



## *2006 Legislative Initiatives*

### *Governor's Initiatives*

#### **Cesspool Phase-Out Act of 2006** (S-2505 and H-7699)

The Governor is re-introducing legislation that would phase-out, by 2012, all cesspools that present the highest risks to public health and/or the environment – namely, cesspools located in close proximity to tidal water areas, public beach areas, and public drinking waters. All cesspools throughout the State are substandard systems that predate the adoption in 1968 of the state's ISDS code. The proposed phase-out program would target those cesspools that pose the most significant threats to waters used for shellfishing, primary contact recreation, and public drinking water supplies. Specifically, the program would address the following four geographic areas:

- Within 200' of the inland edge of shoreline features bordering tidal water areas (i.e., within the CRMC's jurisdiction);
- Within 200' of inland water bodies on which there is a public beach (there are 45 licensed freshwater beaches in RI);
- Within 200' of all surface drinking water supplies (specifically, the impoundment from which water is drawn); and
- Within 200' of all public wells.

Within these four high-risk areas:

- All cesspools would have to be inspected within 4 years (to determine location and condition of cesspool);
- All cesspools found to be failed would have to be abandoned within 1 year;
- All cesspools found in already sewered areas would have to be hooked-up to the sewer within 2 years; and
- All other cesspools would have to be abandoned by 2012.

DEM estimates that the program would result in the removal of some 3,000 to 4,000 cesspools from these high-risk areas.

The program would also:

- Exempt cesspools in municipalities with comparable on-site wastewater management programs;
- Allow waivers in cases of documented financial hardship, but only for non-failed cesspools; and
- Allow for time extensions in areas slated to be sewered.

Additionally, the program would allow for the identification and assessment of cesspools on all properties throughout the State that are subject to sale, and require the phase-out of all such cesspools that are found to be failed.

#### **Dam Safety: Requiring the Development of Emergency Action Plans & Providing Clear Authority for the State to Take Immediate Action in Emergency Situations** (S-2510 and H-7609)

The Governor is proposing legislation to help address growing public safety concerns associated with the State's aging dam infrastructure (totaling about 600 dams). The goal is to enhance DEM's ability to ensure safe and functional dam operations throughout the State. The proposal would also engender greater involvement on the part of all cities and towns to help plan for emergencies at both municipal and privately owned dams. Specifically, the proposal would amend the State's dam safety law (RIGL Chapter 46-19) to:

1. Require the development of emergency action plans by July 1, 2008 for all significant-hazard and high-hazard dams in Rhode Island (~100 dams); and
2. Provide DEM with the authority to effectuate an order to repair or fix a dam, if the owner fails to comply and when such non-compliance creates a clear and present danger to public safety. In such cases, the dam owner could be assessed the costs for actions taken by the Department.

**Preserving Capacity at the Central Landfill** (S-2504 and H-7510)

The Governor is proposing legislation to amend the Refuse Disposal Act (§23-18.9-8.1) to authorize the DEM Director to add license conditions for public solid waste management facilities (i.e., Central Landfill) that promote/require landfill capacity management consistent with the RI Solid Waste Management Plan (State Guide Plan Element 171).

A major component of the RI Solid Waste Management Plan involves making projections about the useful life of the landfill based on certain operations and programs aimed at minimizing and diverting wastes, including recyclables. However, the plan itself has no follow-up or enforcement provisions. The Governor's proposed change to the Refuse Disposal Act would enable DEM to better align the licensing of public facilities – primarily the RI Resource Recovery Corporation – with the provisions of the State Guide Plan element on solid waste management, thereby strengthening the management and preservation of landfill capacity. In the event of significant operational deviations from the plan, the bill would authorize DEM to take appropriate enforcement action.

**Brownfields: Streamlining Redevelopment & Increasing Public Participation** (S-2503 and H-7509)

This proposal would streamline RI's brownfields law by incorporating directly into the statute (RIGL §23-19.14-10) the procedures required to obtain liability protections, hence eliminating the use of extremely time consuming, site-specific settlement agreements. A settlement agreement is a legally binding document that establishes liability protection for a bona fide prospective purchaser (BFP) from any known existing contamination at a site as long as the BFP brings the property into compliance in accordance with applicable remediation regulations.

In addition, this proposal would address a high priority concern regarding municipal development of brownfields sites by requiring a new public participation process for sensitive reuse scenarios (e.g. schools, playgrounds, parks, athletic fields) that prohibits investigation, remediation or construction until the conclusion of a public comment period (except for imminent public health and/or environment hazards and off-site migration scenarios).

The goal of this proposal is to not only speed-up the redevelopment of underutilized brownfields sites, but also to ensure the public has adequate time to comment on proposed redevelopment projects, particularly when the site will be used for a clear public purpose (e.g. education, recreation, healthcare, childcare or housing).

**Clarify Applicability of Solid Waste Laws to Tree Stumps** (S-2507 and H-7866)

This proposal seeks to address an anomaly in the RI Refuse Disposal Act (RIGL §23-18.9) whereby tree waste (leaves, branches, trunks) is regulated differently than tree stumps. Tree stumps are currently exempt from the definition of solid waste, while the rest of the tree (leaves, branches, and trunks) are considered solid waste; hence, individuals can stockpile large quantities of stumps with no oversight by DEM, yet individuals cannot manage their own yard waste (leaf piles, etc. in excess of 3 cubic yards) without potentially running afoul of state law.

Pursuant to the proposal, any tree waste (e.g. leaves, branches, trunks and stumps) generated on a particular piece of property which remains on that same piece of property would not be considered solid waste and thus not be regulated by the Department (currently, only tree stumps are exempt from state regulation). Also under this proposal, any facility or property owner who accepts more than 3 cubic yards of tree waste from another property for storage or disposal would be regulated by the Department. Depending upon the quantity of tree waste accepted and stored, oversight by DEM could range from a simple requirement to comply with performance standards – e.g., for small tree waste operations – to a solid waste license – e.g., for very large, high-volume facilities.

### **Allow for Mail-In Fines for Frequently Encountered Violations (S-2402 and H-7480)**

This proposal would shift several of the Department's most frequently encountered natural resource violations from the jurisdiction of District Court to the Rhode Island Traffic Tribunal. This change would allow violators who wish to plead guilty the option of mailing in payments for fines instead of having to appear in District Court. The proposal would ease the burden, vis-à-vis mandatory court appearances, for both the public and DEM environmental police officers regarding routine, uncontested violations that typically involve \$100 maximum fines. Anyone wishing to contest a violation would still have the option of bringing the matter to court.

### **Preserving Rhode Island's Farmlands (S-2501 and H-7512)**

This proposal would prevent the State, any of its agencies, or any municipality, from building on prime agricultural land unless it can be determined that no alternative construction location exists. Rhode Island's farmlands are the foundation of a strong agricultural industry and a way of life for generations of farm families, and the economic value of Rhode Island agriculture is estimated at greater than \$100 million per year. In addition, prime agricultural land is often located over important and pristine groundwater aquifers, which deserve special attention in order to protect important local drinking water supplies.

Farmland preservation clearly is an important investment in the State's economy and the overall quality of life for each and every resident of Rhode Island, and further steps need to be taken to guard against the development forces that continue to threaten the long-term viability of farmlands -- particularly where development can be re-directed into areas not considered prime agricultural land.

Under the proposal, DEM, in coordination with the Agricultural Lands Preservation Commission, would be required to adopt rules for the evaluation and designation of prime agricultural land, which would then be protected from development if alternative locations exist.

### **Technical Amendments to the Refuse Disposal Act (H-7503 and S-2897)**

This proposal would make several technical changes to the Refuse Disposal Act (RIGL Chapter 23-18.9), aimed at further clarifying DEM's oversight of construction and demolition (C&D) facilities and solid waste management facilities. Specifically, the proposal would:

- Move the C&D processing facility flow-through and record-keeping requirements from the definition section (§23-18.9-7) to the licensing section (§23-18.9-8).
- Add licensing criteria, flow-through and record-keeping provisions for C&D separation facilities, and establish a licensing threshold of 50 tons per day in §23-18.9-8(c).
- Clarify the definition of C&D residual material in §23-18.9-7 such that the definition of C&D residual materials only applies to residuals created from an approved C&D processing technique at an approved C&D facility.
- Remove dated language on the expansion of the Charlestown municipal landfill in §23-18.9-7(8), given that the landfill is in the final stages of formal closure.
- Eliminate the conflict between §23-18.9-7(5) and §23-18.9-8(2)(c) regarding the licensing criteria for C&D processing facilities, thereby clarifying the correct threshold for a license as 50 tons per day.