

2013 -- H 5677

=====  
LC01498  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————  
A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Introduced By: Representatives Valencia, Amore, Handy, Cimini, and Tanzi

Date Introduced: February 27, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-17.1-2 of the General Laws in Chapter 42-17.1 entitled  
2 “Department of Environmental Management” is hereby amended to read as follows:

3 **42-17.1-2. Powers and duties.** -- The director of environmental management shall have  
4 the following powers and duties:

5 (1) To supervise and control the protection, development, planning, and utilization of  
6 the natural resources of the state, such resources, including but not limited to, water, plants, trees,  
7 soil, clay, sand, gravel, rocks and other minerals, air, mammals, birds, reptiles, amphibians, fish,  
8 shellfish, and other forms of aquatic, insect, and animal life;

9 (2) To exercise all functions, powers, and duties heretofore vested in the department of  
10 agriculture and conservation, and in each of the divisions of the department, such as the  
11 promotion of agriculture and animal husbandry in their several branches, including the inspection  
12 and suppression of contagious diseases among animals, the regulation of the marketing of farm  
13 products, the inspection of orchards and nurseries, the protection of trees and shrubs from  
14 injurious insects and diseases, protection from forest fires, the inspection of apiaries and the  
15 suppression of contagious diseases among bees, prevention of the sale of adulterated or  
16 misbranded agricultural seeds, promotion and encouragement of the work of farm bureaus in  
17 cooperation with the University of Rhode Island, farmers' institutes and the various organizations  
18 established for the purpose of developing an interest in agriculture, together with such other

1 agencies and activities as the governor and the general assembly may from time to time place  
2 under the control of the department, and as heretofore vested by such of the following chapters  
3 and sections of the general laws as are presently applicable to the department of environmental  
4 management and which were previously applicable to the department of natural resources and the  
5 department of agriculture and conservation or to any of its divisions: chapters 1 through 22,  
6 inclusive, as amended, in title 2 entitled "Agriculture and Forestry;" chapters 1 through 17,  
7 inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry;" chapters 1 through  
8 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife;" chapters 1 through 32,  
9 inclusive, as amended, in title 21 entitled "Food and Drugs;" chapter 7 of title 23 as amended,  
10 entitled "Mosquito Abatement;" and by any other general or public law relating to the department  
11 of agriculture and conservation or to any of its divisions or bureaus;

12 (3) To exercise all the functions, powers, and duties heretofore vested in the division of  
13 parks and recreation of the department of public works by chapters 1, 2, and 5 in title 32 entitled  
14 "Parks and Recreational Areas;" by chapter 22.5 of title 23, as amended, entitled "Drowning  
15 Prevention and Lifesaving;" and by any other general or public law relating to the division of  
16 parks and recreation;

17 (4) To exercise all the functions, powers, and duties heretofore vested in the division of  
18 harbors and rivers of the department of public works, or in the department itself by such as were  
19 previously applicable to the division or the department, of chapters 1 through 22 and sections  
20 thereof, as amended, in title 46 entitled "Waters and Navigation"; and by any other general or  
21 public law relating to the division of harbors and rivers;

22 (5) To exercise all the functions, powers and duties heretofore vested in the department  
23 of health by chapters 25, 18.9, and 19.5 of title 23, as amended, entitled "Health and Safety;" and  
24 by chapters 12 and 16 of title 46, as amended, entitled "Waters and Navigation"; by chapters 3, 4,  
25 5, 6, 7, 9, 11, 13, 18, and 19 of title 4, as amended, entitled "Animals and Animal Husbandry;"  
26 and those functions, powers, and duties specifically vested in the director of environmental  
27 management by the provisions of § 21-2-22, as amended, entitled "Inspection of Animals and  
28 Milk;" together with other powers and duties of the director of the department of health as are  
29 incidental to or necessary for the performance of the functions transferred by this section;

30 (6) To cooperate with the Rhode Island economic development corporation in its  
31 planning and promotional functions, particularly in regard to those resources relating to  
32 agriculture, fisheries, and recreation;

33 (7) To cooperate with, advise, and guide conservation commissions of cities and towns  
34 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter

1 203 of the Public Laws, 1960;

2 (8) To assign or reassign, with the approval of the governor, any functions, duties, or  
3 powers established by this chapter to any agency within the department, except as hereinafter  
4 limited;

5 (9) To cooperate with the water resources board and to provide to the board facilities,  
6 administrative support, staff services, and such other services as the board shall reasonably  
7 require for its operation and, in cooperation with the board and the statewide planning program to  
8 formulate and maintain a long range guide plan and implementing program for development of  
9 major water sources transmissions systems needed to furnish water to regional and local  
10 distribution systems;

11 (10) To cooperate with the solid waste management corporation and to provide to the  
12 corporation such facilities, administrative support, staff services and such other services within  
13 the department as the corporation shall reasonably require for its operation;

14 (11) To provide for the maintenance of waterways and boating facilities, consistent with  
15 chapter 6.1 of title 46, by: (i) establishing minimum standards for upland beneficial use and  
16 disposal of dredged material; (ii) promulgating and enforcing rules for water quality, ground  
17 water protection, and fish and wildlife protection pursuant to § 42-17.1-24; (iii) planning for the  
18 upland beneficial use and/or disposal of dredged material in areas not under the jurisdiction of the  
19 council pursuant to § 46-23-6(2); and (iv) cooperating with the coastal resources management  
20 council in the development and implementation of comprehensive programs for dredging as  
21 provided for in §§ 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) monitoring dredge material  
22 management and disposal sites in accordance with the protocols established pursuant to § 46-6.1-  
23 5(3) and the comprehensive program provided for in § 46-23-6(1)(ii)(H); no powers or duties  
24 granted herein shall be construed to abrogate the powers or duties granted to the coastal resources  
25 management council under chapter 23 of title 46, as amended;

26 (12) To establish minimum standards, subject to the approval of the environmental  
27 standards board, relating to the location, design, construction and maintenance of all sewage  
28 disposal systems;

29 (13) To enforce, by such means as provided by law, the standards for the quality of air,  
30 and water, and the design, construction and operation of all sewage disposal systems; any order or  
31 notice issued by the director relating to the location, design, construction or maintenance of a  
32 sewage disposal system shall be eligible for recordation under chapter 13 of title 34. The director  
33 shall forward the order or notice to the city or town wherein the subject property is located and  
34 the order or notice shall be recorded in the general index by the appropriate municipal official in

1 the land evidence records in the city or town wherein the subject property is located. Any  
2 subsequent transferee of that property shall be responsible for complying with the requirements of  
3 the order or notice. Upon satisfactory completion of the requirements of the order or notice, the  
4 director shall provide written notice of the same, which notice shall be similarly eligible for  
5 recordation. The original written notice shall be forwarded to the city or town wherein the subject  
6 property is located and the notice of satisfactory completion shall be recorded in the general index  
7 by the appropriate municipal official in the land evidence records in the city or town wherein the  
8 subject property is located. A copy of the written notice shall be forwarded to the owner of the  
9 subject property within five (5) days of a request for it, and, in any event, shall be forwarded to  
10 the owner of the subject property within thirty (30) days after correction;

11 (14) To establish minimum standards for the establishment and maintenance of salutary  
12 environmental conditions, including standards and methods for the assessment and the  
13 consideration of the cumulative effects on the environment of regulatory actions and decisions,  
14 which standards for consideration of cumulative effects shall provide for: (i) evaluation of  
15 potential cumulative effects that could adversely effect public health and/or impair ecological  
16 functioning; (ii) analysis of such other matters relative to cumulative effects as the department  
17 may deem appropriate in fulfilling its duties, functions and powers; which standards and methods  
18 shall only be applicable to ISDS systems in the town of Jamestown in areas that are dependent for  
19 water supply on private and public wells, unless broader use is approved by the general assembly.  
20 The department shall report to the general assembly not later than March 15, 2008 with regard to  
21 the development and application of such standards and methods in Jamestown.

22 (15) To establish and enforce minimum standards for permissible types of septage,  
23 industrial waste disposal sites and waste oil disposal sites;

24 (16) To establish minimum standards subject to the approval of the environmental  
25 standards board for permissible types of refuse disposal facilities, the design, construction,  
26 operation, and maintenance of disposal facilities; and the location of various types of facilities;

27 (17) To exercise all functions, powers, and duties necessary for the administration of  
28 chapter 19.1 of title 23 entitled "Rhode Island Hazardous Waste Management Act";

29 (18) To designate in writing any person in any department of the state government or  
30 any official of a district, county, city, town, or other governmental unit, with that official's  
31 consent, to enforce any rule, regulation, or order promulgated and adopted by the director under  
32 any provision of law; provided, however, that enforcement of powers of the coastal resources  
33 management council shall be assigned only to employees of the department of environmental  
34 management, except by mutual agreement or as otherwise provided in chapter 23 of title 46;

1 (19) To issue and enforce such rules, regulations, and orders as may be necessary to  
2 carry out the duties assigned to the director and the department by any provision of law; and to  
3 conduct such investigations and hearings and to issue, suspend, and revoke such licenses as may  
4 be necessary to enforce those rules, regulations, and orders.

5 Notwithstanding the provisions of § 42-35-9 to the contrary, no informal disposition of a  
6 contested licensing matter shall occur where resolution substantially deviates from the original  
7 application unless all interested parties shall be notified of said proposed resolution and provided  
8 with opportunity to comment upon said resolution pursuant to applicable law and any rules and  
9 regulations established by the director.

10 (20) To enter, examine or survey at any reasonable time such places as the director  
11 deems necessary to carry out his or her responsibilities under any provision of law subject to the  
12 following provisions:

13 (i) For criminal investigations, the director shall, pursuant to chapter 5 of title 12, seek a  
14 search warrant from an official of a court authorized to issue warrants, unless a search without a  
15 warrant is otherwise allowed or provided by law;

16 (ii) All administrative inspections shall be conducted pursuant to administrative  
17 guidelines promulgated by the department in accordance with chapter 35 of title 42.

18 (B) A warrant shall not be required for administrative inspections if conducted under the  
19 following circumstances, in accordance with the applicable constitutional standards:

20 (I) For closely regulated industries;

21 (II) In situations involving open fields or conditions that are in plain view;

22 (III) In emergency situations;

23 (IV) In situations presenting an imminent threat to the environment or public health,  
24 safety or welfare;

25 (V) If the owner, operator, or agent in charge of the facility, property, site or location  
26 consents; or

27 (VI) In other situations in which a warrant is not constitutionally required.

28 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the  
29 director in his or her discretion deems it advisable, an administrative search warrant, or its  
30 functional equivalent, may be obtained by the director from a neutral magistrate for the purpose  
31 of conducting an administrative inspection. The warrant shall be issued in accordance with the  
32 applicable constitutional standards for the issuance of administrative search warrants. The  
33 administrative standard of probable cause, not the criminal standard of probable cause, shall  
34 apply to applications for administrative search warrants.

1 (I) The need for, or reliance upon, an administrative warrant shall not be construed as  
2 requiring the department to forfeit the element of surprise in its inspection efforts.

3 (II) An administrative warrant issued pursuant to this subsection must be executed and  
4 returned within ten (10) days of its issuance date unless, upon a showing of need for additional  
5 time, the court orders otherwise.

6 (III) An administrative warrant may authorize the review and copying of documents that  
7 are relevant to the purpose of the inspection. If documents must be seized for the purpose of  
8 copying, and the warrant authorizes such seizure, the person executing the warrant shall prepare  
9 an inventory of the documents taken. The time, place and manner regarding the making of the  
10 inventory shall be set forth in the terms of the warrant itself, as dictated by the court. A copy of  
11 the inventory shall be delivered to the person from whose possession or facility the documents  
12 were taken. The seized documents shall be copied as soon as feasible under circumstances  
13 preserving their authenticity, then returned to the person from whose possession or facility the  
14 documents were taken.

15 (IV) An administrative warrant may authorize the taking of samples of air, water or soil  
16 or of materials generated, stored or treated at the facility, property, site or location. Upon request,  
17 the department shall make split samples available to the person whose facility, property, site or  
18 location is being inspected.

19 (V) Service of an administrative warrant may be required only to the extent provided for  
20 in the terms of the warrant itself, by the issuing court.

21 (D) *Penalties.* Any willful and unjustified refusal of right of entry and inspection to  
22 department personnel pursuant to an administrative warrant shall constitute a contempt of court  
23 and shall subject the refusing party to sanctions, which in the court's discretion may result in up to  
24 six (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per  
25 refusal.

26 (21) To give notice of an alleged violation of law to the person responsible therefor  
27 whenever the director determines that there are reasonable grounds to believe that there is a  
28 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted  
29 pursuant to authority granted to him or her, unless other notice and hearing procedure is  
30 specifically provided by that law. Nothing in this chapter shall limit the authority of the attorney  
31 general to prosecute offenders as required by law.

32 (i) The notice shall provide for a time within which the alleged violation shall be  
33 remedied, and shall inform the person to whom it is directed that a written request for a hearing  
34 on the alleged violation may be filed with the director within ten (10) days after service of the

1 notice. The notice will be deemed properly served upon a person if a copy thereof is served him  
2 or her personally, or sent by registered or certified mail to his or her last known address, or if he  
3 or she is served with notice by any other method of service now or hereafter authorized in a civil  
4 action under the laws of this state. If no written request for a hearing is made to the director  
5 within ten (10) days of the service of notice, the notice shall automatically become a compliance  
6 order.

7 (ii) Whenever the director determines that there exists a violation of any law, rule, or  
8 regulation within his or her jurisdiction which requires immediate action to protect the  
9 environment, he or she may, without prior notice of violation or hearing, issue an immediate  
10 compliance order stating the existence of the violation and the action he or she deems necessary.  
11 The compliance order shall become effective immediately upon service or within such time as is  
12 specified by the director in such order. No request for a hearing on an immediate compliance  
13 order may be made.

14 (B) Any immediate compliance order issued under this section without notice and prior  
15 hearing shall be effective for no longer than forty-five (45) days; provided, however, that for  
16 good cause shown the order may be extended one additional period not exceeding forty-five (45)  
17 days.

18 (iii) The director may, at his or her discretion and for the purposes of timely and effective  
19 resolution and return to compliance, cite a person for alleged noncompliance through the issuance  
20 of an expedited citation in accordance with subsection 42-17.6-3(c).

21 ~~(iii)~~ (iv) If a person upon whom a notice of violation has been served under the  
22 provisions of this section or if a person aggrieved by any such notice of violation requests a  
23 hearing before the director within ten (10) days of the service of notice of violation, the director  
24 shall set a time and place for the hearing, and shall give the person requesting that hearing at least  
25 five (5) days written notice thereof. After the hearing, the director may make findings of fact and  
26 shall sustain, modify, or withdraw the notice of violation. If the director sustains or modifies the  
27 notice, that decision shall be deemed a compliance order and shall be served upon the person  
28 responsible in any manner provided for the service of the notice in this section.

29 ~~(iv)~~ (v) The compliance order shall state a time within which the violation shall be  
30 remedied, and the original time specified in the notice of violation shall be extended to the time  
31 set in the order.

32 ~~(v)~~ (vi) Whenever a compliance order has become effective, whether automatically  
33 where no hearing has been requested, where an immediate compliance order has been issued, or  
34 upon decision following a hearing, the director may institute injunction proceedings in the

1 superior court of the state for enforcement of the compliance order and for appropriate temporary  
2 relief, and in that proceeding the correctness of a compliance order shall be presumed and the  
3 person attacking the order shall bear the burden of proving error in the compliance order, except  
4 that the director shall bear the burden of proving in the proceeding the correctness of an  
5 immediate compliance order. The remedy provided for in this section shall be cumulative and not  
6 exclusive and shall be in addition to remedies relating to the removal or abatement of nuisances  
7 or any other remedies provided by law.

8 ~~(vi)~~ (vii) Any party aggrieved by a final judgment of the superior court may, within  
9 thirty (30) days from the date of entry of such judgment, petition the supreme court for a writ of  
10 certiorari to review any questions of law. The petition shall set forth the errors claimed. Upon the  
11 filing of the petition with the clerk of the supreme court, the supreme court may, if it sees fit,  
12 issue its writ of certiorari;

13 (22) To impose administrative penalties in accordance with the provisions of chapter  
14 17.6 of this title and to direct that such penalties be paid into the account established by  
15 subdivision (26); and

16 (23) The following definitions shall apply in the interpretation of the provisions of this  
17 chapter:

18 (i) *Director*: The term "director" shall mean the director of environmental management  
19 of the state of Rhode Island or his or her duly authorized agent.

20 (ii) *Person*: The term "person" shall include any individual, group of individuals, firm,  
21 corporation, association, partnership or private or public entity, including a district, county, city,  
22 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual  
23 having active and general supervision of the properties of such corporation.

24 (iii) *Service*: (A) Service upon a corporation under this section shall be deemed to  
25 include service upon both the corporation and upon the person having active and general  
26 supervision of the properties of such corporation.

27 (B) For purposes of calculating the time within which a claim for a hearing is made  
28 pursuant to subdivision (21)(i) of this section heretofore, service shall be deemed to be the date of  
29 receipt of such notice or three (3) days from the date of mailing of said notice, whichever shall  
30 first occur.

31 (24) To conduct surveys of the present private and public camping and other  
32 recreational areas available and to determine the need for and location of such other camping and  
33 recreational areas as may be deemed necessary and in the public interest of the state of Rhode  
34 Island and to report back its findings on an annual basis to the general assembly on or before



1 March 1 of every year;

2 (ii) Additionally, the director of the department of environmental management shall take  
3 such additional steps, including but not limited to, matters related to funding as may be necessary  
4 to establish such other additional recreational facilities and areas as are deemed to be in the public  
5 interest.

6 (25) To apply for and accept grants and bequests of funds with the approval of the  
7 director of administration from other states, interstate agencies and independent authorities, and  
8 private firms, individuals and foundations, for the purpose of carrying out his or her lawful  
9 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt  
10 account created in the Natural Resources Program for funds made available for that program's  
11 purposes or in a restricted receipt account created in the Environmental Protection Program for  
12 funds made available for that program's purposes. All expenditures from the accounts shall be  
13 subject to appropriation by the general assembly, and shall be expended in accordance with the  
14 provisions of the grant or bequest. In the event that a donation or bequest is unspecified or in the  
15 event that the trust account balance shows a surplus after the project as provided for in the grant  
16 or bequest has been completed, the director may utilize said appropriated unspecified or  
17 appropriated surplus funds for enhanced management of the department's forest and outdoor  
18 public recreation areas, or other projects or programs that promote the accessibility of recreational  
19 opportunities for Rhode Island residents and visitors.

20 (ii) The director shall submit to the house fiscal advisor and the senate fiscal advisor, by  
21 October 1 of each year, a detailed report on the amount of funds received and the uses made of  
22 such funds.

23 (26) To establish fee schedules by regulation with the approval of the governor for the  
24 processing of applications and the performing of related activities in connection with the  
25 department's responsibilities pursuant to subdivision (12) of this section, chapter 19.1 of title 23  
26 as it relates to inspections performed by the department to determine compliance with chapter  
27 19.1 and rules and regulations promulgated in accordance therewith, chapter 18.9 of title 23 as it  
28 relates to inspections performed by the department to determine compliance with chapter 18.9  
29 and the rules and regulations promulgated in accordance therewith, chapters 19.5 and 23 of title  
30 23; chapter 12 of title 46 insofar as it relates to water quality certifications and related reviews  
31 performed pursuant to provisions of the federal Clean Water Act, the regulation and  
32 administration of underground storage tanks and all other programs administered under chapter  
33 12 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46 insofar  
34 as they relate to any reviews and related activities performed under the provisions of the

1 Groundwater Protection Act, chapter 23-24.9 as it relates to the regulation and administration of  
2 mercury-added products, and chapter 17.7 of this title insofar as it relates to administrative  
3 appeals of all enforcement, permitting and licensing matters to the administrative adjudication  
4 division for environmental matters. Two (2) fee ranges shall be required: for "Appeal of  
5 enforcement actions", a range of fifty dollars (\$50) to one hundred dollars (\$100), and for  
6 "Appeal of application decisions", a range of five hundred dollars (\$500) to ten thousand dollars  
7 (\$10,000). The monies from the administrative adjudication fees will be deposited as general  
8 revenues and the amounts appropriated shall be used for the costs associated with operating the  
9 administrative adjudication division.

10           There is hereby established an account within the general fund to be called the water  
11 and air protection program. The account shall consist of sums appropriated for water and air  
12 pollution control and waste monitoring programs and the state controller is hereby authorized and  
13 directed to draw his or her orders upon the general treasurer for the payment of such sums or such  
14 portions thereof as may be required from time to time upon receipt by him or her of properly  
15 authenticated vouchers. All amounts collected under the authority of this subdivision for the  
16 sewage disposal system program and fresh waters wetlands program will be deposited as general  
17 revenues and the amounts appropriated shall be used for the purposes of administering and  
18 operating the programs. The director shall submit to the house fiscal advisor and the senate fiscal  
19 advisor by January 15 of each year a detailed report on the amount of funds obtained from fines  
20 and fees and the uses made of such funds.

21           (27) To establish and maintain a list or inventory of areas within the state worthy of  
22 special designation as "scenic" to include, but not be limited to, certain state roads or highways,  
23 scenic vistas and scenic areas, and to make the list available to the public.

24           (28) To establish and maintain an inventory of all interests in land held by public and  
25 private land trust and to exercise all powers vested herein to insure the preservation of all  
26 identified lands.

27           (i) The director may promulgate and enforce rules and regulations to provide for the  
28 orderly and consistent protection, management, continuity of ownership and purpose, and  
29 centralized records-keeping for lands, water, and open spaces owned in fee or controlled in full or  
30 in part through other interests, rights, or devices such as conservation easements or restrictions,  
31 by private and public land trusts in Rhode Island. The director may charge a reasonable fee for  
32 filing of each document submitted by a land trust.

33           (ii) The term "public land trust" means any public instrumentality created by a Rhode  
34 Island municipality for the purposes stated herein and financed by means of public funds

1 collected and appropriated by the municipality. The term "private land trust" means any group of  
2 five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode  
3 Island as a nonbusiness corporation for the purposes stated herein, or a national organization such  
4 as the nature conservancy. The main purpose of either a public or a private land trust shall be the  
5 protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other  
6 natural features, areas, or open space for the purpose of managing or maintaining, or causing to  
7 be managed or maintained by others, the land, water, and other natural amenities in any  
8 undeveloped and relatively natural state in perpetuity. A private land trust must be granted  
9 exemption from federal income tax under Internal Revenue Code 501c(3) [26 U.S.C. § 501(c)(3)]  
10 within two (2) years of its incorporation in Rhode Island or it may not continue to function as a  
11 land trust in Rhode Island. A private land trust may not be incorporated for the exclusive purpose  
12 of acquiring or accepting property or rights in property from a single individual, family,  
13 corporation, business, partnership, or other entity. Membership in any private land trust must be  
14 open to any individual subscribing to the purposes of the land trust and agreeing to abide by its  
15 rules and regulations including payment of reasonable dues.

16 (iii) Private land trusts will, in their articles of association or their bylaws, as  
17 appropriate, provide for the transfer to an organization created for the same or similar purposes  
18 the assets, lands and land rights and interests held by the land trust in the event of termination or  
19 dissolution of the land trust.

20 (B) All land trusts, public and private, will record in the public records of the  
21 appropriate towns and cities in Rhode Island all deeds, conservation easements or restrictions or  
22 other interests and rights acquired in land and will also file copies of all such documents and  
23 current copies of their articles of association, their bylaws, and annual reports with the secretary  
24 of state, and with the director of the Rhode Island department of environmental management. The  
25 director is hereby directed to establish and maintain permanently a system for keeping records of  
26 all private and public land trust land holdings in Rhode Island.

27 (29) The director will contact in writing, not less often than once every two (2) years,  
28 each public or private land trust to ascertain: that all lands held by the land trust are recorded with  
29 the director; the current status and condition of each land holding; that any funds or other assets  
30 of the land trust held as endowment for specific lands have been properly audited at least once  
31 within the two (2) year period; the name of the successor organization named in the public or  
32 private land trust's bylaws or articles of association; and any other information the director deems  
33 essential to the proper and continuous protection and management of land and interests or rights  
34 in land held by the land trust. In the event that the director determines that a public or private land

1 trust holding land or interest in land appears to have become inactive, he or she shall initiate  
2 proceedings to effect the termination of the land trust and the transfer of its lands, assets, land  
3 rights, and land interests to the successor organization named in the defaulting trust's bylaws or  
4 articles of association or to another organization created for the same or similar purposes. Should  
5 such a transfer not be possible, then the land trust, assets, and interest and rights in land will be  
6 held in trust by the state of Rhode Island and managed by the director for the purposes stated at  
7 the time of original acquisition by the trust. Any trust assets or interests other than land or rights  
8 in land accruing to the state under such circumstances will be held and managed as a separate  
9 fund for the benefit of the designated trust lands.

10 (30) Consistent with federal standards, issue and enforce such rules, regulations and  
11 orders as may be necessary to establish requirements for maintaining evidence of financial  
12 responsibility for taking corrective action and compensating third parties for bodily injury and  
13 property damage caused by sudden and non-sudden accidental releases arising from operating  
14 underground storage tanks.

15 (31) To enforce, by such means as provided by law, the standards for the quality of air,  
16 and water, and the location, design, construction and operation of all underground storage  
17 facilities used for storing petroleum products or hazardous materials; any order or notice issued  
18 by the director relating to the location, design construction, operation or maintenance of an  
19 underground storage facility used for storing petroleum products or hazardous materials shall be  
20 eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice  
21 to the city or town wherein the subject facility is located, and the order or notice shall be recorded  
22 in the general index by the appropriate municipal officer in the land evidence records in the city  
23 or town wherein the subject facility is located. Any subsequent transferee of that facility shall be  
24 responsible for complying with the requirements of the order or notice. Upon satisfactory  
25 completion of the requirements of the order or notice, the director shall provide written notice of  
26 the same, which notice shall be eligible for recordation. The original written notice shall be  
27 forwarded to the city or town wherein the subject facility is located, and the notice of satisfactory  
28 completion shall be recorded in the general index by the appropriate municipal official in the land  
29 evidence records in the city or town wherein the subject facility is located. A copy of the written  
30 notice shall be forwarded to the owner of the subject facility within five (5) days of a request for  
31 it, and, in any event, shall be forwarded to the owner of the subject facility within thirty (30) days  
32 after correction.

33 (32) To manage and disburse any and all funds collected pursuant to § 46-12.9-4, in  
34 accordance with § 46-12.9-5, and other provisions of the Rhode Island Underground Storage

1 Tank Financial Responsibility Act, as amended.

2 (33) To support, facilitate and assist the Rhode Island Natural History Survey, as  
3 appropriate and/or as necessary, in order to accomplish the important public purposes of the  
4 survey in gathering and maintaining data on Rhode Island natural history, making public  
5 presentations and reports on natural history topics, ranking species and natural communities,  
6 monitoring rare species and communities, consulting on open space acquisitions and management  
7 plans, reviewing proposed federal and state actions and regulations with regard to their potential  
8 impact on natural communities, and seeking outside funding for wildlife management, land  
9 management and research.

10 (34) To promote the effective stewardship of lakes and ponds including collaboration  
11 with associations of lakefront property owners on planning and management actions that will  
12 prevent and mitigate water quality degradation, the loss of native habitat due to infestation of  
13 non-native species and nuisance conditions that result from excessive growth of algal or non-  
14 native plant species. By January 31, 2012, the director shall prepare and submit a report to the  
15 governor and general assembly that based upon available information provides: (a) an assessment  
16 of lake conditions including a description of the presence and extent of aquatic invasive species in  
17 lakes and ponds; (b) recommendations for improving the control and management of aquatic  
18 invasives species in lakes and ponds; and (c) an assessment of the feasibility of instituting a boat  
19 sticker program for the purpose of generating funds to support implementation actions to control  
20 aquatic invasive species in the freshwaters of the state.

21 SECTION 2. Sections 42-17.6-3 and 42-17.6-4 of the General Laws in Chapter 42-17.6  
22 entitled "Administrative Penalties for Environmental Violations" are hereby amended to read as  
23 follows:

24 **42-17.6-3. Notice of violation and assessment of penalty.** -- (a) Whenever the director  
25 seeks to assess an administrative penalty on any person, the director shall cause to be served upon  
26 the person, either by service, in hand, or by certified mail, return receipt requested, a written  
27 notice of its intent to assess an administrative penalty which shall include:

28 (1) A concise statement of the alleged act or omission for which the administrative  
29 penalty is sought to be assessed;

30 (2) Each law, rule, regulation, order, permit, license, or approval which has not been  
31 complied with as a result of the alleged act or omission;

32 (3) The amount which the director seeks to assess as an administrative penalty for each  
33 alleged act or omission;

34 (4) A statement of the person's right to an adjudicatory hearing on the proposed

1 assessment;

2 (5) The requirements the person must comply with to avoid being deemed to have waived  
3 the right to an adjudicatory hearing; and

4 (6) The manner of payment thereof if the person elects to pay the penalty and waive an  
5 adjudicatory hearing.

6 (b) After written notice of noncompliance or intent to assess an administrative penalty  
7 has been given, each day thereafter during which the noncompliance occurs or continues shall  
8 constitute a separate offense and shall be subject to a separate administrative penalty if reasonable  
9 efforts have not been made to promptly come into compliance.

10 (c) For purposes of timely and effective resolution and return to compliance, the director  
11 may cite a person for alleged non-compliance through the issuance of an expedited citation,  
12 which may include assessment of penalties up to two thousand five hundred dollars (\$2,500).  
13 Each expedited citation shall include a concise statement of the alleged act or omission that  
14 constitutes non-compliance and each law, rule, regulation, order, permit, license or approval  
15 which has not been complied with. Expedited citations issued under this section without notice  
16 and prior hearing shall be effective no longer than sixty (60) days from the date of receipt by the  
17 person alleged to be in non-compliance. In the event that the alleged non-compliance and penalty  
18 is unresolved and the expedited citation expires, the director retains the right to issue a separate  
19 notice of violation and order and penalty, subject to appeal pursuant to section 42-17.6-4.

20 **42-17.6-4. Right to adjudicatory hearing.** -- (a) Whenever the director seeks to assess  
21 an administrative penalty on any person other than through an expedited citation issued pursuant  
22 to subsection 42-17.6-3 (c), the person shall have the right to an adjudicatory hearing under  
23 chapter 35 of this title, the provisions of which shall apply except when they are inconsistent with  
24 the provisions of this chapter.

25 (b) A person shall be deemed to have waived his or her right to an adjudicatory hearing  
26 unless, within ten (10) days of the date of the director's notice that he or she seeks to assess an  
27 administrative penalty, the person files with the director or the clerk of the administrative  
28 adjudication division a written statement denying the occurrence of any of the acts or omissions  
29 alleged by the director in the notice, or asserting that the money amount of the proposed  
30 administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to chapter 35  
31 of title 42, the director shall, by a preponderance of the evidence, prove the occurrence of each act  
32 or omission alleged by the director.

33 (c) If a person waives his or her right to an adjudicatory hearing, the proposed  
34 administrative penalty shall be final immediately upon the waiver.

1 SECTION 3. This act shall take effect upon passage.

=====  
LC01498  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\*\*\*

- 1           This act would allow the director of environmental management to use an expedited
- 2 citation process for alleged noncompliance.
- 3           This act would take effect upon passage.

=====  
LC01498  
=====