

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

**Notice of Public Hearing and Comment Period
Concerning Proposed “*Rules and Regulations for the
Brownfields Remediation and Economic Development Fund*”**

Notice is hereby given that a public hearing regarding proposed regulations entitled “*Rules and Regulations for the Brownfields Remediation and Economic Development Fund*” will be held in Room 300 of the RI Department of Environmental Management, at 235 Promenade Street, Providence, Rhode Island on Wednesday, August 12th at 3:30 PM at which time interested parties will be heard.

These rules and regulations are promulgated pursuant to the authority provided by Rhode Island General Laws, Chapter 46-17.1, Chapter 23-19.1, Chapter 23-19.14, Chapter 46-12, Chapter 46-13.1, and Section 46-12.3 and Section 46-12-5 of those Laws, as amended in accordance with Rhode Island General Laws 46-35, the Administrative Procedures Act. The Department will accept public comments on the proposed regulations to create a Brownfields Remediation and Economic Development Fund to receive, hold and administer the use of \$5,000,000 from the 2014 RI Clean Water, Open Space, and Healthy Communities Bond during this time.

These draft regulations were created to encourage the reuse of Brownfields in economically distressed areas 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. The remediation and redevelopment of these sites, many of which occupy prime commercial/industrial locations within the state’s urban corridor, 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 the local tax base.

RIDEM has complied with the requirements of R.I. Gen. Laws Section 42-35-3 by considering alternative approaches to the proposed regulations and has determined that there is no alternative approach that would be as effective and less burdensome. RIDEM has also determined that the proposed regulations do not overlap or duplicate any other state regulation. DEM has complied with the requirements of R.I. Gen. Laws Section 22-12-1.1 and R.I. Gen. Laws Chapter 42-35.1 by preparing a Small Business Impact Statement for the Office of Regulatory Reform.

Copies of the proposed regulations and a Concise Explanatory Statement are available at RIDEM’s Office of Customer & Technical Assistance at 235 Promenade Street, Providence, Rhode Island, 02908 or on the Department’s web site at www.dem.ri.gov/pubs/index.htm#regprops. Written comments on the proposed regulations may be sent to: Matthew DeStefano, RIDEM, Office of Waste Management, 235 Promenade Street, Providence, RI, 02908 until 4:00 PM August 14, 2015. At that time the comment period will end, unless extended by the hearing officer. It is requested that persons who wish to make oral comments during the public hearing submit a copy of their statement for the record. All oral and written comments will be considered in the same manner.

The Department of Environmental Management building is accessible to those with disabilities. Persons with disabilities requiring special accommodation should contact Matthew DeStefano, RIDEM, Office of Waste Management at (401) 222-2797 ext. 7141 or matthew.destefano@dem.ri.gov at least three business days prior to the hearing.

Signed this 10th day of July 2015

Terrence Gray, PE, Associate Director for Environmental Protection

Summary Statement

Rules and Regulations for the Brownfields Remediation and Economic Development Fund

The 2014 RI Clean Water, Open Space, and Healthy Communities Bond was recently approved and have necessitated these regulations. As a result, these regulations are being promulgated to create a Brownfields Remediation and Economic Development Fund (the Fund) to receive, hold and administer the use of the \$5,000,000 portion of the bond. The Fund was created to encourage the reuse of brownfields in economically distressed areas 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. 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.

The RI Department of Environmental Management, Office of Waste Management (OWM) will administer the Brownfields Remediation and Economic Redevelopment Fund program. 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. Furthermore, the 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.

In general, these funds shall 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.

**State of Rhode Island and Providence Plantations
Department of Environmental Management**

Office of Waste Management

**Rules and Regulations for the
BROWNFIELDS REMEDIATION AND ECONOMIC
DEVELOPMENT FUND**



EFFECTIVE DATE: _____

These rules and regulations are promulgated pursuant to the authority provided by Rhode Island General Laws, Chapter 46-17.1, Chapter 23-19.1, Chapter 23-19.14, Chapter 46-12, Chapter 46-13.1, and Section 46-12.3 and Section 46-12-5 of those Laws, as amended in accordance with Rhode Island General Laws 46-35, the Administrative Procedures Act.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**RULES AND REGULATIONS FOR THE
BROWNFIELDS REMEDIATION AND ECONOMIC DEVELOPMENT
FUND**

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SECTION 1.00 PURPOSE

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.

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.

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.

SECTION 2.00 LEGAL AUTHORITY

These rules and regulations are promulgated pursuant to the authority provided by Rhode Island General Laws, Chapter 46-17.1, Chapter 23-19.1, Chapter 23-19.14, Chapter 46-12, Chapter 46-13.1, and Section 46-12.3 and Section 46-12-5 of those Laws, as amended in accordance with Rhode Island General Laws 46-35, the Administrative Procedures Act.

SECTION 3.00 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.

SECTION 4.00 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.

SECTION 5.00 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.

SECTION 6.00 DEFINITIONS

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

40 CFR ... – shall mean that section or subsection of the Code of Federal Regulations, Title 40, Protection of Environment, Chapter 1, Environmental Protection Agency. References to the Administrator, appearing therein, shall be interpreted as referring to the Director.

Applicant – shall mean any person or persons applying for monies under these rules and regulations.

Brownfields site – shall mean 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 – shall mean the building, alteration, rehabilitation, improvement, or extension of a project, including the necessary planning, design and engineering associated with the specific project.

Contaminated-Site – shall mean 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 – shall mean the Rhode Island Department of Environmental Management (RIDEM).

Director – shall mean 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 – shall mean the Brownfields Remediation and Economic Redevelopment Fund, as established by these regulations.

Groundwater – shall mean 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 – shall mean 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) – shall mean 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) – shall mean 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 – shall mean an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, 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 – shall be defined by 40 CFR 300.5 (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.

Release shall also include an actual or potential threat of Release.

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 – shall mean the act of implementing, operating and maintaining a Remedy or Remedial Action.

Source Area – shall mean 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.

SECTION 7.00 FUND ESTABLISHMENT

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.

SECTION 8.00 NOTIFICATION OF AVAILABLE FUNDS

8.01 – 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.

8.02 – 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:

- a. The approximate amount of money available under the fund;
- b. The deadline for all applications; and
- c. Any other information that the Director determines necessary and pertinent.

SECTION 9.00 APPLICATION REQUIREMENTS

9.01 - 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.

Applications shall be submitted to RIDEM via:

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.

SECTION 10.00 PROJECT CATEGORIES AND ELIGIBLE COSTS

10.01 – 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.

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.

10.02 – Project Categories: The following categories of grants will be considered:

10.02.01 – 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.

10.02.02 – 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.

10.02.03 – 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.

10.02.04 – 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.

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.
- g. Environmental consulting costs
- h. other environmental investigations, compilation of information, marketing materials, design, or site work required to support reuse/redevelopment of the Brownfields site

Examples of types of costs that are ineligible to receive grant monies from the Fund from these regulations include:

- 1) Pre-award costs, unless incurred within 90 days of application approval and have been pre-approved by the Department.
- 2) Administrative costs including clerical support, monthly utility expenses, the purchase of office equipment, personnel costs associated with fund raising for the nongovernmental entity, etc..
- 3) Costs associated with the performance of a Supplemental Environmental Project (“SEP”).
- 4) State or Federal lobbying costs, penalties or fines.
- 5) Land acquisition projects that do not have tangible public health or environmental benefits and physical construction or redevelopment.

- 6) Response costs for emergency response actions caused or exacerbated solely by the applicant or their agents or assigns.
- 7) 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).

SECTION 11.00 APPLICATION REVIEW AND SELECTION

11.01 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 Sections 9.00 and 10.00 of these Regulations.
- 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.

SECTION 12.00 GRANT AWARDS

12.01 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:

a. 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.

b. 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.

c. 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.

d. 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 pre-payment 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.

12.02 – 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.

12.03 – 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.

The foregoing "Rules and Regulations for the Brownfields Remediation and Economic Development Fund", after due notice, are hereby adopted and filed with the Secretary of State on _____, _____ and shall become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 42-35,42-17.1 and 42-17.6 of the General Laws of Rhode Island of 1956, as amended.

Janet L. Coit., Director
Department of Environmental Management

Notice Given on:

Public Hearing held:

Filing Date:

Effective Date:

**NOTIFICATION FORM
FROM RI DEPARTMENT OF ENVIRONMENTAL MANGEMENT**

**SMALL BUSINESS REGULATORY IMPACT AND
REGULATORY FLEXIBILITY ANALYSIS
(R.I.G.L. § 42-35.1-4)**

Title of Administrative Rule or Regulation:

*Rules and Regulations for the Brownfields Remediation and Economic Development
(PROPOSED – NEW REGULATIONS)*

Statutory Authority:

RIGL Chapter 42-35, Chapter 23-19.1, Chapter 23-19.14, Chapter 42-17.1-2, Chapter 46-12 and Chapter 46-13.1.

The Regulation:

These are new regulations that will allow the Department to provide grant monies from the Brownfields Remediation and Economic Development Fund to spur economic development and environmental cleanups. 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 assist property owners and potential purchasers of property with the redevelopment and identification and remediation of releases of hazardous materials and petroleum in property soils and groundwater on sites within Rhode Island. Without these regulations, DEM will be unable to disburse these important funds.

Expected Small Business Impact:

Small businesses will only be impacted positively. Businesses applying for and accepting these funds will receive financial support from DEM for the clean up and redevelopment of sites within Rhode Island.

Regulatory Flexibility Analysis:

- (1) The establishment of less stringent compliance or reporting requirements for small businesses.
The Department designed these regulations in such a way that they will benefit small businesses needing access to resources for identification and remediation of releases of hazardous materials and petroleum on sites within Rhode Island. The Department is cognizant of the need to work with businesses to achieve proper compliance and will do so under these regulations. Compliance, in the context of these regulations, will be focused on complying with grant conditions, which will be negotiated prior to issuing the grants.

- (2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
The Department is cognizant of the need to be flexible, within reason, when it comes to schedules and deadlines for the cleanup of contaminated property. Through these regulations, our staff will continue to work with businesses and property owners towards the ultimate goal of a complete site investigation and cleanup.

(3) The consolidation or simplification of compliance or reporting requirements for small businesses.
The Department is cognizant of the need to be flexible, within reason, when it comes to reporting requirements for the cleanup of contaminated property. Through these regulations, our staff will continue to work with businesses and property owners towards the ultimate goal of a complete site investigation and cleanup. Reporting requirements are focused on ensuring accountability for the public money being invested in the projects and defining the benefits and accomplishments achieved as a result of those investments.

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation.

Because these proposed regulations focus on the dispensing of funding for priority cleanup projects, the establishment of specific performance standards was not part of the drafting process. The performance of the grant program established under the regulations will be judged by the benefits and accomplishments reported by grant recipients.

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

A goal of these regulations is to assist small businesses. There is no need for exemptions for small businesses from the proposed regulations since doing so would only cut off a new, key funding stream.

Any questions regarding these proposed regulations should be directed to the Terry Gray, RIDEM, at 222-4700 Ext. 7100 or terry.gray@dem.ri.gov

(Completed in April 2015)

SMALL BUSINESS IMPACT STATEMENT

RIDEM Rules and Regulations for the Brownfields Remediation and Economic Development Fund

Agency submitting regulation:

Rhode Island Department of Environmental Management (RIDEM)

Subject matter of regulation:

Rules and Regulations for the BROWNFIELDS REMEDIATION AND ECONOMIC DEVELOPMENT FUND

To administer funds to spur economic development and cleanup of former brownfields sites in a manner that is protective of human health and the environment.

ERLID No: New regulations (not assigned yet)

Statutory authority:

Chapter 42-35, Chapter 23-19.1, Chapter 23-19.4, Chapter 42-17.1-2, Chapter 46-12 and Chapter 46-13.1.

Other agencies affected:

Commerce RI

Other regulations that may duplicate or conflict with the regulation:

None

Describe the scope and objectives of the regulation:

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 assist property owners and potential purchasers of property with the redevelopment and identification and remediation of releases of hazardous materials and petroleum in property soils and groundwater on sites within Rhode Island.

What was the rationale for establishing this regulation?

To allow the Department to provide grant monies from the Brownfields Remediation and Economic Development Fund to spur economic development and environmental cleanups.

Does the rationale still exist?

Yes.

Is the rationale still relevant?

Yes, the rationale is still relevant to economic development, especially with the economy turning around.

Business industry (s) affected by the regulation:

This regulation has the potential to impact any property or business (large or small) in Rhode Island if they apply for funds under this Fund.

Types of businesses included in the industry (s):

This regulation has the potential to impact business types that deal in redevelopment of under-utilized properties because the regulation focuses on such properties which can be located anywhere and is not specific to a particular business type.

Total number of small businesses included in the regulated industry (s) (Please see the attached guidance documents for assistance determining the total number of small businesses)

All businesses that deal in redevelopment of under-utilized properties (see above).

Number of small businesses potentially subject to the proposed regulation:

All businesses that deal in redevelopment of under-utilized properties (please see above).

How often do small businesses contact your agency for assistance with clarification of the regulation and/or receive assistance with compliance issues?

N/A - these are new regulations that have yet to be implemented.

What is the cost to your agency of establishing and enforcing this regulation?

RIDEM has three (3 FTEs) staff members that will be working part time with this regulation. Approximately, 10 to 20% of their time will be charged to this Fund depending on demand.

What would the consequences be if the regulation did not exist?

Businesses and private individuals would have no mechanism to access these grant monies and thus no economic development or environmental cleanups would occur.

Effective date used in cost estimate:

July 1, 2015 until June 30, 2019

For each question below, please answer “yes” or “no” and offer a brief explanation.

Please describe any facts, data, views, arguments, or other input from small businesses, organizations or any other sources that were used to quantify the impacts outlined below.

1.	Yes X	No	Do small businesses have to create, file, or issue additional reports? All businesses and property owners associated with brownfields redevelopment would be able to utilize grant monies to write reports.
2.	Yes X	No	Do small businesses have to implement additional recordkeeping procedures? All businesses and property owners who are determined to have a jurisdictional release of hazardous materials and/or petroleum on their property or Site are subject to the reporting and recordkeeping requirements in the Remediation Regulations. They may also have to do annual monitoring if their property has an environmental land usage restriction (ELUR).
3.	Yes	No X	Do small businesses have to provide additional administrative oversight?
4.	Yes	No X	Do small businesses have to hire additional employees in order to comply with the proposed regulation?
5.	Yes X	No	Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)? They would hire professionals but most costs would be paid out of the Fund with the exception of matching funds which would be required in some cases.
6.	Yes	No X	Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?
7.	Yes X	No	Are performance standards more appropriate than design standards? Every property is different and the implementation of performance standards or design standards is determined by the redevelopment and/or remediation approved, however ultimate compliance is determined by successful performance of the remedy and economic development.
8.	Yes	No X	Does the regulation require small businesses to cooperate with audits, inspections, or other regulatory enforcement activities?
9.	Yes	No X	Does the regulation have the effect of creating additional taxes and/or fees for small businesses?
10.	Yes	No X	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? Businesses and property owners usually hire environmental consultants that are familiar with the Regulatory process and keep up with any annual changes.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
OFFICE OF REGULATORY REFORM
 OFFICE OF MANAGEMENT & BUDGET
 DEPARTMENT OF ADMINISTRATION

One Capitol Hill
 Providence, RI 02908-5890
 Office: (401) 574-8430
 www.omb.ri.gov

Executive Order 15-07: Submission Form

AGENCY AND REGULATION INFORMATION

1. Title of Regulation	Rules and Regulations for the Brownfields Remediation and Economic Development Fund.		
2. Agency Name	Rhode Island Department of Environmental Management	3. Date Submitted (mm/dd/yy)	04/24/15
4. Agency Contact Name	Terrence Gray, Associate Director for Environmental Protection	5. Telephone (include Area Code)	(401) 222-6800
6. Email	terry.gray@dem.ri.gov		
7. Rulemaking Action	<input type="checkbox"/> Amendment <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Repeal Emergency Rulemaking		
8. State Statutory Authority	Chapter 42-35, Chapter 23-19.1, Chapter 23-19.4, Chapter 42-17.1-2, Chapter 46-12 and Chapter 46-13.1		
9. Federal or other Statutory Authority (please describe)	None		
10. Is there a legal deadline for this action?	<input checked="" type="checkbox"/> None Statutory deadline: _____ <input type="checkbox"/> Court-ordered deadline: _____ Describe: Funds from the bond, authorized by voters in November 2014, will be made available for grants in July 2015.		
11. Current ERLID #	_____ OR <input checked="" type="checkbox"/> No current ERLID # assigned		

AGENCY CERTIFICATIONS

12. Regulatory Flexibility Analysis/Small Business Regulatory Fairness in Administrative Procedures

By signature in item 13, the agency Rules Coordinator or authorized designee deems that this regulation:

DOES have impact on small business
 DOES NOT have impact on small business,

and that if such small business impact exists, the agency has completed the additional documentation for further Regulatory Flexibility Analysis, in order to consider, without limitation, all methods of reducing the impact of this regulation on small business.

Executive Order 15-07

By signature in item 13, the agency Rules Coordinator or authorized designee certifies that the agency has complied with the requirements of E.O 15-07 and any applicable policy directives.

13. Signature of Rules Coordinator or Authorized Designee	Terrence D. Gray, P.E.	14. Date (mm/dd/yy)	04/24/15
	I understand that my typed name shall have the same force and effect as my written signature.		
15. Position	Associate Director for Environmental Protection		

EXECUTIVE SUMMARY OF REGULATION

16. Briefly summarize the purpose of this regulation.

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 assist property owners and potential purchasers of property with the redevelopment and identification and remediation of releases of hazardous materials and petroleum in property soils and groundwater on sites within 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.

17. Briefly summarize the societal costs and benefits of this regulation on Rhode Island.

The regulations will serve to provide grant funding to spur economic development throughout Rhode Island. The program will be focused on creating jobs and economic development by providing grants to public and private land owners to investigate and remediate Brownfields sites. Benefits of remediation and redevelopment of these sites include: mitigating the threat to public health and the environment from exposure to uncontrolled contamination, creates and attracts both temporary and permanent jobs, reduces the use of "greenfields" outside urban areas and increases local tax base.