation on water.

- P. "Waters and submerged lands of the State" means all tidal waters and tidal lands within the territorial limits of the State, all inland waters of the State, and all publicly owned submerged lands lying beneath the inland waters of the State.

## **4.2 Authority**

Pursuant to R.I. Gen. Laws § 46-6-10.2, the Derelict and Abandoned Vessel and Obstruction Removal Commission was established to develop criteria to prioritize the disbursement of funds from the derelict and abandoned vessel and obstruction removal account established pursuant to R.I. Gen. Laws § 46-6-10.3 and to advise the Director as to the application of those criteria.

## **4.3 Purpose**

These regulations provide the guidelines and procedures whereby a public entity may apply to be considered for reimbursement from the Account to cover the costs of removing, disposing, and/or selling derelict and abandoned vessels and other obstructions, including any associated administrative or environmental remediation costs, in accordance with the provisions of Chapter 46-6 of the R.I. Gen. Laws.

## **4.4 Derelict and Abandoned Vessel and Obstruction Removal Commission**

### **A. Commission Established**

Consistent with R. I. Gen. Laws § 46-6-10.2, the "Derelict and Abandoned Vessel and Obstruction Removal Commission" shall advise and assist the Department in prioritizing the disbursement of funds from the Account.

### **B. Membership**

The "Derelict and Abandoned Vessel and Obstruction Removal Commission" shall consist of five (5) members as follows:

1. One member who shall be engaged in the marine trades industry to be appointed by the Governor with advice and consent of the Senate,
2. One member who shall represent a private nonprofit environmental advocacy organization whose purposes include protecting and preserving Narragansett Bay, to be appointed by the Governor with advice and consent of the Senate,
3. One member who shall be a municipal harbormaster to be appointed by the Governor with advice and consent of the Senate,
4. The Director or his or her designee, and

5. The Executive Director of the Coastal Resources Management Council or his or her designee.
- C. The chairperson shall be elected by the members of the Commission.
- D. The members appointed by the Governor shall serve 3 (three) year terms and be eligible for re-appointment.

#### **4.5 Allocation of Funds**

- A. The Commission may by majority vote to approve an application submitted by an authorized public entity for reimbursement to cover the costs of removing, disposing, and/or selling derelict and abandoned vessels and other obstructions from the Account submitted to the Commission on the Commission's Application Form. The Commission shall consider timely- submitted applications consistent with the Commission's evaluation criteria set forth in § 4.9 of this Part. The Commission shall submit to the Director, recommendations for amounts to be awarded to applicants. The Director shall review and make a determination on the recommendations within 30 (thirty) days of receipt. Final decision making authority for awarding of funds resides with the Director.
- B. The Commission may establish the minimum and maximum amounts of funding which may be applied for by, or awarded to, an authorized public entity or project within any funding round or within an individual category.

#### **4.6 Application Procedure**

- A. Application Form

An application for reimbursement to cover the costs of removing, disposing, and/or selling derelict and abandoned vessels and other obstructions from the Account may only be submitted by an authorized public entity through the submittal to the Commission of a request on an Application Form (a copy of which is attached hereto and designated Appendix #1, §4.13 of this Part) together with such other supporting material as may be deemed appropriate.

- B. Filing of Applications

Applications for reimbursement will be considered by the Commission semi-annually with application deadlines of July 1 and November 1. Applications may be submitted to the following address:

Derelict and Abandoned Vessel and Obstruction Removal Commission

c/o RIDEM / Division of Law Enforcement

235 Promenade Street, RM 250

Providence, RI 02908

Alternatively, an application may be submitted electronically to:

DEM.EnforcementChief@dem.ri.gov.

- C. Applications may be submitted by authorized public entities at any time that an emergency is presented that mandates the immediate removal of a derelict or abandoned vessel or obstruction.
- D. Applications may be submitted by authorized public entities any time that the salvage value of the derelict or abandoned vessel or obstruction to be removed is in excess of the cost of its removal, thus providing a reasonable expectation that the authorized public entity will not be required to seek the allocation of funds for the cost of removal of the subject vessel or obstruction, or may result in the deposit of funds into the Account.

#### **4.7 Application Package**

The application package shall contain an affidavit to be signed by the harbormaster of the municipality (or his/her representative) attesting to the affiant's approval of the application and to the accuracy of the information in support thereof.

#### **4.8 Application Review**

The Commission shall review the applications and determine those that fail to meet the minimum eligibility criteria or which are incomplete. Applicants shall be notified promptly if the applications that have been disqualified. The Commission may accept modified applications for consideration during a subsequent application period.

#### **4.9 Evaluation Criteria and Awards**

##### **4.9.1 Evaluation Criteria**

The Commission shall evaluate the applications received utilizing criteria consistent with Commission objectives. Criteria to be considered shall include the extent to which derelict and abandoned vessels are in danger of sinking or have sunk, are breaking up or have broken up, pose a hazard to navigation, and/or pose threats to the environment; and the extent to which obstructions pose a hazard to navigation, and/or pose threats to the environment. The Commission shall utilize the Abandoned Vessel Scoring Form (a copy of which is attached hereto and designated Appendix #2, § 4.14 of this Part) in evaluating the applications.

##### **4.9.2 Awards**

Once the Commission has reviewed and scored all of the applications, it shall evaluate which applications should be granted reimbursements based upon the scoring. The Commission may also consider the relative amounts of money requested in the various

applications in order to maximize use of the limited amounts appropriated to the Account. Upon completion of all scoring activities, the Commission by majority vote shall submit to the Director recommendations of amounts to be awarded to applicants. The amount of the reimbursements awarded on the list of recommendations may not exceed the amount of funds available to be awarded from funds in the Account. The Commission shall submit the recommendations to the Director who shall review and make a determination on recommendations within 30 (thirty) days of receipt. Final decision making authority for awarding of funds resides with the Director.

#### 4.11 Emergency Response Fund

The Commission shall annually designate a portion of the Account for the purpose of funding emergency response expenditures authorized by the Director or his or her designee consistent with the requirements of R.I. Gen. Laws §§ 46-6-8 and 46-6-10.

#### 4.12 Severability

If any section, paragraph, phase, 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.

#### 4.13 APPENDIX #1

Abandoned Vessel Removal Application Form		
File Number (to be assigned by Agency):		
Today's date:	Date sighted or incident:	
When did the vessel become abandoned and how was this determined (please attach documentation)?		
Removal form filed by:	Contact phone numbers	
Mailing address:	Cell:	
General location of vessel:		
Latitude:	Longitude:	Water Depth:

Is vessel on private property		If so, property owner's name and address:	
Vessel Name:		Identification Number:	Photos shall be attached detailing various views.
Vessel owner's name:		Owner's address:	Owner's Insurance: Agency Policy #
Has the vessel owner been found to be unable to pay? Please elaborate.			
How is the vessel secured			
Length: FT		Beam: FT	Tonnage:
Hull Type (wood, fiberglass etc.):		Propulsion (sail, power):	Type of Fuel (gas/diesel):
Is there anything leaking		Estimated Fuel on board (gal)	Any other hazardous material
What government agencies have responded to this incident (attach/include reports)			
What was the outcome of this response			

#### 4.14 APPENDIX #2

RANK	0	1	2	3	4	Rank	Multiplier	Score
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Human Health and Safety	Not accessible to public, not a site of criminal activity or dumping	Access to vessel is difficult for public, not likely a site of criminal activity or dumping	Public access to vessel is somewhat limited, some broken parts and physical hazards	Very little effort to limit public access to vessel, broken parts causing hazardous surfaces and/or attractive nuisance, possible site of criminal activity or dumping	Unrestricted public access onto vessel, Used as dump site or site of other criminal activity		2	
Environmental Hazard	Known to be clean and does not pose a direct threat to habitats or species	Does not likely contain much fuel or HAZMAT, residual amounts only; or poses	Potentially holds a moderate amount of fuel or HAZMAT; ongoing activities or neglect make spill possible; or directly impacts natural habitats	Potentially holds large amounts of fuel or HAZMAT; containers of unknown materials visible on vessel; ongoing activities make	Leaking oil or HAZMAT imminent; or directly impacts threatened or endangered species		2	
Navigational Hazard	Away from vessel traffic	Near limited vessel traffic	Encroaching upon middle of moderate traffic area (e.g., approaches to small marinas or ports)	Encroaching upon middle of high-traffic area, such as approach to large marinas or ports	Encroaching upon middle of navigable waterway (e.g., a traffic lane)		2	
Threat to Economic or Public Benefit	No threat to public or commercial benefit	Public or commercial benefit may be harmed by a change in vessel status	Public or commercial benefit is partly harmed by the presence of the vessel or may be harmed with a change in vessel status	Public or commercial benefit is harmed by the presence of the vessel or may be severely harmed with a change in vessel status	Public or commercial benefit is severely harmed by the presence of the vessel		1	

Threat of Vessel Status Change	Tied securely to dock with sound lines and in sound condition	Moored or anchored securely and in sound condition	Moored or anchored but untended for >1 year; riding noticeably low in water; sunken and stable; or grounded in the intertidal zone	Not adrift, but in danger of becoming adrift, breaking up, or sinking; or sunken and unstable	Adrift or in imminent danger of becoming adrift, breaking up, or sinking.		1	
Cost Benefit	> \$30,000 per vessel	> \$20,000 to \$30,000 per vessel	> \$10,000 to \$20,000 per vessel	> \$5,000 to \$10,000 per vessel	< \$5,000 per vessel		1	
TOTAL SCORE								

Note: Shaded cells indicate situations that may elevate vessel status to an emergency subject to the discretion of the Director