

2021 -- S 0321 SUBSTITUTE A

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO WATERS AND NAVIGATION -- STATE AFFAIRS AND GOVERNMENT --
HEALTH AND SAFETY

Introduced By: Senators Euer, Cano, Murray, DiMario, and Valverde

Date Introduced: February 18, 2021

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-12-9 and 46-12-17 of the General Laws in Chapter 46-12 entitled
2 "Water Pollution" are hereby amended to read as follows:

3 **46-12-9. Notices of violation and compliance orders.**

4 (a) The director shall follow the procedures provided in ~~§ 42-17.1-10(g)~~ [§ 42-17.1-2\(21\)](#)
5 in issuing any notice of violation or compliance order authorized pursuant to this chapter or any
6 rules, regulations, or permits promulgated thereunder.

7 (b) Where an order of the director does not specify the system or means to be adopted, the
8 person against whom an order is entered shall, before proceeding to install a system or means,
9 submit to the director a plan or statement describing the system or means which the person proposes
10 to adopt.

11 (c) Any order or notice issued by the director shall be eligible for recordation under chapter
12 13 of title 34. The director shall forward the original order or notice to the city or town wherein the
13 subject property is located and the order or notice shall be recorded in the land evidence records in
14 the city or town wherein the subject property is located. Any subsequent transferee of that property
15 shall be responsible for complying with the requirements of the order or notice. Upon satisfactory
16 completion of the requirements of the order or notice, the director shall provide written notice of
17 the same to the owner of the subject property, which notice shall be similarly eligible for
18 recordation.

1 **46-12-17. Proceedings for enforcement.**

2 The superior court for Providence County shall have concurrent jurisdiction to enforce the
3 provisions of this chapter and any rule, regulation, permit, or order issued pursuant thereto.
4 Proceedings for enforcement may be instituted and prosecuted in the name of the director, by either
5 the director or by the attorney general, and in any proceedings in which the director or the attorney
6 general seeks injunctive relief ~~is sought~~, it shall not be necessary ~~for the director~~ to show that
7 without the relief, the injury which will result will be irreparable or that the remedy at law is
8 inadequate. Proceedings provided in this section shall be in addition to and may be utilized in lieu
9 of other administrative or judicial proceedings authorized by this chapter.

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

12 **42-17.1-2. Powers and duties.**

13 The director of environmental management shall have the following powers and duties:

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

18 (2) To exercise all functions, powers, and duties heretofore vested in the department of
19 agriculture and conservation, and in each of the divisions of the department, such as the promotion
20 of agriculture and animal husbandry in their several branches, including the inspection and
21 suppression of contagious diseases among animals; the regulation of the marketing of farm
22 products; the inspection of orchards and nurseries; the protection of trees and shrubs from injurious
23 insects and diseases; protection from forest fires; the inspection of apiaries and the suppression of
24 contagious diseases among bees; the prevention of the sale of adulterated or misbranded
25 agricultural seeds; promotion and encouragement of the work of farm bureaus, in cooperation with
26 the University of Rhode Island, farmers' institutes, and the various organizations established for the
27 purpose of developing an interest in agriculture; together with such other agencies and activities as
28 the governor and the general assembly may, from time to time, place under the control of the
29 department; and as heretofore vested by such of the following chapters and sections of the general
30 laws as are presently applicable to the department of environmental management and that were
31 previously applicable to the department of natural resources and the department of agriculture and
32 conservation or to any of its divisions: chapters 1 through 22, inclusive, as amended, in title 2
33 entitled "Agriculture and Forestry"; chapters 1 through 17, inclusive, as amended, in title 4 entitled
34 "Animals and Animal Husbandry"; chapters 1 through 19, inclusive, as amended, in title 20 entitled

1 "Fish and Wildlife"; chapters 1 through 32, inclusive, as amended, in title 21 entitled "Food and
2 Drugs"; chapter 7 of title 23, as amended, entitled "Mosquito Abatement"; and by any other general
3 or public law relating to the department of agriculture and conservation or to any of its divisions or
4 bureaus;

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

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

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

23 (6) To cooperate with the Rhode Island commerce corporation in its planning and
24 promotional functions, particularly in regard to those resources relating to agriculture, fisheries,
25 and recreation;

26 (7) To cooperate with, advise, and guide conservation commissions of cities and towns
27 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter
28 203 of the Public Laws, 1960;

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

32 (9) To cooperate with the water resources board and to provide to the board facilities,
33 administrative support, staff services, and other services as the board shall reasonably require for
34 its operation and, in cooperation with the board and the statewide planning program, to formulate

1 and maintain a long-range guide plan and implementing program for development of major water-
2 sources transmission systems needed to furnish water to regional- and local-distribution systems;

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

6 (11) To provide for the maintenance of waterways and boating facilities, consistent with
7 chapter 6.1 of title 46, by: (i) Establishing minimum standards for upland beneficial use and
8 disposal of dredged material; (ii) Promulgating and enforcing rules for water quality, ground water
9 protection, and fish and wildlife protection pursuant to § 42-17.1-24; (iii) Planning for the upland
10 beneficial use and/or disposal of dredged material in areas not under the jurisdiction of the council
11 pursuant to § 46-23-6(2); and (iv) Cooperating with the coastal resources management council in
12 the development and implementation of comprehensive programs for dredging as provided for in
13 §§ 46-23-6(1)(ii)(H) and 46-23-18.3; and (v) Monitoring dredge material management and disposal
14 sites in accordance with the protocols established pursuant to § 46-6.1-5(a)(3) and the
15 comprehensive program provided for in § 46-23-6(1)(ii)(H); no powers or duties granted herein
16 shall be construed to abrogate the powers or duties granted to the coastal resources management
17 council under chapter 23 of title 46, as amended;

18 (12) To establish minimum standards, subject to the approval of the environmental
19 standards board, relating to the location, design, construction, and maintenance of all sewage-
20 disposal systems;

21 (13) To enforce, by such means as provided by law, the standards for the quality of air, and
22 water, and the design, construction, and operation of all sewage-disposal systems; any order or
23 notice issued by the director relating to the location, design, construction, or maintenance of a
24 sewage-disposal system shall be eligible for recordation under chapter 13 of title 34. The director
25 shall forward the order or notice to the city or town wherein the subject property is located and the
26 order or notice shall be recorded in the general index by the appropriate municipal official in the
27 land evidence records in the city or town wherein the subject property is located. Any subsequent
28 transferee of that property shall be responsible for complying with the requirements of the order or
29 notice. Upon satisfactory completion of the requirements of the order or notice, the director shall
30 provide written notice of the same, which notice shall be similarly eligible for recordation. The
31 original written notice shall be forwarded to the city or town wherein the subject property is located
32 and the notice of satisfactory completion shall be recorded in the general index by the appropriate
33 municipal official in the land evidence records in the city or town wherein the subject property is
34 located. A copy of the written notice shall be forwarded to the owner of the subject property within

1 five (5) days of a request for it, and, in any event, shall be forwarded to the owner of the subject
2 property within thirty (30) days after correction;

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

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

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

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

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

27 (19) To issue and enforce the rules, regulations, and orders as may be necessary to carry
28 out the duties assigned to the director and the department by any provision of law; and to conduct
29 investigations and hearings and to issue, suspend, and revoke licenses as may be necessary to
30 enforce those rules, regulations, and orders. Any license suspended under the rules, regulations,
31 and/or orders shall be terminated and revoked if the conditions that led to the suspension are not
32 corrected to the satisfaction of the director within two (2) years; provided that written notice is
33 given by certified mail, return receipt requested, no less than sixty (60) days prior to the date of
34 termination.

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

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

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

12 (ii)(A) All administrative inspections shall be conducted pursuant to administrative
13 guidelines promulgated by the department in accordance with chapter 35 of title 42;

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

16 (I) For closely regulated industries;

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

18 (III) In emergency situations;

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

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

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

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

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

33 (II) An administrative warrant issued pursuant to this subsection must be executed and
34 returned within ten (10) days of its issuance date unless, upon a showing of need for additional

1 time, the court orders otherwise;

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

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

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

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

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

27 (i) The notice shall provide for a time within which the alleged violation shall be remedied,
28 and shall inform the person to whom it is directed that a written request for a hearing on the alleged
29 violation may be filed with the director within ~~ten (10)~~ twenty (20) days after service of the notice.
30 The notice will be deemed properly served upon a person if a copy thereof is served him or her
31 personally; or sent by registered or certified mail to his or her last known address; or if he or she is
32 served with notice by any other method of service now or hereafter authorized in a civil action
33 under the laws of this state. If no written request for a hearing is made to the director within ~~ten~~
34 ~~(10)~~ twenty (20) days of the service of notice, the notice shall automatically become a compliance

1 order;

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

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

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

14 (iv) If a person upon whom a notice of violation has been served under the provisions of
15 this section or if a person aggrieved by any such notice of violation requests a hearing before the
16 director within ~~ten (10)~~ twenty (20) days of the service of notice of violation, the director shall set
17 a time and place for the hearing, and shall give the person requesting that hearing at least five (5)
18 days written notice thereof. After the hearing, the director may make findings of fact and shall
19 sustain, modify, or withdraw the notice of violation. If the director sustains or modifies the notice,
20 that decision shall be deemed a compliance order and shall be served upon the person responsible
21 in any manner provided for the service of the notice in this section;

22 (v) The compliance order shall state a time within which the violation shall be remedied,
23 and the original time specified in the notice of violation shall be extended to the time set in the
24 order;

25 (vi) Whenever a compliance order has become effective, whether automatically where no
26 hearing has been requested, where an immediate compliance order has been issued, or upon
27 decision following a hearing, the director may institute injunction proceedings in the superior court
28 of the state for enforcement of the compliance order and for appropriate temporary relief, and in
29 that proceeding, the correctness of a compliance order shall be presumed and the person attacking
30 the order shall bear the burden of proving error in the compliance order, except that the director
31 shall bear the burden of proving in the proceeding the correctness of an immediate compliance
32 order. The remedy provided for in this section shall be cumulative and not exclusive and shall be
33 in addition to remedies relating to the removal or abatement of nuisances or any other remedies
34 provided by law;

1 (vii) Any party aggrieved by a final judgment of the superior court may, within thirty (30)
2 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari to
3 review any questions of law. The petition shall set forth the errors claimed. Upon the filing of the
4 petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of
5 certiorari.

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

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

10 (i) Director: The term "director" shall mean the director of environmental management of
11 the state of Rhode Island or his or her duly authorized agent;

12 (ii) Person: The term "person" shall include any individual, group of individuals, firm,
13 corporation, association, partnership, or private or public entity, including a district, county, city,
14 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual
15 having active and general supervision of the properties of the corporation;

16 (iii) Service: (A) Service upon a corporation under this section shall be deemed to include
17 service upon both the corporation and upon the person having active and general supervision of the
18 properties of the corporation;

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

22 (24)(i) To conduct surveys of the present private and public camping and other recreational
23 areas available and to determine the need for and location of other camping and recreational areas
24 as may be deemed necessary and in the public interest of the state of Rhode Island and to report
25 back its findings on an annual basis to the general assembly on or before March 1 of every year;

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

30 (25)(i) To apply for and accept grants and bequests of funds, with the approval of the
31 director of administration, from other states, interstate agencies, and independent authorities, and
32 private firms, individuals, and foundations, for the purpose of carrying out his or her lawful
33 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt
34 account created in the natural resources program for funds made available for that program's

1 purposes or in a restricted receipt account created in the environmental protection program for
2 funds made available for that program's purposes. All expenditures from the accounts shall be
3 subject to appropriation by the general assembly, and shall be expended in accordance with the
4 provisions of the grant or bequest. In the event that a donation or bequest is unspecified, or in the
5 event that the trust account balance shows a surplus after the project as provided for in the grant or
6 bequest has been completed, the director may utilize the appropriated unspecified or appropriated
7 surplus funds for enhanced management of the department's forest and outdoor public recreation
8 areas, or other projects or programs that promote the accessibility of recreational opportunities for
9 Rhode Island residents and visitors;

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

13 (26) To establish fee schedules by regulation, with the approval of the governor, for the
14 processing of applications and the performing of related activities in connection with the
15 department's responsibilities pursuant to subsection (12); chapter 19.1 of title 23, as it relates to
16 inspections performed by the department to determine compliance with chapter 19.1 and rules and
17 regulations promulgated in accordance therewith; chapter 18.9 of title 23, as it relates to inspections
18 performed by the department to determine compliance with chapter 18.9 and the rules and
19 regulations promulgated in accordance therewith; chapters 19.5 and 23 of title 23; chapter 12 of
20 title 46, insofar as it relates to water-quality certifications and related reviews performed pursuant
21 to provisions of the federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the regulation and
22 administration of underground storage tanks and all other programs administered under chapter 12
23 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46, insofar as
24 they relate to any reviews and related activities performed under the provisions of the Groundwater
25 Protection Act; chapter 24.9 of title 23 as it relates to the regulation and administration of mercury-
26 added products; and chapter 17.7 of this title, insofar as it relates to administrative appeals of all
27 enforcement, permitting and licensing matters to the administrative adjudication division for
28 environmental matters. Two (2) fee ranges shall be required: for "Appeal of enforcement actions",
29 a range of fifty dollars (\$50) to one hundred dollars (\$100), and for "Appeal of application
30 decisions", a range of five hundred dollars (\$500) to ten thousand dollars (\$10,000). The monies
31 from the administrative adjudication fees will be deposited as general revenues and the amounts
32 appropriated shall be used for the costs associated with operating the administrative adjudication
33 division.

34 There is hereby established an account within the general fund to be called the water and

1 air protection program. The account shall consist of sums appropriated for water and air pollution
2 control and waste-monitoring programs and the state controller is hereby authorized and directed
3 to draw his or her orders upon the general treasurer for the payment of the sums, or portions thereof,
4 as may be required, from time to time, upon receipt by him or her of properly authenticated
5 vouchers. All amounts collected under the authority of this subdivision for the sewage-disposal-
6 system program and freshwaters wetlands program will be deposited as general revenues and the
7 amounts appropriated shall be used for the purposes of administering and operating the programs.
8 The director shall submit to the house fiscal advisor and the senate fiscal advisor by January 15 of
9 each year a detailed report on the amount of funds obtained from fines and fees and the uses made
10 of the funds.

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

14 (28) To establish and maintain an inventory of all interests in land held by public and
15 private land trust and to exercise all powers vested herein to ensure the preservation of all identified
16 lands;

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

23 (ii) The term "public land trust" means any public instrumentality created by a Rhode Island
24 municipality for the purposes stated herein and financed by means of public funds collected and
25 appropriated by the municipality. The term "private land trust" means any group of five (5) or more
26 private citizens of Rhode Island who shall incorporate under the laws of Rhode Island as a
27 nonbusiness corporation for the purposes stated herein, or a national organization such as the nature
28 conservancy. The main purpose of either a public or a private land trust shall be the protection,
29 acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other natural features,
30 areas, or open space for the purpose of managing or maintaining, or causing to be managed or
31 maintained by others, the land, water, and other natural amenities in any undeveloped and relatively
32 natural state in perpetuity. A private land trust must be granted exemption from federal income tax
33 under Internal Revenue Code 501(c)(3) [26 U.S.C. § 501(c)(3)] within two (2) years of its
34 incorporation in Rhode Island or it may not continue to function as a land trust in Rhode Island. A

1 private land trust may not be incorporated for the exclusive purpose of acquiring or accepting
2 property or rights in property from a single individual, family, corporation, business, partnership,
3 or other entity. Membership in any private land trust must be open to any individual subscribing to
4 the purposes of the land trust and agreeing to abide by its rules and regulations including payment
5 of reasonable dues;

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

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

17 (29) The director will contact in writing, not less often than once every two (2) years, each
18 public or private land trust to ascertain: that all lands held by the land trust are recorded with the
19 director; the current status and condition of each land holding; that any funds or other assets of the
20 land trust held as endowment for specific lands have been properly audited at least once within the
21 two-year (2) period; the name of the successor organization named in the public or private land
22 trust's bylaws or articles of association; and any other information the director deems essential to
23 the proper and continuous protection and management of land and interests or rights in land held
24 by the land trust. In the event that the director determines that a public or private land trust holding
25 land or interest in land appears to have become inactive, he or she shall initiate proceedings to
26 effect the termination of the land trust and the transfer of its lands, assets, land rights, and land
27 interests to the successor organization named in the defaulting trust's bylaws or articles of
28 association or to another organization created for the same or similar purposes. Should such a
29 transfer not be possible, then the land trust, assets, and interest and rights in land will be held in
30 trust by the state of Rhode Island and managed by the director for the purposes stated at the time
31 of original acquisition by the trust. Any trust assets or interests other than land or rights in land
32 accruing to the state under such circumstances will be held and managed as a separate fund for the
33 benefit of the designated trust lands;

34 (30) Consistent with federal standards, issue and enforce such rules, regulations, and orders

1 as may be necessary to establish requirements for maintaining evidence of financial responsibility
2 for taking corrective action and compensating third parties for bodily injury and property damage
3 caused by sudden and non-sudden accidental releases arising from operating underground storage
4 tanks;

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

22 (32) To manage and disburse any and all funds collected pursuant to § 46-12.9-4, in
23 accordance with § 46-12.9-5, and other provisions of the Rhode Island Underground Storage Tank
24 Financial Responsibility Act, as amended;

25 (33) To support, facilitate, and assist the Rhode Island Natural History Survey, as
26 appropriate and/or as necessary, in order to accomplish the important public purposes of the survey
27 in gathering and maintaining data on Rhode Island natural history; making public presentations and
28 reports on natural history topics; ranking species and natural communities; monitoring rare species
29 and communities; consulting on open-space acquisitions and management plans; reviewing
30 proposed federal and state actions and regulations with regard to their potential impact on natural
31 communities; and seeking outside funding for wildlife management, land management, and
32 research;

33 (34) To promote the effective stewardship of lakes, ponds, rivers, and streams including,
34 but not limited to, collaboration with watershed organizations and associations of lakefront property

1 owners on planning and management actions that will prevent and mitigate water quality
2 degradation, reduce the loss of native habitat due to infestation of non-native species, abate
3 nuisance conditions that result from excessive growth of algal or non-native plant species as well
4 as promote healthy freshwater riverine ecosystems;

5 (35) In implementing the programs established pursuant to this chapter, to identify critical
6 areas for improving service to customers doing business with the department, and to develop and
7 implement strategies to improve performance and effectiveness in those areas. Key aspects of a
8 customer-service program shall include, but not necessarily be limited to, the following
9 components:

10 (a) Maintenance of an organizational unit within the department with the express purpose
11 of providing technical assistance to customers and helping customers comply with environmental
12 regulations and requirements;

13 (b) Maintenance of an employee-training program to promote customer service across the
14 department;

15 (c) Implementation of a continuous business process evaluation and improvement effort,
16 including process reviews to encourage development of quality proposals; ensure timely and
17 predictable reviews; and result in effective decisions and consistent follow up and implementation
18 throughout the department; and publish an annual report on such efforts;

19 (d) Creation of a centralized location for the acceptance of permit applications and other
20 submissions to the department;

21 (e) Maintenance of a process to promote, organize, and facilitate meetings prior to the
22 submission of applications or other proposals in order to inform the applicant on options and
23 opportunities to minimize environmental impact; improve the potential for sustainable
24 environmental compliance; and support an effective and efficient review and decision-making
25 process on permit applications related to the proposed project;

26 (f) Development of single permits under multiple authorities otherwise provided in state
27 law to support comprehensive and coordinated reviews of proposed projects. The director may
28 address and resolve conflicting or redundant process requirements in order to achieve an effective
29 and efficient review process that meets environmental objectives; and

30 (g) Exploration of the use of performance-based regulations coupled with adequate
31 inspection and oversight, as an alternative to requiring applications or submissions for approval
32 prior to initiation of projects. The department shall work with the office of regulatory reform to
33 evaluate the potential for adopting alternative compliance approaches and provide a report to the
34 governor and the general assembly by May 1, 2015;

1 (36) To formulate and promulgate regulations requiring any dock or pier longer than twenty
2 feet (20') and located on a freshwater lake or pond to be equipped with reflective materials, on all
3 sides facing the water, of an appropriate width and luminosity such that it can be seen by operators
4 of watercraft; and

5 (37) To temporarily waive any control or prohibition respecting the use of a fuel or fuel
6 additive required or regulated by the department if the director finds that:

7 (i) Extreme or unusual fuel or fuel additive supply circumstances exist in the state or the
8 New England region that prevent the distribution of an adequate supply of the fuel or fuel additive
9 to consumers;

10 (ii) Extreme or unusual fuel or fuel additive supply circumstances are the result of a natural
11 disaster, an act of God, a pipeline or refinery equipment failure, or another event that could not
12 reasonably have been foreseen; and

13 (iii) It is in the public interest to grant the waiver.

14 Any temporary waiver shall be made in writing and shall be effective for twenty (20)
15 calendar days; provided, that the director may renew the temporary waiver, in writing, if it is
16 deemed necessary.

17 SECTION 3. Section 23-18.9-11 of the General Laws in Chapter 23-18.9 entitled "Refuse
18 Disposal" is hereby amended to read as follows:

19 **23-18.9-11. Prosecution of violations -- Relief in equity or by prerogative writ.**

20 (a) All prosecutions for the criminal violation of any provision of this chapter, or any rule
21 or regulation made by the director in conformance with this chapter, shall be by indictment or
22 information. The director, without being required to enter into any recognizance or to give surety
23 for cost, or the attorney general of his or her own motion, may institute the proceedings in the name
24 of the state. It shall be the duty of the attorney general to conduct the criminal prosecution of all
25 the proceedings brought ~~by the director~~ pursuant to this chapter.

26 (b) The director may obtain relief in equity or by prerogative writ whenever relief shall be
27 necessary for the proper performance of his or her duties under this chapter. The superior court for
28 Providence County shall have ~~the concurrent~~ jurisdiction in equity to enforce the provisions of this
29 chapter and any rule, ~~or regulation~~ or order issued pursuant to ~~made by the director under~~ this
30 chapter. Proceedings ~~under this section shall follow the course of equity and shall be instituted and~~
31 ~~prosecuted in the name of the director by the attorney general, but only upon the request of the~~
32 ~~director~~ for enforcement in superior court may be instituted and prosecuted in the name of the
33 director, by either the director or by the attorney general, and in any proceeding in which the
34 director or the attorney general seeks injunctive relief, it shall not be necessary to show that without

1 [this relief, the injury that will result will be irreparable or that the remedy at law is inadequate.](#)
2 [Proceedings provided for in this section shall be in addition to other administrative or judicial](#)
3 [proceedings authorized by this chapter or pursuant to any other provision of the general laws or](#)
4 [common law.](#)

5 SECTION 4. Section 23-19.1-15 of the General Laws in Chapter 23-19.1 entitled
6 "Hazardous Waste Management" is hereby amended to read as follows:

7 **23-19.1-15. Proceedings for enforcement.**

8 The superior court for Providence county shall have [concurrent](#) jurisdiction to enforce the
9 provisions of this chapter and any rule, regulation, or order issued pursuant to this chapter.
10 Proceedings for enforcement may be instituted and prosecuted in the name of the director, [by either](#)
11 [the director or by the attorney general](#), and in any proceeding in which [the director or the attorney](#)
12 [general seeks](#) injunctive relief ~~is sought~~, it shall not be necessary ~~for the director~~ to show that,
13 without this relief, the injury ~~which that~~ will result will be irreparable, or that the remedy at law is
14 inadequate. [Proceedings provided for in this section shall be in addition to other administrative or](#)
15 [judicial proceedings authorized by this chapter or pursuant to any other provision of the general](#)
16 [laws or common law.](#)

17 SECTION 5. Section 46-12.5.1-12 of the General Laws in Chapter 46-12.5.1 entitled "Oil
18 Pollution Control" is hereby amended to read as follows:

19 **46-12.5.1-12. Notices of violations and compliance orders.**

20 (a) The director shall follow the procedures provided in § 42-17.1-2(21) in issuing any
21 notice of violation or compliance order authorized pursuant to this chapter or any rules, regulations,
22 or permits promulgated thereunder.

23 (b) Where an order of the director does not otherwise specify, the person against whom an
24 order is entered shall, within seventy-two (72) hours of the receipt of the order and before
25 proceeding to install a system or means to contain, abate, control, and remove the discharged oil,
26 submit to the director a plan or a statement describing the system or means that the person intends
27 to implement.

28 [\(c\) Any order or notice issued by the director shall be eligible for recordation under chapter](#)
29 [13 of title 34. The director shall forward the original order or notice to the city or town wherein the](#)
30 [subject property is located and the order or notice shall be recorded in the land evidence records in](#)
31 [the city or town wherein the subject property is located. Any subsequent transferee of that property](#)
32 [shall be responsible for complying with the requirements of the order or notice. Upon satisfactory](#)
33 [completion of the requirements of the order or notice, the director shall provide written notice of](#)
34 [the same, which notice shall be similarly eligible for recordation. The original written notice shall](#)

1 [be forwarded to the city or town wherein the subject property is located and the notice of](#)
2 [satisfactory completion shall be recorded in the land evidence records in the city or town wherein](#)
3 [the subject property is located.](#)

4 SECTION 6. Section 42-17.6-4 of the General Laws in Chapter 42-17.6 entitled
5 "Administrative Penalties for Environmental Violations" is hereby amended to read as follows:

6 **42-17.6-4. Right to adjudicatory hearing.**

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

11 (b) A person shall be deemed to have waived his or her right to an adjudicatory hearing
12 unless, within ~~ten (10)~~ [twenty \(20\)](#) days of the date of the director's notice that he or she seeks to
13 assess an administrative penalty, the person files with the director or the clerk of the administrative
14 adjudication division a written statement denying the occurrence of any of the acts or omissions
15 alleged by the director in the notice, or asserting that the money amount of the proposed
16 administrative penalty is excessive. In any adjudicatory hearing authorized pursuant to chapter 35
17 of title 42, the director shall, by a preponderance of the evidence, prove the occurrence of each act
18 or omission alleged by the director.

19 (c) If a person waives his or her right to an adjudicatory hearing, the proposed
20 administrative penalty shall be [a final agency order](#) immediately upon the waiver. [The director may](#)
21 [institute injunctive proceedings in the superior court for Providence County for enforcement of the](#)
22 [final administrative penalty as a final agency order.](#)

23 SECTION 7. Section 23-19.14-7.1 of the General Laws in Chapter 23-19.14 entitled
24 "Industrial Property Remediation and Reuse Act" is hereby amended to read as follows:

25 **23-19.14-7.1. Remedial agreements.**

26 In addition to exemption from liability provided for in § 23-19.14-7, [for sites on which a](#)
27 [remedial decision letter has been issued](#), the state ~~and a person who has received a remedial decision~~
28 ~~letter~~ may enter into a remedial agreement that includes a covenant not to sue and contribution
29 protection and which describes the agreed remedial actions and shall be assignable as therein
30 provided. Whenever the state has entered into a remedial agreement under this section, the liability
31 to the state under this chapter of each party to the agreement including any future liability to the
32 state, arising from the release or threatened release that is the subject of the agreement shall be
33 limited as provided in the agreement pursuant to a covenant not to sue. The final covenant not to
34 sue may, at the discretion of the state, be transferred to successors or assigns that are not otherwise

1 found to be a responsible party under § 23-19.14-6. The covenant not to sue may provide that future
2 liability to the state of a person who is under the remedial agreement may be limited to the same
3 proportion as that established in the original agreement. A remedial agreement shall be distinct
4 from a letter of compliance, and the absence of a remedial agreement shall not affect or compromise
5 exemption to liability provided for in § 23-19.14-7.

6 SECTION 8. Section 23-23-6 of the General Laws in Chapter 23-23 entitled "Air
7 Pollution" is hereby amended to read as follows:

8 **23-23-6. Investigation and hearing of complaint of pollution -- Public disclosure.**

9 (a) If the director shall have cause to believe that any person is violating any provision of
10 this chapter or rule or regulation or any order made under this chapter, it shall be the duty of the
11 director to cause the matter to be investigated. Except as provided in § 23-23-16, ~~before making~~
12 ~~any finding that a violation has occurred, that person shall be granted a hearing. At all hearings, the~~
13 ~~director shall receive evidence and hear witnesses in behalf of the person believed to be causing air~~
14 ~~pollution.~~ the director shall follow the procedures provided in § 42-17.1-2(21) in issuing any notice
15 of violation or compliance order authorized pursuant to this chapter or any rules, regulations, or
16 permits promulgated thereunder.

17 (b) The director shall maintain records concerning all investigations undertaken and
18 findings made pursuant to this section. Those records shall be made available for public inspection
19 and shall include the following information:

- 20 (1) The names and addresses of persons investigated;
- 21 (2) The date or dates of any hearing or hearings conducted with respect to those persons
22 and the time and place of the hearings;
- 23 (3) Any findings made by the director after the conclusion of the hearings.

24 SECTION 9. This act shall take effect upon passage.

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LC000637/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION -- STATE AFFAIRS AND GOVERNMENT --
HEALTH AND SAFETY

1 This act would update and modernize the Department of Environmental Management's
2 ability to enforce environmental laws, and more specifically modifies practices regarding a Notice
3 of Violation.

4 This act would take effect upon passage.

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LC000637/SUB A
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