

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
DIVISION OF WATER RESOURCES**

**AMENDED  
RULES AND REGULATIONS PERTAINING TO A USER FEE SYSTEM FOR  
POINT SOURCE DISCHARGERS THAT DISCHARGE POLLUTANTS INTO  
THE WATERS OF THE STATE**

**SEPTEMBER 1988**

**AUTHORITY: Chapters 46-12, 42.17, and 42-35 of the General Laws  
of Rhode Island, 1956 as amended.**

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INTO THE WATERS OF THE STATE**

SECTION

**1.00 Purpose**

The purpose of these regulations is to establish a user fee system for point sources dischargers that discharge pollutants into the surface waters of the State. The funds from such fees will be used by the Department of Environmental Management to develop and operate a pollution monitoring system and to protect, preserve, and upgrade the surface waters into which the discharges flow.

**2.00 Authority**

These regulations are adopted pursuant to Chapters 46-12, 42-17.1, and 42-35 of the General Laws of Rhode Island as amended.

**3.00 Definitions**

The following terms shall, unless otherwise specified, be construed in harmony with and shall supplement those terms contained in the Regulations for the Rhode Island Pollutant Discharge Elimination System (RIPDES).

**"Annual User Fee Assessment Date"** means the date designated each year by the Director that the Department mails to each point source discharger an assessment of its annual user fee.

**"Biological Concentration Factor"** means the pollutant concentration in the fish relative to the surrounding water.

**"Clean Water Act"** means the Federal law enacted under 33 U.S.C. 1251 et seq. and any amendments thereto.

**"Conventional Pollutants"** will be determined using these tests: BOD<sub>5</sub>, Total Suspended Solids, pH, Settleable Solids, and Fecal Coliform Bacteria.

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

**"Director"** means the director of the Department of Environmental Management or any subordinate or subordinates to whom he has delegated the powers and duties vested in him by these regulations.

**"Discharge"** means the addition of any pollutants to the waters from any point source.

**"Discharger"** means any person, corporation, municipality, sewerage authority, or other legal entity that discharges, causes a discharge, permits a discharge, or who fails to exercise reasonable care to prevent a discharge.

**"EPA"** means the United States Environmental Protection Agency.

**"Facility"** means any point source or any other activity (including land or appurtenances thereto) that is subject to regulation under the RIPDES or NPDES permit program.

**"Fee Assessment Document"** means a report, prepared at least annually by the Director, containing an analysis of the cost of the pollution monitoring program and an assessment of the annual user fees.

**"Metal Priority Pollutants"** are: Antimony, Arsenic, Beryllium, Cadmium, Chromium, Copper, Lead, Mercury, Nickel, Selenium, Silver, Thallium, and Zinc; additional: Asbestos, Total Cyanide, and Total Phenols.

**"Monitoring"** means any method established by the Director or the EPA for identifying and assessing pollutants discharged from point sources into surface waters of the State.

**"Municipality"** means a city, town, borough, county, parish, district, quasi-governmental corporation, association, or other public body created by (or under) State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, an Indian Tribe, or a designated and approved management agency under Section 208 of the Clean Water Act.

**"National Pollutant Discharge Elimination System (NPDES)"** means the national program for issuing, modifying, revoking (and reissuing), terminating, monitoring (and enforcing) permits, and imposing (and enforcing) pretreatment requirements under Sections 307, 318, 402, and 405 of the Clean Water Act; it includes any State program approved by the Regional Administrator.

**"Organic Priority Pollutants"** are those pollutants designated priority pollutants by the EPA except metals, total phenol, and total cyanide.

**"Partial Scan"** means analyzing the effluent for pollutants that previous data indicates is in the discharge.

**"Person"** means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal (or state agency), fire district, club, nonprofit agency (or subdivision), commission, department, bureau, agency (or department) of the State or Federal government (including a quasi-governmental corporation) or any intestate body, and any agent or employee thereof.

**"Point Source"** means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation (or vessel), or other floating craft from which pollutants are or may be discharged; this term excludes return flows from irrigated agriculture.

**"Pollutant"** means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked (or discarded) equipment, rock, sand, or cellar dirt or any industrial, municipal, or agricultural waste and other wastes.

**"Pollutant Monitoring Program"** means all those actions undertaken by the Department, including the procurement of all necessary equipment and personnel, to: (a) develop, operate, maintain, and enforce a means of monitoring the discharge of pollutants into the surface waters of the State from point source dischargers, (b) assess the overall impact from such discharges, and (c) protect, preserve, and upgrade the surface waters into which such discharges flow.

**"Priority Pollutant"** means those pollutants specified pursuant to Section 307(a)(1) of the Clean Water Act.

**"Regional Administrator"** means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or an authorized representative of the Regional Administrator.

**"RIPDES"** means the Rhode Island Pollutant Discharge Elimination System and the Regulations promulgated to implement the system.

**"Total Scan"** means analyzing the effluent for pollutants that previous data indicates is in the discharge or that might be in the discharge or both.

**"Waters of the State" or "Water"** means all surface water and groundwater of the State of Rhode Island including all tidewaters, territorial seas, wetlands, land masses partially (or wholly) submerged in water, and both inter and intra-state bodies of water that are, have been, or will be used in commerce (by industry) for the harvesting of fish and shellfish or for recreational purposes.

#### **4.00 Severability**

If any provision of these rules and regulations, of the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby.

#### **5.00 Application of these Regulations**

- (a) These regulations shall be liberally construed to permit the Department to effectuate the purposes of the State law.

- (b) For the purpose of these regulations, point source discharges may be sampled at the point of discharge and at an appropriate upstream and downstream location as determined by the Department.
- (c) Nothing in these rules and regulations shall limit the Director's power and duty to issued an immediate order pursuant to Section 46-12-10 of the General Laws of Rhode Island.
- (d) These regulations shall be construed in harmony with, and as a supplement to, all regulations promulgated by the Department pursuant to Chapters 46-12, 42-17.1 and 42-35 of the General Laws of Rhode Island.

## **6.00 User Fee System**

- (a) The Director hereby establishes a system of assessing user fees on point source dischargers that discharge into the surface waters of the State. Monies derived from the user fee system shall be used exclusively for a pollution monitoring program and shall not be substituted for funds appropriated by the State or Federal Government for similar purposes.
- (b) The user fees:
  - (i) Shall be individually based on the need for monitoring a facility's discharge because of the potential for environmental degradation that its effluent poses as determined by the Director; such determination by the Director shall be set forth in a Fee Assessment Document which the Director will make available for public review and comment prior to the Annual User Fee Assessment Date;
  - (ii) Shall not exceed the cost to the State for monitoring such facilities;
  - (iii) Shall be assessed on an annual basis and shall be paid in full within forty-five (45) days of the Annual User Fee Assessment Date;
  - (iv) Shall be assessed on a new source which begins operations after the Annual User Fee Assessment Date based upon the estimated volume of its discharge, the type of pollutants likely to be present, and the anticipated number of samples that can reasonably be taken prior to the next Annual User Fee Assessment Date; and
  - (v) Shall be rebated in whole or in part, if a point source permanently ceases all discharge operations after the Annual User Fee Assessment Date, and some or all of the annual samples were not collected.
- (c) The Director may, at any time prior to the next Annual User Fee Assessment Date, issue a supplemental Fee Assessment Document and assess additional user

fees, so long as the total user fee does not exceed the provisions in Section 6(b)(ii), or issue a credit that may be applied to future user fee charges.

- (d) Any person who fails to pay the user fee within forty-five (45) days of the assessment date shall be in violation of these regulations. Each day after the assessment date the user fee remains unpaid constitutes a separate violation and subjects the violator to appropriate administrative, civil, and criminal sanctions as provided by law.
- (e) The Director may authorize a refund of user fees upon promulgation of the Fee Assessment Document and upon a finding that fees were collected in excess of those required.

### **7.00 Pollution Monitoring Program**

The Director establishes a pollution monitoring program that is designed to:

- (i) Develop, operate, maintain, and enforce a means of monitoring the discharge of pollutants into the surface waters of the State from point source dischargers,
- (ii) Assess the overall impact from such dischargers, and
- (iii) Protect, preserve, and upgrade the surface waters into which such discharges flow.

### **8.00 Effective Date**

These rules and regulations become effective twenty (20) days following their filing with the Office of the Secretary of State; the annual user fee is due and owing forty five (45) days after each Annual User Fee Assessment Date.

### **9.00 Superseded Rules and Regulations**

On the effective date of these rules and regulations the Rules and Regulations Pertaining to a User Fee System for Point Source Dischargers who Discharge Pollutants into the Waters of the State, adopted and filed with the Secretary State on August 15, 1986, are hereby revoked.

The foregoing rules and regulations, after due notice and hearing, are hereby adopted and filed with the Secretary of State this \_\_\_\_\_ day of \_\_\_\_\_ to become effective twenty (20) days thereafter, in accordance with the provisions of Chapter 46-12, 42-17, and 42-35 of the General Laws of Rhode Island, 1956 as amended.

\_\_\_\_\_  
Director  
Department of Environmental Management

Notice given on \_\_\_\_\_

Hearing held on \_\_\_\_\_

Effective \_\_\_\_\_