

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY  
JANUARY SESSION, A.D. 2001

AN ACT

RELATING TO STATE AFFAIRS AND GOVERNMENT – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**Introduced By:**  
**Date Introduced:**  
**Referred To:**

It is enacted by the General Assembly as follows:

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

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

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

(b) To exercise all functions, powers, and duties heretofore vested in the department of agriculture and conservation, and in each of the divisions of the department, such as the promotion of agriculture and animal husbandry in their several branches, including the inspection and suppression of contagious diseases among animals, the regulation of the marketing of farm products, the inspection of orchards and nurseries, the protection of trees and shrubs from injurious insects and diseases, protection from forest fires, the inspection of apiaries and the suppression of contagious diseases among bees, prevention of the sale of adulterated or misbranded agricultural seeds, promotion and encouragement of the work of farm bureaus in cooperation with the university of Rhode Island, farmers' institutes and the various organizations established for the purpose of developing an interest in agriculture, together with such other agencies and activities as the governor and the general assembly may from time to time place under the control of the department, and as heretofore vested by such of the following chapters and sections of the general laws as are presently applicable to the department of environmental management and which were previously applicable to the department of natural resources and the department of agriculture and conservation or to any of its divisions: chapters 1 through 22, inclusive, as amended, in title 2 entitled "Agriculture and Forestry;" chapters 1 through 17, inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry;" chapters 1 through 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife;" chapters 1 through 32, inclusive, as amended, in title 21 entitled "Food and Drugs;" chapter 7 of title 23 as amended, entitled "Mosquito Abatement;" and by any other general or public law relating to the department of agriculture and conservation or to any of its divisions or bureaus;

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

(d) To exercise all the functions, powers, and duties heretofore vested in the division of harbors and rivers of the department of public works, or in the department itself by such as were previously applicable to the division or the department, of chapters 1 through 22 and sections

thereof, as amended, in title 46 entitled "Waters and Navigation"; and by any other general or public law relating to the division of harbors and rivers;

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

(f) To cooperate with the Rhode Island Economic Development Corporation in its planning and promotional functions, particularly in regard to those resources relating to agriculture, fisheries, and recreation;

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

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

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

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

(k) To cooperate with the coastal resources management council in the development and implementation of comprehensive programs for dredging as provided for in §§ 46-23-6(A)(2)(h) and 46-23-18.3 and in monitoring dredge material management and disposal sites in accordance with the comprehensive program provided for in § 46-23-6(A)(2)(h) and to provide to the council facilities, administrative support, staff services and such other services as the council shall reasonably require for its operation; no powers or duties granted herein shall be construed to abrogate the powers or duties granted to the coastal resources management council under chapter 23 of title 46, as amended;

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

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

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

(n) To establish minimum standards for the establishment and maintenance of salutary environmental conditions;

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

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

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

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

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

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

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

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

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

(B) A warrant shall not be required for civil inspections conducted under the following circumstances:

(i) For closely regulated facilities or activities;

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

(iii) In emergency situations;

(iv) In situations presenting imminent danger to the environment or public health, safety, or welfare;

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

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

(C) Whenever it shall be necessary, or whenever the director in his or her discretion deems it advisable, an administrative search warrant, or its functional equivalent, may be obtained by the director for the purpose of conducting a civil inspection. Such a warrant, or its functional equivalent, shall be issued by a court of competent jurisdiction upon a showing by the director that the inspection is being sought pursuant to a reasonable and applicable legislative or administrative program. The criminal standard of probable cause shall not apply to applications for administrative search warrants.

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

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

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

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

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

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

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

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

(2) Whenever the director determines that there exists a violation of any law, rule, or regulation within his or her jurisdiction which requires immediate action to protect the environment, he or she may, without prior notice of violation or hearing, issue an immediate compliance order stating the existence of the violation and the action he or she deems necessary. The compliance

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order shall become effective immediately upon service or within such time as is specified by the director in such order. No request for a hearing on an immediate compliance order may be made.

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

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

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

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

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

(v) To impose administrative penalties in accordance with the provisions of chapter 17.6 of this title and to direct that such penalties be paid into the account established by subsection (z) of this section; and

(w) The following definitions shall apply in the interpretation of the provisions of this chapter:

(1) Director: The term director shall mean the director of environmental management of the state of Rhode Island or his or her duly authorized agent.

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

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

(b) For purposes of calculating the time within which a claim for a hearing is made pursuant to § 42-17.1-2(u)(1) heretofore, service shall be deemed to be the date of receipt of such notice or three (3) days from the date of mailing of said notice, whichever shall first occur.

(x) To conduct surveys of the present private and public camping and other recreational areas available and to determine the need for and location of such other camping and recreational areas

as may be deemed necessary and in the public interest of the state of Rhode Island and to report back its findings on an annual basis to the general assembly on or before March 1 of every year;

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

(y) To apply for and accept grants and bequests of funds with the approval of the director of administration from other states, interstate agencies and independent authorities, and private firms, individuals and foundations, for the purpose of carrying out his or her lawful responsibilities. The funds shall be deposited as general revenues and appropriations made shall be expended in accordance with the provisions of the grant or bequest.

(z) To establish fee schedules by regulation with the approval of the governor for the processing of applications and the performing of related activities in connection with the department's responsibilities pursuant to subdivision (1) of this section, chapter 19.1 of title 23 as it relates to inspections performed by the department to determine compliance with chapter 19.1 and rules and regulations promulgated in accordance therewith, chapter 18.9 of title 23 as it relates to inspections performed by the department to determine compliance with chapter 18.9 and the rules and regulations promulgated in accordance therewith, chapters 19.5 and 23 of title 23; chapter 12 of title 46 insofar as it relates to water quality certifications and related reviews performed pursuant to provisions of the federal Clean Water Act, the regulation and administration of underground storage tanks and all other programs administered under chapter 12 of title 46 and § 2-1-18 et seq., and chapter 13.1 of title 46 insofar as it relates to any reviews and related activities performed under the provisions of the Groundwater Protection Act, and chapter 17.7 of this title insofar as it relates to administrative appeals of all enforcement, permitting and licensing matters to the administrative adjudication division for environmental matters. Two fee ranges shall be required: for "Appeal of enforcement actions", a range of fifty dollars (\$50) to one hundred dollars (\$100), and for "Appeal of application decisions", a range of five hundred dollars (\$500) to ten thousand dollars (\$10,000). The monies from the administrative adjudication fees will be deposited as general revenues and the amounts appropriated shall be used for the costs associated with operating the administrative adjudication division.

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

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

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

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

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

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

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

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

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

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

(ee) To enforce, by such means as provided by law, the standards for the quality of air, and water, and the location, design, construction and operation of all underground storage facilities used for storing petroleum products or hazardous materials; any order or notice issued by the

director relating to the location, design construction, operation or maintenance of an underground storage facility used for storing petroleum products or hazardous materials shall be eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice to the city or town wherein the subject facility is located, and the order or notice shall be recorded in the general index by the appropriate municipal officer in the land evidence records in the city or town wherein the subject facility is located. Any subsequent transferee of that facility shall be responsible for complying with the requirements of the order or notice. Upon satisfactory completion of the requirements of the order or notice, the director shall provide written notice of the same, which notice shall be eligible for recordation. The original written notice shall be forwarded to the city or town wherein the subject facility is located, and the notice of satisfactory completion shall be recorded in the general index by the appropriate municipal official in the land evidence records in the city or town wherein the subject facility is located. A copy of the written notice shall be forwarded to the owner of the subject facility within five (5) days of a request for it, and, in any event, shall be forwarded to the owner of the subject facility within thirty (30) days after correction.

SECTION 2. This act shall take effect upon passage.

**EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO STATE AFFAIRS AND GOVERNMENT – DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

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This act would establish within the Department of Environmental Management detailed and specific authority for the issuance of administrative search warrants.

This act would take effect upon passage.