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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO BUSINESS AND PROFESSION - INSTALLERS OF INDIVIDUAL SEWAGE
DISPOSAL SYSTEMS

Introduced By: Senator Leo R. Blais

Date Introduced: March 18, 2010

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-56-1 and 5-56-7 of the General Laws in Chapter 5-56 entitled
2 "Installers of Individual Sewage Disposal Systems" are hereby amended to read as follows:

3 **5-56-1. License required.** -- (a) It is unlawful for any person to install, construct, alter, or
4 repair or cause to be installed, constructed, altered, or repaired any individual sewage disposal
5 system unless he or she has a valid annual license issued by the director of environmental
6 management.

7 (b) This section does not apply to a property owner installing, constructing, altering, or
8 repairing an individual sewage disposal system to serve a building he or she occupies or will
9 occupy as his or her intended permanent domicile; provided, that he or she has obtained written
10 permission for that work, and that he or she has obtained the necessary written approval of the
11 director [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) of the
12 plans and specifications for that work prior to the start of any construction.

13 **5-56-7. Responsibilities, performance and conduct.** -- A licensed installer shall adhere
14 to the following:

15 (1) Perform all work in compliance with approved plans and specifications only.

16 (2) Report any discrepancies on an approved plan, which he or she may note during
17 construction, to the director [or his or her assigns pursuant to Rhode Island general laws section](#)
18 [42-17.1-2\(12\)](#).

1 (3) Utilize only quality grade construction materials approved by the director [or his or](#)
2 [her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#).

3 (4) Use only the best construction techniques to provide for the best possible
4 installations.

5 (5) Work only under valid plans approved by the director [or his or her assigns pursuant](#)
6 [to Rhode Island general laws section 42-17.1-2\(12\)](#) with the approval stamp clearly indicated, and
7 commence work only after completely reviewing the entire approval including the application,
8 the layout plans, all typical specification sheets, and other attachments.

9 (6) Adhere to each and every term of approval as stipulated by the director [or his or her](#)
10 [assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) in ~~his or her~~ [the](#) approval of
11 the particular plan.

12 SECTION 2. Sections 5-56.1-1, 5-56.1-7 and 5-56.1-8 of the General Laws in Chapter 5-
13 56.1 entitled "Designers of Individual Sewage Disposal Systems" are hereby amended to read as
14 follows:

15 **5-56.1-1. Declaration of intent and purpose.** -- (a) Whereas sewage entering individual
16 sewage disposal systems contains bacteria, viruses, other pathogens and nutrients; and, whereas
17 the sewage may also contain hazardous materials, including, but not limited to, cleaning fluids,
18 paints, hobby supplies and other hazardous household chemicals; and, whereas improperly
19 designed or defectively installed and failing individual sewage disposal systems may degrade
20 wetlands, groundwater, or surface waters, including drinking water sources; and, whereas the
21 public health, the public welfare, and the environment require protection from pollutants
22 emanating from individual sewage disposal systems; the general assembly establishes licensing
23 requirements and responsibilities for persons involved in certain design and installation activities
24 relating to individual sewage disposal systems.

25 (b) The purpose of this chapter is to establish provisions, qualifications and procedures
26 for licensing persons engaged in the preparation of applications, plans, certifications and
27 specifications for individual sewage disposal systems, also referred to as "ISDS", for submittal to
28 the department of environmental management [or his or her assigns pursuant to Rhode Island](#)
29 [general laws section 42-17.1-2\(12\)](#).

30 **5-56.1-7. Responsibilities -- Performance and conduct.** -- (a) A licensed designer shall
31 perform all studies, measurements, evaluations, investigations, data gathering and other work
32 within his or her licensed area of responsibility required to prepare the applicable submittal for
33 individual sewage disposal systems. Non-licensed employees or subordinates of a person
34 possessing a designer's license may assist in the work provided the work is done under the direct

1 supervision of the licensed designer who shall be responsible for the work and shall sign any and
2 all required applications, submittals and certifications.

3 (b) A licensed designer shall witness and inspect the installation of any individual
4 sewage disposal system which he or she designed. The licensing authority may, in accordance
5 with regulation, waive this requirement for good cause, including the designer's death or
6 incapacity.

7 (c) A licensed designer shall certify to the licensing authority [or his or her assigns](#)
8 [pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) that the individual sewage disposal
9 system was installed in conformance with the approved application, plans, specifications,
10 applicable statutes and regulations and that he or she has witnessed and inspected the installation.
11 Upon the certification, the licensed designer shall be responsible for the installation. The
12 certification shall not be construed to release the installer from liability. The licensed designer
13 shall not be responsible for any negligent act or omission of a user of an ISDS, which causes
14 damage to the ISDS, including altering of site conditions after certification of installation, failing
15 to properly maintain the ISDS or failing to protect the ISDS from physical disturbance causing
16 damage.

17 **5-56.1-8. Denial, suspension and revocation of licenses -- Censure.** -- (a) The licensing
18 authority may deny, suspend or revoke a designer's license if the person or licensed designer fails
19 to comply with the requirements prescribed in this chapter or any regulation promulgated under
20 this chapter or where the person or licensed designer:

21 (1) Provided incorrect, incomplete or misleading information in obtaining a designer's
22 license; or

23 (2) Demonstrated gross or repeated negligence, incompetence or misconduct in the
24 representation of site conditions in an application to the department of environmental
25 management [or its assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#), design of
26 an ISDS, or inspection or certification of an installation of an ISDS; or

27 (3) Committed a felony involving moral turpitude; or

28 (4) Failed or neglected to comply with continuing education requirements established by
29 the licensing authority.

30 (b) An action to suspend or revoke a designer's license pursuant to subsection (a) of this
31 section may not be taken until after the licensed designer has an opportunity to have a hearing
32 before the licensing authority. This hearing shall be held within thirty (30) days of written notice
33 of intent to suspend or revoke the license.

34 (c) The licensing authority shall appoint a review panel consisting of five (5) members at

1 least three (3) of whom shall be licensed designers not employed by the licensing authority, for
2 the purpose of reviewing and hearing disciplinary actions contemplated under subsection (b) of
3 this section. The review board shall make recommendations to the licensing authority to suspend
4 or revoke licenses. All final decisions shall be made by the licensing authority.

5 (d) Any person aggrieved by the denial of an application for a license pursuant to section
6 5-56.1-4 or a denial, suspension or revocation of a license pursuant to this section may request a
7 formal hearing pursuant to section 42-17.1-2(21) which shall be granted, if requested, in writing
8 by the aggrieved applicant or licensee within ten (10) days of the denial, suspension or
9 revocation.

10 (e) The licensing authority may publicly censure any licensed designer whose license
11 was suspended or revoked.

12 SECTION 3. Sections 23-19.5-1, 23-19.5-2 and 23-19.5-4 of the General Laws in
13 Chapter 23-19.5 entitled "Percolation Tests and Water Table Elevation Determinations" are
14 hereby amended to read as follows:

15 **23-19.5-1. When test and determination and/or data required -- Filing of results. --**

16 (a) No parcel of real property that is not readily accessible to a public sewer system shall be
17 advertised or represented as being for sale or other transfer or conveyance as a "buildable", or
18 "developable" property, so called, unless the seller shall first apply for and receive from the
19 department of environmental management either a valid certification of the property's suitability
20 for development as part of a subdivision or a valid approval for the installation of an individual
21 sewage disposal system(s) on the property [from the department of environmental management or](#)
22 [its assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\).](#)

23 (b) A public sewer shall be presumed to be readily accessible to a parcel of property if it
24 is located within two hundred (200) feet of any property line of the parcel of property.

25 (c) Nothing in this section shall prohibit a person from selling a parcel of property as
26 "raw land", so called, without making any representations as to its ability to be developed. In this
27 case, the seller shall, at the first available opportunity, expressly advise any prospective buyer that
28 the property has not been certified for development as part of a subdivision or approved by the
29 department of environmental management [or its assigns pursuant to Rhode Island general laws](#)
30 [section 42-17.1-2\(12\)](#) as being suitable for the on-site disposal of sanitary sewage or other liquid
31 waste. When conveying property in this manner, a seller shall not accept any offer, sign any
32 purchase and sale agreement, complete any closing or enter into any other agreement for transfer
33 or conveyance of property without requiring the buyer to acknowledge, in writing, that the
34 property has not been [certified for development as part of a subdivision by the department or has](#)

1 not received a construction permit for an OWTS by the department of environmental
2 management or its assigns pursuant to Rhode Island general laws section 42-17.1-2(12) approved
3 ~~by the department of environmental management~~ as being suitable for the on-site disposal of
4 sanitary sewage or other liquid waste.

5 **23-19.5-2. Certification by department of environmental management.** -- (a) Prior to
6 advertising or representing any parcel of property as being for sale or other transfer or
7 conveyance as a "buildable" or "developable" property, so called, the seller shall cause a
8 registered professional engineer or registered professional land surveyor to submit and receive
9 approval of any applications, plans, specifications, fees, percolation tests, groundwater table
10 elevation determinations and other compilations of information as may be required by the
11 department of environmental management or its assigns pursuant to Rhode Island general laws
12 section 42-17.1-2(12) in order to certify the property's suitability for development as a
13 subdivision or to approve or renew an approval for the installation of an individual sewage
14 disposal system on the property. No building shall be erected on the property after this unless an
15 approval for the installation of an individual sewage disposal system has been issued and remains
16 valid in accordance with the rules and regulations of the department of environmental
17 management.

18 (b) No subdivision certification or approval or renewal for the installation of an
19 individual sewage disposal system shall be issued by the department unless the application for
20 this certification, approval or renewal is accompanied by valid tests, determinations, and/or data
21 in accordance with this chapter.

22 (c) (1) All tests, determinations and/or data necessary for the design and installation of
23 an individual sewage disposal system, compiled by a registered professional engineer or
24 registered professional land surveyor after January 1, 1992 and certified in accordance with
25 subsection (a) shall be considered valid, provided that at the time of application to install,
26 construct or alter a system using these tests, determination, and/or data, that a registered
27 professional engineer or registered professional land surveyor shall present to the department of
28 environmental management or its assigns pursuant to Rhode Island general laws section 42-17.1-
29 2(12) an affidavit, in a form ~~satisfactory to the department~~ consistent with the department's
30 current regulatory requirements, stating that the tests, determinations and/or data are still valid
31 and that there have been no significant changes to the property and/or surrounding properties that
32 would adversely affect the validity of the tests, determinations, and/or data previously obtained
33 and/or submitted.

34 (2) All tests, determinations and/or data necessary for the design and installation of an

1 individual sewage disposal system, compiled by a registered professional engineer or registered
2 professional land surveyor between July 21, 1987 and January 1, 1992 certified in accordance
3 with subsection (a) shall be considered valid provided that at the time of application to install,
4 construct, alter, or repair a system using the tests, determinations, and/or data, that a registered
5 professional engineer or registered professional land surveyor shall present an affidavit, in form
6 satisfactory to the department of environmental management [or its assigns pursuant to Rhode](#)
7 [Island general laws section 42-17.1-2\(12\)](#), stating that the tests, determination and/or data are still
8 valid and that there have been no significant changes to the property and/or surrounding
9 properties that would adversely affect the validity of the tests, determinations, and/or data
10 previously obtained and/or submitted; provided, however, that the director of the department of
11 environmental management [and its assigns pursuant to Rhode Island general laws section 42-](#)
12 [17.1-2\(12\)](#) reserves the right to require additional tests, determinations and/or data for the design
13 and installation upon the finding of good cause.

14 (d) When a person seeks to both renew tests, determinations, or data that have been
15 relied upon by the department of environmental management [or its assigns pursuant to Rhode](#)
16 [Island general laws section 42-17.1-2\(12\)](#) in approving an application and seeks also to renew the
17 approval, the application for renewal of the approval and tests, determinations and/or data shall be
18 accompanied by the affidavit of a registered professional engineer or registered professional land
19 surveyor, as described in subsection (c) of this section, and new or revised plans and
20 specifications for the previously approved sewage disposal system that meet the department's
21 current regulatory requirements.

22 **23-19.5-4. Keeping of records -- Regulations.** -- The department of environmental
23 management [and its assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) shall
24 keep the records of all percolation tests, ground water table elevation determinations performed,
25 and also a record of all other required information for a period of at least fifteen (15) years.
26 [Assigns of the director pursuant to Rhode Island general laws section 42-17.1-2\(12\) may be](#)
27 [required to submit copies of all records of percolation tests and groundwater table elevation](#)
28 [determinations to the department of environmental management.](#) The director of environmental
29 management may promulgate any rules and regulations as the director may deem necessary for
30 the proper implementation of the provisions of this chapter. The director may authorize licensed
31 designers of individual sewage disposal systems to make submittals under this chapter.

32 SECTION 4. Section 23-27.3-113.6.1 of the General Laws in Chapter 23-27.3 entitled
33 "State Building Code" is hereby amended to read as follows:

34 **23-27.3-113.6.1. Approval of an individual sewage disposal system.** -- No person shall

1 install, construct, alter, or repair or cause to be installed, constructed, altered, or repaired any
2 individual sewage disposal system, nor shall he or she begin construction of any improvement to
3 his or her property from which sewage will have to be disposed of by means of an individual
4 sewage disposal system, including additions which will result in increased sewage flow, until he
5 or she has obtained the written approval of the director of the department of environmental
6 management [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) of
7 the plans and specifications for the work. Repairs or alterations shall, insofar as possible, comply
8 in every respect with the standards set forth in subject regulations. A municipality may only grant
9 a building permit pursuant to the State Building Code where the person applying for the building
10 permit presents to the municipality the written approval of the director [or his or her assigns](#)
11 [pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) as required by departmental
12 regulations on the individual sewage disposal systems. Upon completion of the installation,
13 construction, alteration, or repair of the individual sewage disposal system, the owner shall
14 submit a copy of the certificate of conformance from the department of environmental
15 management [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) to
16 the building official prior to the issuance of a certificate of use and occupancy as required by
17 sections 23-27.3-120.0 -- 23-27.3-120.6.

18 SECTION 5. Section 42-17.1-2 of the General Laws in Chapter 42-17.1 entitled
19 "Department of Environmental Management" is hereby amended to read as follows:

20 **42-17.1-2. Powers and duties.** -- The director of environmental management shall have
21 the following powers and duties:

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

26 (2) To exercise all functions, powers, and duties heretofore vested in the department of
27 agriculture and conservation, and in each of the divisions of the department, such as the
28 promotion of agriculture and animal husbandry in their several branches, including the inspection
29 and suppression of contagious diseases among animals, the regulation of the marketing of farm
30 products, the inspection of orchards and nurseries, the protection of trees and shrubs from
31 injurious insects and diseases, protection from forest fires, the inspection of apiaries and the
32 suppression of contagious diseases among bees, prevention of the sale of adulterated or
33 misbranded agricultural seeds, promotion and encouragement of the work of farm bureaus in
34 cooperation with the University of Rhode Island, farmers' institutes and the various organizations

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

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

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

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

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

34 (7) To cooperate with, advise, and guide conservation commissions of cities and towns

1 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter
2 203 of the Public Laws, 1960;

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

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

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

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

27 (12) (i) To establish minimum standards, ~~subject to the approval of the environmental~~
28 ~~standards board,~~ relating to the location, design, construction and maintenance of all sewage
29 disposal systems (also known as "Onsite Wastewater Treatment Systems" or "OWTS");

30 (ii) The director shall assign to local municipalities the duties and authority to inspect,
31 enforce and issue permits for OWTS with a design flow of two thousand (2,000) gallons or less
32 per day. Local municipalities shall apply and enforce OWTS regulations in the same manner in
33 which local rules and regulations are applied and enforced but, if any such local municipality fails
34 to apply or enforce the same, the department may apply or enforce its own regulations.

1 (iii) Municipalities shall assume the aforementioned duties and authority on or before
2 July 1, 2011, unless a waiver is properly obtained from the director. On or before such date,
3 municipalities shall be required to develop regulations for the permitting, enforcement and
4 compliance of OWTS units under their jurisdiction. Such regulations shall conform to the
5 minimum requirements existing under the department's RULES ESTABLISHING MINIMUM
6 STANDARDS RELATING TO LOCATION, DESIGN, CONSTRUCTION, AND
7 MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS (the "Rules"),
8 municipalities shall be permitted to adopt regulations that are more stringent than the
9 department's rules. Municipalities may charge permitting fees which shall be specified within
10 local OWTS regulations. The appeal of decisions issued by municipalities regarding local OWTS
11 regulations shall be brought before the corresponding municipal court (as identified within Rhode
12 Island general laws section 45-2-1, et seq.).

13 (iv) The application for a waiver (as provided in paragraph 12(C) shall be reviewed by
14 the director pursuant to rules and regulations promulgated by the department which shall include,
15 but not limited to, the following: (A) the overall availability of sewers within the municipality;
16 (B) the number of OWTS units existing in the municipality; (C) the history of OWTS
17 applications within the municipality; and (D) other factors that the department may deem
18 relevant.

19 (v) Permitting decisions by local municipalities shall be made by a qualified professional.
20 The professional must have the minimum qualifications as determined by the department
21 pursuant to its own rules and regulations.

22 (13) To enforce, by such means as provided by law, the standards for the quality of air,
23 and water, and the design, construction and operation of all sewage disposal systems; any order or
24 notice issued by the director or his or her assigns pursuant to Rhode Island general laws section
25 42-17.1-2(12) relating to the location, design, construction or maintenance of a sewage disposal
26 system shall be eligible for recordation under chapter 13 of title 34. The director or his or her
27 assigns pursuant to Rhode Island general laws section 42-17.1-2(12) shall forward the order or
28 notice to the city or town wherein the subject property is located and the order or notice shall be
29 recorded in the general index by the appropriate municipal official in the land evidence records in
30 the city or town wherein the subject property is located. Any subsequent transferee of that
31 property shall be responsible for complying with the requirements of the order or notice. Upon
32 satisfactory completion of the requirements of the order or notice, the director or his or her
33 assigns pursuant to Rhode Island general laws section 42-17.1-2(12) shall provide written notice
34 of the same, which notice shall be similarly eligible for recordation. The original written notice

1 shall 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 general index by the appropriate municipal
3 official in the land evidence records in the city or town wherein the subject property is located. A
4 copy of the written notice shall be forwarded to the owner of the subject property within five (5)
5 days of a request for it, and, in any event, shall be forwarded to the owner of the subject property
6 within thirty (30) days after correction;

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

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

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

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

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

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

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

6 (20) To enter, examine or survey at any reasonable time such places as the director [or his](#)
7 [or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) deems necessary to
8 carry out his or her responsibilities under any provision of law subject to the following
9 provisions:

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

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

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

17 (I) For closely regulated industries;

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

19 (III) In emergency situations;

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

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

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

25 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the
26 director [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) in his
27 or her discretion deems it advisable, an administrative search warrant, or its functional equivalent,
28 may be obtained by the director from a neutral magistrate for the purpose of conducting an
29 administrative inspection. The warrant shall be issued in accordance with the applicable
30 constitutional standards for the issuance of administrative search warrants. The administrative
31 standard of probable cause, not the criminal standard of probable cause, shall apply to
32 applications for administrative search warrants.

33 (I) The need for, or reliance upon, an administrative warrant shall not be construed as
34 requiring the department [or his or her assigns pursuant to Rhode Island general laws section 42-](#)

1 [17.1-2\(12\)](#) to forfeit the element of surprise in its inspection efforts.

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

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

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

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

20 (D) Penalties. - Any willful and unjustified refusal of right of entry and inspection to
21 department personnel [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-](#)
22 [2\(12\)](#) pursuant to an administrative warrant shall constitute a contempt of court and shall subject
23 the refusing party to sanctions, which in the court's discretion may result in up to six (6) months
24 imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per refusal.

25 (21) To give notice of an alleged violation of law to the person responsible therefor
26 whenever the director [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-](#)
27 [2\(12\)](#) determines that there are reasonable grounds to believe that there is a violation of any
28 provision of law within his or her jurisdiction or of any rule or regulation adopted pursuant to
29 authority granted to him or her, unless other notice and hearing procedure is specifically provided
30 by that law. Nothing in this chapter shall limit the authority of the attorney general to prosecute
31 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) (A) Whenever the director [or his or her assigns pursuant to Rhode Island general](#)
8 [laws section 42-17.1-2\(12\)](#) determines that there exists a violation of any law, rule, or regulation
9 within his or her jurisdiction which requires immediate action to protect the environment, he or
10 she may, without prior notice of violation or hearing, issue an immediate compliance order stating
11 the existence of the violation and the action he or she deems necessary. The compliance order
12 shall become effective immediately upon service or within such time as is specified by the
13 director [or his or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) in such
14 order. No request for a hearing on an immediate compliance order may be made.

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

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

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

30 (v) Whenever a compliance order has become effective, whether automatically where no
31 hearing has been requested, where an immediate compliance order has been issued, or upon
32 decision following a hearing, the director may institute injunction proceedings in the superior
33 court of the state for enforcement of the compliance order and for appropriate temporary relief,
34 and in that proceeding the correctness of a compliance order shall be presumed and the person

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

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

11 (22) To impose administrative penalties in accordance with the provisions of chapter
12 17.6 of this title and to direct that such penalties be paid into the account established by
13 subdivision (26); and

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

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

18 (ii) Assigns: The term "his or her assigns" or "assigns" shall mean the municipality or its
19 delegated agency pursuant to Rhode Island general laws section 42-17.1-2(12).

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

24 ~~(ii)~~(iv) 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) (i) 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) (i) 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 section 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46
34 insofar 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 and
11 air protection program. The account shall consist of sums appropriated for water and air pollution
12 control and waste monitoring programs and the state controller is hereby authorized and directed
13 to draw his or her orders upon the general treasurer for the payment of such sums or such portions
14 thereof as may be required from time to time upon receipt by him or her of properly authenticated
15 vouchers. All amounts collected under the authority of this subdivision for the sewage disposal
16 system program and fresh waters wetlands program will be deposited as general revenues and the
17 amounts appropriated shall be used for the purposes of administering and operating the programs.
18 [All amounts received by the assigns of the director pursuant to Rhode Island general laws section](#)
19 [42-17.1-2\(12\) shall be used by the municipality for its own administrative purposes.](#) The director
20 [and his or her assigns pursuant to Rhode Island general laws section 42-17.1-2\(12\)](#) shall submit to
21 the house fiscal advisor and the senate fiscal advisor by January 15 of each year a detailed report
22 on the amount of funds obtained from fines and fees and the uses made of such funds.

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

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

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

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

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

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

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

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

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

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

1 (32) To manage and disburse any and all funds collected pursuant to section 46-12.9-4,
2 in accordance with section 46-12.9-5, and other provisions of the Rhode Island Underground
3 Storage Tank Financial Responsibility Act, as amended.

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

12 SECTION 6. This act shall take effect upon passage.

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LC02150
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESS AND PROFESSION - INSTALLERS OF INDIVIDUAL SEWAGE
DISPOSAL SYSTEMS

1 This act would assign to local municipalities, the duties and authority to inspect, enforce
2 and issue permits for onsite wastewater treatment systems with a design flow of two thousand
3 (2,000) gallons or less per day.

4 This act would take effect upon passage.

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LC02150
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