

RHODE ISLAND COASTAL NONPOINT PROGRAM NOAA/EPA DECISION TO FULLY APPROVE

FOREWORD

This document contains the basis for NOAA and EPA's decision to fully approve Rhode Island's Coastal Nonpoint Pollution Control Program (coastal nonpoint program). It discusses how the State has met each of the conditions of approval placed on the coastal nonpoint program submitted by Rhode Island pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

The Findings for Rhode Island's coastal nonpoint program were issued on September 24, 1997. Since that time, Rhode Island has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on materials Rhode Island has provided to document how the conditions have been met, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) find that Rhode Island has satisfied all conditions of approval.

This document is organized in the same fashion as the Findings for Rhode Island's coastal nonpoint program. Where the Findings included a condition, this document repeats the condition, and discusses how the condition has been satisfied. For further understanding of terms in this document and the basis for these decisions, the reader is referred to the following: *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* (EPA, January 1993); *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance* (NOAA and EPA, January 1993); *Flexibility for State Coastal Nonpoint Programs* (NOAA and EPA, March 1995); and *Final Administrative Changes to the Coastal Nonpoint Pollution Control Program Guidance for Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)* (NOAA and EPA, October, 1998)

FINAL APPROVAL DECISION

NOAA and EPA find that State of Rhode Island has satisfied all conditions placed on approval of the Rhode Island coastal nonpoint program submitted to NOAA and EPA pursuant to Section 6217(a) of the Coastal Zone Act Reauthorization Amendments of 1990. Therefore, Rhode Island's coastal nonpoint program meets all program requirements and is hereby fully approved, constituting a final approval decision for the program.

Please note that the approval decision made for the Rhode Island coastal nonpoint program does not relieve the State of any requirements under the Endangered Species Act.

AGRICULTURE

CONDITION: Within three years, Rhode Island will demonstrate the State's ability to achieve implementation of the management measures for confined animal facilities and nutrient management as it applies to animal waste agricultural management measures using the approach described in the letter referenced below in the Rationale. Within one year, Rhode Island will identify measurable results to be achieved during this three year time frame.

DECISION: Rhode Island has satisfied this condition.

RATIONALE: Under the Final Administrative Changes published on October 16, 1998, NOAA and EPA agreed to approve program elements for which states had proposed voluntary or incentive-based programs, backed by existing State enforcement authorities, if the State provided three items: a legal opinion from the State that the authority can be used to prevent nonpoint pollution and require implementation of management measures; a description of the voluntary or incentive based programs; and a description of the mechanism or process linking the implementing agency with the enforcement agency and a commitment to use the enforcement authority where necessary. Rhode Island has provided these three components, and therefore has satisfied this condition.

Rhode Island submitted a legal opinion from the Chief Legal Counsel for the Rhode Island Department of Environmental Management (DEM) certifying that the Rhode Island Water Quality Act provides authority to prevent nonpoint pollution and require implementation of the confined animal facilities and nutrient management measures related to animal waste. (See legal opinion.) Chapter 46-12, *Water Pollution*, of the Rhode Island General Laws provides the DEM with the authority to prevent and control water pollution from all sources. To summarize, the law prohibits any person from placing any pollutant in a location where it is likely to enter the waters; discharging any pollutant into the waters except in compliance with the law and pursuant to the terms and conditions of a permit; or constructing any establishment that may result in the discharge of any pollutant into waters of the State unless the discharge is made to an approved system or means to prevent pollution. The definition of *pollutant* under the State's Water Quality Regulations includes agricultural waste and nutrients, and the regulations further provide that they cover nonpoint sources, with specific standards for nutrients including phosphorus and nitrogen in both fresh and salt water. The Chief Legal Counsel concludes, based on this law and implementing regulations, that not only does the State have the statutory authority to prevent nonpoint source pollution and require management measure implementation, but that there is no State law that would limit or preclude management measure implementation, and that the State has promulgated regulations that encompass management measure implementation. Enforcement authority has been satisfactorily demonstrated both through the DEM's enabling legislation, Rhode Island General Laws 42-17.1-2(4)(v), as well as the 46-12-1 et seq., and DEM has affirmed its commitment to apply this authority to address nonpoint pollution from agricultural operations where necessary.

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Rhode Island is implementing voluntary or incentive-based programs through the Rhode Island Division of Agriculture, the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) and Farm Services Agency (FSA). In essence, the State has a four-step process that interacts with its Water Quality regulations to implement Best Management Practices (BMPs) where specific pollutant discharges have been identified in high priority watersheds. Agricultural BMPs are developed in a process that includes the Rhode Island Division of Agriculture, the farm operator, the NRCS, and the FSA. Technical compliance is ensured by a Memorandum of Understanding which assures a coordinated effort between [the Rhode Island Department of Environmental Management] DEM, NRCS, and FSA...in regard to agricultural projects which fall under RIGL 2-1-22(i)(2) and (j) (SD3.00).@It is DEM's responsibility under the MOU to determine whether agricultural projects that may impact wetlands, aquatic environments, or surface waters meet these specifications. DEM is both the implementing and enforcement agency. The State has satisfied the three elements required under the Final Administrative Changes, and this condition has been met.

URBAN

CONSTRUCTION SITE CHEMICAL CONTROL: Within three years, Rhode Island will finalize amendments to RICRMP Section 300.2 to implement the management measure within the jurisdiction of CRMC, and amend its *Soil Erosion and Sediment Control Handbook* to incorporate the elements of the measure and ensure implementation in areas outside of CRMC jurisdiction.

DECISION: Rhode Island has satisfied this condition.

RATIONALE: The State has addressed the condition through adoption of changes to CRMC regulations (RICRMP Section 300.2) and amendments to the *Rhode Island Soil Erosion and Sediment Control Handbook*. Specifically, Section 300.2, Filling, Removing, or Grading of Shoreline Features, has been revised to require Erosion and Sediment Control Plans for projects, and establishes policies that all such activities be done in accordance with the standards and specifications set forth in the revised *Erosion and Sediment Control Handbook*. Additional requirements include limitation on the application of nutrients to establish and maintain vegetation while minimizing nutrient runoff, and limiting the application of toxic substances and controlling their storage and disposal on site. The revisions to the *Rhode Island Soil Erosion and Sediment Control Handbook* have been made in accordance with the BMPs listed in EPA's *Guidance Specifying Management Measures For Sources of Nonpoint Pollution in Coastal Waters* (January 1993), thereby meeting this element of the condition.

NEW AND EXISTING OSDS: Within three years, Rhode Island will develop a strategy to address inspections of existing OSDS and make the necessary program changes to address nitrogen-limited surface waters.

DECISION: Rhode Island has satisfied this condition.

RATIONALE: The State has addressed both parts of the condition through development of a number of new programs and initiatives. With respect to inspections of existing OSDS, Rhode Island's Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems have been revised to require maintenance by property owners, including inspection of the system every 2-3 years with pumping of septic tank as needed [SD 2.11(b)]. There are also several joint activities taking place at the State and municipal level to address maintenance of OSDS. For example, as part of DEM's Wastewater Management District Program, 13 municipalities are developing wastewater management plans that include strategies for OSDS maintenance, and repair and upgrade of failing systems. A Community Septic System Loan Program using State Revolving Funds and providing low interests loans has been established to accelerate repairs and upgrades of failing systems. To date, Charlestown has an approved community program, and has awarded five loans. South Kingstown has an approved management plan and is in the process of applying for program approval. Management plans must describe how the community will carry out its program to repair/replace failed septic systems and how system management will prevent future septic system failures. DEM has also inventoried municipal capacities and programs in a *Rhode Island Municipal Septic Systems Standards and Programs* reference manual for use by Rhode Island municipalities that are considering development or revision of septic system requirements and management programs, and developed the *Septic System Check-Up: The Rhode Island Handbook for Inspection* for use by wastewater professionals.

Rhode Island has taken many steps to address OSDS in nitrogen-limited surface waters, both through application of land use restrictions and the promotion of alternative systems. The State has adopted Special Area Management Plans for the Salt Pond and Narrow River, which are considered nitrogen-limited areas. Recent revisions to the SAMPs employ several different strategies to address nitrogen-limited waters, including increases in acreage from two to three acres, and a 200 foot setback requirement for Lands of Critical Concern; and requiring nitrogen reducing technologies for new OSDS installation or replacements. Through DEM's Wastewater Management District Programs, several municipalities, including Charlestown, Gloucester, New Shoreham, and North Kingstown, have identified areas where enhanced nitrogen removal systems will be required. While other towns, like Narragansett, have no regulation or ordinance that specifically requires advanced treatment, the town may require nitrogen reduction in the coastal overlay district for systems sited within 200 feet of a coastal feature, based on staff recommendation. DEM has noticed improved communication and coordination between these municipalities and the State in reviewing projects and identifying areas where denitrification systems should be required. Finally, DEM has developed a technical review committee that meets on a monthly to quarterly basis to review and certify alternative OSDS systems and new denitrification technology. To date, it has certified three systems that can be used by municipalities in Rhode Island without requiring a variance.

HYDROMODIFICATION

CONDITION: Within three years, Rhode Island will develop a process to identify opportunities and, where appropriate, implement practices to improve the physical and chemical characteristics of surface waters and instream and riparian habitat in existing channels and protect surface water quality and instream riparian habitat at existing dams.

DECISION: Rhode Island has satisfied this condition.

RATIONALE: The State has met this condition through a combination of its statewide watershed planning effort and a continuing effort to identify hydromodification projects as a priority for section 319 funding. Individual watershed teams are and will be identifying opportunities and priorities for addressing existing nonpoint source problems caused by channelization, dam and dredging action. To implement the priorities identified in the plans, DEM listed hydromodification retrofit projects as priority projects in its requests for proposals for new 319 funding. In the AFY99 Request for Competitive Grant Proposals for Rhode Island Nonpoint Source Management Program, eligible activities include the design and implementation of practices (BMPs) to abate a nonpoint pollution source or the effects of hydromodification including restoration of degraded habitats. Projects addressing the pollutants of concern for Group 1 waters on Rhode Island's list of impaired waters or well-documented water quality impairment received the highest ranking. Examples of hydromodification projects that received funding in FY99 include a project to remove a degraded sluiceway at the Lincoln, Lace and Braid site of the Woonasquatucket River to restore it to a wetland with good habitat value, and a project to mitigate degradation from hydromodification by removing sediments and restoring the habitat resources (salt marsh) of Still House Cove. As further evidence of habitat restoration prioritization activities, Rhode Island provided a map entitled AA Blueprint for Rhode Island's Coastal Habitats; Restoration Opportunities and Accomplishments, 1999, which identifies coastal wetland, eelgrass, anadromous fish run, and other types of habitat restoration projects; completed, ongoing, and proposed. NOAA and EPA find that by taking these steps, Rhode Island clearly has in a place a process to identify and implement practices to address the surface water, instream and riparian physical and chemical characteristics and habitat issues for channels and dams.

WETLANDS

CONDITION: Within three years, Rhode Island will develop a process to identify opportunities and, where appropriate, implement practices to protect existing wetlands and riparian areas that are not being actively altered but that serve a significant nonpoint source abatement function.

DECISION: Rhode Island has satisfied this condition.

RATIONALE: The condition is aimed at protecting wetlands and riparian areas from indirect impacts associated with changes in hydrology or increased sediment/pollutant loading resulting from runoff. Rhode Island has addressed this condition by virtue of the fact that the State has in place management measures and enforceable policies and mechanisms for erosion and sediment control, stormwater management (new and existing development) and watershed management. These measures provide adequate controls to manage and mitigate potentially adverse hydrologic and sediment loading impacts to wetlands and riparian areas that perform beneficial water quality functions and thus should meet the measure. In addition, the State is working with the Environmental Data Center of the University of Rhode Island to develop a GIS-based database and process for prioritizing lands and habitats for acquisition or other types of protection. This information will significantly strengthen consideration of the functional importance of wetlands and riparian areas in abating nonpoint source pollution. It will also contribute to the State's other wetlands and habitat conservation strategies currently under development.

MONITORING:

CONDITION: Within two years, Rhode Island will develop a plan that enables the State to assess over time the extent to which implementation of management measures is reducing pollutant loads and improving water quality.

DECISION: Rhode Island has satisfied this condition.

RATIONALE: Rhode Island has developed a plan that will capitalize on three water quality monitoring programs the State currently has in place under the Clean Water Act (CWA) to meet the coastal nonpoint program requirements. First, DEM will conduct ambient water quality monitoring and measure progress towards achieving State and Federal water quality goals. The State has developed assessments of individual waterbodies, forming baseline data that is available on a computerized system. The State then intends to utilize the requirements of its Total Maximum Daily Load (TMDL) process to identify specific causes of impairments, and target management measures to address the impairments. In some cases where management measures are already being practiced, the TMDL process may require the State to implement additional management measures, all of which would be identified and tracked for effectiveness. The State will also use the section 319 competitive grant program to require pre- and post- monitoring for BMP construction activities. It will consider projects ranging from TMDL development and implementation to watershed initiatives to site-specific pollution abatement projects. By using these three programs, the State will be able to evaluate the effectiveness of management measures in controlling nonpoint source pollution both on a watershed and individual BMP basis, as well as estimate reductions in pollutant loads and assess water quality improvements.