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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO WATERS AND NAVIGATION -- WATER POLLUTION

Introduced By: Representatives Ginaitt, Giannini, Naughton, Crowley, and Long

Date Introduced: June 10, 2004

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-12-1, 46-12-2 and 46-12-3 of the General Laws in Chapter 46-
2 12 entitled "Water Pollution" are hereby amended to read as follows:

3 **46-12-1. Definitions.** -- As used in this chapter the following terms shall, where the
4 context permits, be construed as follows:

5 (1) "Boat" means any vessel or water craft whether moved by oars, paddles, sails, or
6 other power mechanism, inboard or outboard, or any other vessel or structure floating upon the
7 water whether or not capable of self locomotion, including house boats, barges, and similar
8 floating objects.

9 (2) "Clean Water Act" refers to the federal law enacted under 33 U.S.C. section 1251 et
10 seq., and all amendments thereto.

11 (3) (i) "Director" shall be held to mean the director of the department of environmental
12 management or any subordinate or subordinates to whom the director has delegated the powers
13 and duties vested in him or her by this chapter.

14 (ii) Wherever reference is made in this chapter to any order of the director and the order
15 shall have been modified by the court, the order referred to shall be taken to be the order of the
16 director as so modified.

17 (4) "Discharge" means the addition of any pollutant to the waters from any point source.

18 (5) "Effluent limitation" means any restriction or prohibitions, established in accord with
19 the provisions of this chapter or under the federal Clean Water Act, 33 U.S.C. section 1251 et

1 seq., on quantities, rates, and concentrations of chemical, physical, biological, radiological, and
2 other constituents which are discharged into the waters.

3 (6) "Fecal coliform bacteria" means organisms within the intestines of warm blooded
4 animals that indicate the presence of fecal material, and the potential presence of organisms
5 capable of causing disease in humans.

6 (7) "Groundwaters" shall include all underground waters of whatever nature.

7 (8) "Marine Sanitation Device-Type I" means a marine toilet which, under prescribed
8 test conditions, will produce an effluent that will not exceed a fecal coliform bacteria count of one
9 thousand (1,000) parts per one hundred (100) milliliters and have no visible solids.

10 (9) "Marine Sanitation Device-Type II" means a marine toilet which, under prescribed
11 test conditions will produce an effluent that does not exceed a fecal coliform bacteria count of
12 two hundred (200) parts per one hundred (100) milliliters, and have suspended solids not greater
13 than one hundred and fifty (150) milligrams per liter.

14 (10) "Marine Sanitation Device-Type III" means a marine toilet which is designed to
15 prevent the discharge from the boat of any treated or untreated sewage, or any waste derived from
16 sewage.

17 (11) "Marine toilet" means any toilet on or within any boat as that term is defined herein.

18 (12) "No discharge zone" means an environmentally sensitive area of the waters of the
19 state which has been declared by the department of environmental management pursuant to the
20 Clean Water Act, 33 U.S.C. section 1251 et seq., to be an area in which any discharge of sewage
21 is prohibited.

22 (13) "Person" shall include an individual, trust, firm, joint stock company, corporation
23 (including a quasi government corporation) partnership, association, syndicate, municipality,
24 municipal or state agency, fire district, club, nonprofit agency, or any subdivision, commission,
25 department, bureau, agency, or department of state or federal government (including any quasi
26 government corporation) or of any interstate body.

27 (14) "Point source" means any discernible, confined, and discrete conveyance, including,
28 but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,
29 rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which
30 pollutants are or may be discharged. This term does not include return flows from irrigated
31 agriculture.

32 (15) "Pollutant" means any material or effluent which may alter the chemical, physical,
33 biological, or radiological characteristics and/or integrity of water, including but not limited to,
34 dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions,

1 chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded
2 equipment, cellar dirt or industrial, municipal, agricultural, or other waste petroleum or petroleum
3 products, including but not limited to oil.

4 (16) "Polluting" shall be held to mean the causing of pollution.

5 (17) "Pollution" means the man made or man induced alteration of the chemical,
6 physical, biological, and radiological integrity of water.

7 (18) "Publicly owned treatment works" means any facility for the treatment of pollutants
8 owned by the state or any political subdivision thereof, municipality, or other public entity,
9 including any quasi government corporation.

10 (19) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying,
11 injecting, escaping, leaching, dumping, or disposing of any pollutant into a surface water or
12 wetland, or onto or below the land surface.

13 (20) "Schedule of compliance" means a schedule of remedial measures including an
14 enforceable sequence of actions, or operations, leading to compliance with an effluent limitation
15 or any other limitation, prohibition, or standard.

16 (21) "Sewage" means fecal material and human waste, or wastes from toilets and other
17 receptacles intended to receive or retain body waste, and any wastes, including wastes from
18 human households, commercial establishments, and industries, and storm water runoff, that are
19 discharged to or otherwise enter a publicly owned treatment works.

20 (22) "Underground storage tank" shall mean any one or combination of tanks (inc luding
21 underground pipes connected thereto) which is used to contain an accumulation of petroleum
22 product or hazardous materials, and the volume of which (including the volume of the
23 underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the
24 ground.

25 (23) "Waters" shall include all surface waters including all waters of the territorial sea,
26 tidewaters, all inland waters of any river, stream, brook, pond, or lake, and wetlands, as well as all
27 groundwaters.

28 (24) "Eutrophication" means a reduction of dissolved oxygen from excessive plant
29 growth, chiefly algae, typically as an effect of increased nutrient loadings, to levels that impair
30 the viability of other aquatic life.

31 (25) "Nutrient" means organic materials and chemicals, including especially nitrogen and
32 phosphorous and their compounds, that are biologically reactive and necessary for life.

33 **46-12-2. Administration.** -- (a) It shall be the responsibility of the director of
34 environmental management to administer this chapter. Within the department of environmental

1 management, the director may employ personnel who shall come within the classified service in
2 accordance with the laws of this state for the purposes of this chapter, and may delegate to a
3 subordinate or subordinates any or all the powers and duties vested in the director hereunder. The
4 general assembly shall annually appropriate such sums as it may deem necessary for the expenses
5 of administering this chapter.

6 (b) The department of environmental management is hereby designated as the state water
7 pollution control agency for this state for all purposes of the Clean Water Act, as amended, 33
8 U.S.C. 1251 et seq., and is hereby authorized to take all action necessary or appropriate to secure
9 to this state the benefits of that act.

10 (c) The department of environmental management is hereby designated to operate the
11 underground injection control program under the federal Safe Drinking Water Act, as amended,
12 42 U.S.C. 300f et seq., and is hereby authorized to take all action necessary or appropriate to
13 secure to this state the benefits of that program.

14 (d) The department of environmental management is hereby designated to administer the
15 wellhead protection program as approved by the federal environmental protection agency and in
16 accordance with the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq., and is
17 hereby authorized to take all actions necessary or appropriate to secure to this state the benefits of
18 that program. The department of environmental management shall cooperate and coordinate
19 wellhead protection program activities with the department of health public drinking water supply
20 program.

21 (e) The department of environmental management is hereby designated to administer the
22 underground storage tank program as approved by the federal environmental protection agency
23 pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.,
24 and is hereby authorized to take all necessary or appropriate actions to secure to this state the
25 benefits of this program, including participation via cooperative agreement with the
26 environmental protection agency (EPA) in the leaking underground storage tank trust fund.

27 (f) The department of environmental management is hereby designated to establish,
28 administer, and enforce standards for nutrients as necessary to protect, maintain and/or improve
29 the ecological functions of the marine and aquatic resources of the state; and to prepare, adopt,
30 and implement plans as necessary and appropriate to accomplish the purposes of managing
31 nutrient loadings and preventing, abating, and/or eliminating the deleterious effects of nutrients,
32 including, but not limited to, eutrophication, harmful algal blooms, hypoxia, anoxia, oxygen-
33 stress-induced population shifts, and/or fish kills. To implement the purposes of this subsection,
34 the department shall implement measures to achieve an overall goal of reducing nitrogen loadings

1 [from waste water treatment facilities by fifty percent \(50%\) by December 31, 2008, through](#)
2 [waste water treatment facility upgrades scheduled to be undertaken by December 31, 2006, and](#)
3 [through proposed permit modifications, which shall be issued by the department on or before July](#)
4 [1, 2004. The department shall report on the implementation of these measures in the report](#)
5 [required by subsection 46-12-3\(25\).](#)

6 **46-12-3. Powers and duties of the director.** -- In addition to the other powers granted
7 the director of environmental management herein, the director shall have and may exercise the
8 following powers and duties:

9 (1) To exercise general supervision of the administration and enforcement of this
10 chapter, and all rules and regulations and orders promulgated hereunder;

11 (2) To develop comprehensive programs for the prevention, control, and abatement of
12 new or existing pollution of the waters of this state;

13 (3) To advise, consult, and cooperate with other agencies of the state, the federal
14 government, other states, and interstate agencies and with affected groups, political subdivisions,
15 and industries in the furtherance of the purposes of this chapter;

16 (4) To accept and administer loans and grants from the federal government and from
17 other sources, public or private, for the carrying out of any of its functions, which loans and
18 grants shall not be expended for other than the purposes for which provided;

19 (5) To encourage, participate in, or conduct studies, investigations, research, and
20 demonstrations relating to water pollution and its causes, prevention, control, and abatement
21 thereof, as he or she may deem advisable and necessary for the discharge of his or her duties
22 under this chapter;

23 (6) To collect and disseminate information relating to water pollution and the prevention,
24 control, and abatement thereof;

25 (7) Except as otherwise provided in subsection (24) below, to promulgate standards of
26 water quality and to classify the waters of the state accordingly;

27 (8) To administer state grants to municipalities and political subdivisions for the
28 construction of sewage treatment works;

29 (9) To hold hearings, to issue notices of hearings and subpoenas requiring the attendance
30 of witnesses and the production of evidence, and to administer oaths and to take testimony, that
31 he or she may deem necessary;

32 (10) To approve, pursuant to standards adopted by the environmental standards board,
33 the construction, modification, and operation of discharge systems or any parts thereof, and to
34 require the prior submission of plans, specifications, and other data relative to discharge systems

1 and to require that the plans, specifications, or other data be certified by a professional engineer
2 registered in Rhode Island, and to inspect the systems either under construction or in operation;

3 (11) To issue a permit for the discharge of any pollutant or combination of pollutants or
4 to issue a general permit authorizing a category of discharges within a geographical area upon
5 conditions as may be necessary to carry out the purposes of this chapter and of the Clean Water
6 Act, 33 U.S.C. section 1251 et seq., which may include, but not be limited to, providing for
7 specific effluent limitations and levels of treatment technology, monitoring, recording, and
8 reporting standards, or to deny a permit or general permit;

9 (12) To renew, revoke, modify, or suspend in whole or in part any permit, order, or
10 schedule of compliance pursuant to the provisions of this chapter, and any rules and regulations
11 promulgated thereunder;

12 (13) To approve the discharge of pollutants into the waters of this state pursuant to all
13 applicable standards;

14 (14) To require publicly owned treatment works to adopt and implement requirements
15 regarding the pretreatment of pollutants consistent with existing federal requirements, and to
16 require compliance by all persons with pretreatment requirements;

17 (15) To issue such orders as may be necessary to prevent the unauthorized construction,
18 modification, or operation of discharge systems and the discharge of pollutants into the waters of
19 this state;

20 (16) To require proper maintenance and operation of discharge systems;

21 (17) To consult the advisory council on environmental affairs on the policies and plans
22 for the control and abatement of pollution;

23 (18) To make, issue, amend, and revoke reasonable rules and regulations for the
24 prevention, control, and abatement of pollution and the enforcement of orders issued hereunder,
25 including public notice and comment requirements;

26 (19) To exercise all incidental powers necessary to carry out the purposes of this chapter;

27 (20) To approve the operation of treatment facilities, pursuant to the provisions of
28 chapters 3, 11, and 18 of title 44;

29 (21) To promulgate and enforce rules and regulations to govern the location, design,
30 construction, maintenance, and operation of underground storage facilities used for storing
31 petroleum products or hazardous materials to prevent, abate, and remedy the discharge of
32 petroleum products and hazardous materials into the waters of the state; provided that all
33 underground storage tanks and associated piping installed after September 1, 1991 shall provide
34 for secondary containment in a manner approved by the director; and provided that the

1 installation of underground storage tanks is prohibited at sites located within wellhead protection
2 areas for community water supply wells as designated by the director and consistent with chapter
3 46-13.1. This prohibition shall not apply to the replacement or upgrading of existing underground
4 storage tanks installed prior to July 1, 1991, provided that such activity take place in accordance
5 with all applicable state and federal regulations;

6 (22) To promulgate and enforce rules and regulations to govern the installation,
7 construction, operation, and abandonment of monitoring wells; ~~and~~

8 (23) To promulgate and enforce rules and regulations to govern the location, design,
9 installation, operation and maintenance of subsurface disposal systems which receive the
10 discharge of pollutants and of subsurface containment systems, including underground storage
11 tanks, used to contain or control the discharge of pollutants below the ground surface.;

12 (24) In connection with the dredging and transportation and disposal of dredge material,
13 to promulgate and adopt water quality standards that conform with the federal environmental
14 protection agency's applicable water quality rules and regulations and guidelines, including but
15 not limited to, the federal environmental protection agency's rules and regulations and guidelines
16 for deviating from said standards. The department of environmental management shall also apply
17 the applicable standards and guidelines and adopt the procedures as set forth in the manual
18 identified as "Evaluation of Dredge Material for Purpose of Ocean Disposal. Testing Manual Put
19 Together by EPA and Army Corps of Engineers in February, 1991" and any amendments or
20 supplements or successor manuals thereto to the extent that the same are relevant to dredging,
21 transportation and/or disposal of dredge materials in tidal waters or any documents or manuals
22 approved by the federal environmental protection agency relating to dredging, transportation
23 and/or disposal of dredge materials.; and

24 (25) To prepare and to submit to the governor, the speaker of the house, the president of
25 the senate, the chairperson of the house committee on environment and natural resources and the
26 chairperson of the senate committee on environment and agriculture, not later than February 1,
27 2005, a plan, including an implementation program with cost estimates, recommended sources of
28 funding, measurable goals, objectives, and targets and limitations for nutrient introduction into
29 the waters of the state, for the purposes of: (i) managing nutrient loadings and the effects of
30 nutrients in the waters of the state; and (ii) preventing and eliminating conditions of
31 eutrophication.

32 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO WATERS AND NAVIGATION -- WATER POLLUTION

1 This act would implement a program to limit the introduction of nutrients in the state's
2 waters and would attempt to prevent and/or eliminate the conditions of eutrophication caused
3 therefrom.

4 This act would take effect upon passage.

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