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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY -- HAZARDOUS WASTE MANAGEMENT

Introduced By: Representatives Carson, Batista, and Morales

Date Introduced: February 09, 2022

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-19.1-4, 23-19.1-18 and 23-19.1-18.1 of the General Laws in
2 Chapter 23-19.1 entitled "Hazardous Waste Management" are hereby amended to read as follows:

3 **23-19.1-4. Definitions.**

4 When used in this chapter:

5 (1) "Department" means the department of environmental management;

6 (2) "Director" means the director of the department of environmental management or the
7 director's designee;

8 (3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking,
9 abandoning, or placing of any hazardous waste in, on, into or onto any land, other surface, or
10 building, or into any water, stormwater system, or sewer system;

11 (4) "Fill" means any act by which earth, sand, or other material is placed or moved to a
12 new location above ground. The fill is also the difference in elevation between a point of existing
13 undisturbed ground and a designated point of higher elevation of the final grade.

14 ~~(4)~~(5)(i) "Hazardous waste" means any waste or combination of wastes of a solid, liquid,
15 contained gaseous, or semisolid form which because of its quantity, concentration, or physical,
16 chemical, or infectious characteristics may:

17 (A) Cause or significantly contribute to an increase in mortality or an increase in serious
18 irreversible or incapacitating reversible illness; or

19 (B) Pose a substantial present or potential hazard to human health or the environment.

1 (ii) These wastes include, but are not limited to, those which are toxic, corrosive,
2 flammable, irritants, strong sensitizers, substances which are assimilated or concentrated in and are
3 detrimental to tissue, or which generate pressure through decomposition or chemical reaction. In
4 addition, these wastes include "industrial waste" as the term is used elsewhere, unless the context
5 shall clearly indicate otherwise.

6 ~~(5)~~(6) "Hazardous waste generation" means the act or process of producing hazardous
7 waste;

8 ~~(6)~~(7) "Hazardous waste management" means the systematic control of the collection,
9 source separation, storage, transportation, processing, treatment, recovery, and disposal of
10 hazardous wastes;

11 ~~(7)~~(8) "Hazardous waste management facility" means a facility, excluding vehicles, for
12 collection, source separation, storage, processing, treatment, recovery, or disposal of hazardous
13 wastes, or a transfer station for hazardous waste, and may include a facility at which such activities
14 occur and where waste has been generated;

15 ~~(8)~~(9) "Landfill" means any disposal facility or part of a facility where hazardous waste is
16 placed in or on land;

17 ~~(9)~~(10) "Manifest" means the form used for identifying the quantity, composition, and the
18 origin, routing, and destination of hazardous waste during its transportation from the point of
19 generation to the point of disposal, treatment, or storage;

20 ~~(10)~~(11) "Person" means an individual, trust, firm, joint stock company, corporation
21 (including a government corporation), partnership, association, the federal government or any
22 agency or subdivision thereof, a state, municipality, commission, political subdivision of a state, or
23 any interstate body;

24 ~~(11)~~(12) "Storage" means the actual or intended containment of hazardous waste, either on
25 a temporary basis or for a period of years, in such a manner as not to constitute disposal of the
26 hazardous waste;

27 ~~(12)~~(13) "Transfer station" means an intermediate point in the transport of hazardous
28 wastes where the wastes are brought, stored, and transferred to vehicles for movement to other
29 intermediate points or to the point of ultimate storage or disposal;

30 ~~(13)~~(14) "Transport" means the movement of wastes from the point of generation to any
31 intermediate points, and finally to the point of ultimate storage or disposal;

32 ~~(14)~~(15) "Treatment" means any method, technique, or process, including neutralization or
33 incineration, designed to change the physical, chemical, or biological character or composition of
34 any hazardous waste as to neutralize the waste or so as to render the waste less hazardous,

1 nonhazardous, safer to transport, amenable to storage, or reduced in volume, except any method or
2 technique that may be included as part of the manufacturing process at the point of generation.

3 **23-19.1-18. Criminal penalties -- Payment of restoration costs.**

4 (a) Unless otherwise specified, any person who shall refuse to obey or who shall knowingly
5 violate, or reasonably should know that he or she is violating, the provisions of an order issued by
6 the director under the provisions of this chapter or any rules or regulations promulgated pursuant
7 to this chapter, or who shall cause the refusal or violation, shall be guilty of a felony.

8 (b) Any person who shall tamper with, destroy, or in any other way detrimentally affect a
9 well which has been installed by any person pursuant to an order or rules and regulations issued by
10 the department of environmental management or any other state agency, for the purpose of testing
11 ground water contamination, shall be guilty of a felony.

12 (c) Disposal of hazardous wastes at landfills which cannot be located, designed,
13 constructed, or operated to prevent the endangerment of all underground drinking water sources
14 beyond the facility boundary; or the endangerment of an aquifer which has been designated by any
15 federal or Rhode Island state agency as a sole source aquifer; or contamination by discharge by any
16 surface or subsurface means causing a violation of any rule or regulation or standard of any federal
17 or Rhode Island agency; or disposal of hazardous wastes at facilities other than hazardous waste
18 disposal facilities permitted by the department of environmental management is prohibited, and
19 any person who knowingly disposes, or who reasonably should know that he or she is disposing or
20 causing the disposal of, hazardous wastes in Rhode Island at other than hazardous waste disposal
21 facilities holding valid permits issued by the department of environmental management shall be
22 deemed guilty of a felony.

23 (d) Operation of a hazardous waste disposal facility in Rhode Island without a valid permit
24 issued by the department of environmental management is prohibited, and any person who
25 knowingly operates a hazardous waste disposal facility in Rhode Island, or who reasonably should
26 know that he or she is operating or causing the operation of this facility without a valid permit shall
27 be guilty of a felony.

28 (e) Transportation of hazardous wastes in Rhode Island without a valid permit issued by
29 the department of environmental management is prohibited, and any person who knowingly
30 transports hazardous wastes in Rhode Island without a valid permit issued by the department of
31 environmental management, or who reasonably should know that he or she is transporting or
32 causing to be transported hazardous wastes without a permit, shall be guilty of a felony.

33 (f) Treatment of hazardous wastes in Rhode Island without a valid permit issued by the
34 department of environmental management, or storage of hazardous wastes in Rhode Island without

1 a valid permit issued by the department of environmental management is prohibited and any person
2 who knowingly stores or treats hazardous wastes in Rhode Island without a valid permit issued by
3 the department of environmental management, or other authorization of the department of
4 environmental management, or who reasonably should know that he or she is storing or treating or
5 causing to be treated or stored without a permit, shall be guilty of a felony.

6 (g) The transporting, causing to be transported, or accepting of hazardous waste for
7 treatment, storage, or disposal from a transporter without a manifest required by the department of
8 environmental management and completed in accordance with department of environmental
9 management regulations is prohibited. Any person who transports, causes to be transported, or
10 accepts hazardous waste for treatment, storage, or disposal and fails to prepare a manifest for the
11 hazardous waste or knowingly alters or falsifies the information on the manifest shall be deemed
12 guilty of a felony.

13 (h) The use of hazardous waste or solid waste as fill on any construction site project is
14 prohibited and any person who knowingly uses, or transports for use, hazardous waste or solid
15 waste as fill on any construction site project in Rhode Island, or who reasonably should know that
16 such fill is contaminated, shall be guilty of a felony.

17 ~~(i)~~(i) Any person who knowingly makes a false statement, representation, or certification
18 in any application, record, report, plan, permit, or other document filed, maintained, and used for
19 the purposes of program compliance under this chapter shall be deemed guilty of a felony.

20 ~~(j)~~(j) Any person who violates any provision of this section shall be punished by
21 imprisonment for not more than five (5) years or by a fine of not more than twenty-five thousand
22 dollars (\$25,000) or both. In the case of a continuing violation, each day's continuance of the
23 violation shall be a separate and distinct offense.

24 ~~(k)~~(k) In addition to the provisions of this section, after a judgment of conviction and
25 hearing in accordance with § 23-19.1-18.1, the court ~~may~~ shall order the defendant to pay the cost
26 of restoring to its original state the area where hazardous wastes were unlawfully stored, treated, or
27 disposed.

28 **23-19.1-18.1. Determination of restoration costs -- Judgment -- Other relief not**
29 **precluded.**

30 (a) In any case where the court is of the opinion that the sentence should consist of or
31 include the amount of the cost of restoring to its original state the area where hazardous wastes
32 were stored, treated, or disposed of, or contaminated soil was used as fill, in violation of the
33 provisions of this chapter, the court shall order a hearing to determine the amount of the cost of the
34 restoration. For the purposes of this section, the "original state of the area" means the reasonably

1 ascertainable condition of the property immediately prior to the unlawful storage, treatment, ~~or~~
2 disposal, [or use of contaminated soil as fill](#), or, if impracticable to determine the condition, then it
3 shall be the reasonable environmentally sound condition of the property. The order must be filed
4 with the clerk of the court and must specify a date for the hearing not less than ten (10) days after
5 the filing of the order.

6 (b) Upon receipt of the order, the clerk of the court must send a notice of the hearing to the
7 defendant, the defendant's legal counsel, and the attorney general. The notice must specify the time
8 and place of the hearing and the fact that the purpose of the hearing is to determine the amount of
9 the cost of restoring to its original state the area where hazardous wastes were stored, treated, or
10 disposed unlawfully.

11 (c) When the defendant appears for the hearing, the court must ask the defendant whether
12 he or she wishes to make any statement or offer any evidence with respect to the amount of the cost
13 of restoring to its original state the area where hazardous wastes were stored, treated, or disposed
14 unlawfully.

15 (d) At any hearing held pursuant to this section, the burden of proof rests upon the state,
16 which shall be represented by the attorney general. A finding as to the amount of the cost of
17 restoring to its original state the area where hazardous wastes were stored, treated, or disposed
18 unlawfully must be based upon a preponderance of the evidence. The defendant shall be permitted
19 to rebut any evidence offered by the state.

20 (e) In all cases, the court shall enter its findings and judgment upon the record at the
21 conclusion of the hearing.

22 (f)(1) The judgment may require the defendant to pay an amount for the restoration of the
23 property or to perform duties of restoration or both. Where the cost of restoration cannot be wholly
24 determined by the evidence, the court may order the defendant to pay an amount that reasonably
25 approximates the total cost of restoration or may require the defendant to finance the restoration
26 without a determination as to amount.

27 (2) When the court orders the defendant to pay an amount for the restoration of the
28 property, the amount shall be paid to the department of environmental management and shall be
29 used exclusively by the department of environmental management for the restoration of the
30 property.

31 (3) Where the court orders the defendant to perform duties of restoration to the property,
32 the court may authorize the department of environmental management to supervise and report to it
33 on the conduct of the duties.

34 (4) In order to most likely assure the restoration of the property, where there are two or

1 more defendants, the court may apportion the costs or assign the performance of duties of
2 restoration, or both, between or among the defendants as the interests of justice may appear to the
3 court.

4 (5) Defendants may be ordered by the court to reimburse the state for any administrative
5 costs incurred by the state or its agents in conjunction with restoration work.

6 (g) The provisions of this section shall not preclude the state or attorney general or the
7 department of environmental management from seeking any other relief authorized by other statute
8 or common law.

9 SECTION 2. Chapter 23-19.1 of the General Laws entitled "Hazardous Waste
10 Management" is hereby amended by adding thereto the following section:

11 **23-19.1-22.1. Use of contaminated soil.**

12 (a) Any person who shall violate the provisions of this chapter through the use of hazardous
13 waste or solid waste as fill on any construction site project in the State of Rhode Island, or who
14 shall have caused the use of hazardous waste or solid waste as fill on any construction site project
15 in the State of Rhode Island shall be absolutely liable for the cost of containment, cleanup,
16 restoration, and removal of the fill, and for all damages, losses, or injuries, including environmental,
17 which result directly or indirectly from the use of the contaminated soil as fill.

18 (b) Proceedings brought pursuant to this section shall be instituted by filing a complaint in
19 the superior court.

20 (c) The state, by and through the department of environmental management, is the trustee
21 of the air, water, fish, and wildlife of the state. An action brought pursuant to the provisions of this
22 chapter with respect to environmental damage may be brought by the attorney general or the
23 director of the department of environmental management in the name of the state as trustee for
24 those natural resources.

25 (d) The court may award treble the amount of the costs, damages, losses, or injuries
26 whenever it finds that an individual has used contaminated soil as fill in violation of this section or
27 the rules and regulations promulgated pursuant to this chapter in a willful and knowing manner.

28 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- HAZARDOUS WASTE MANAGEMENT

- 1 This act would prohibit the use of hazardous waste or solid waste as fill on any construction
- 2 site project and renders the use of such soil as fill a felony.
- 3 This act would take effect upon passage.

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