

LC00465

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2002

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Introduced By: Representative Brian P. Kennedy

Date Introduced: February 05, 2002

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 42-17.1-2 and 42-17.1-20 of the General Laws in Chapter 42-17.1
2 entitled "Department of Environmental Management [Effective until July 1, 2002.]" are hereby
3 repealed.

4 ~~42-17.1-2. Powers and duties. [Effective until July 1, 2002.]~~ -- The director of
5 environmental management shall have the following powers and duties:

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

10 ~~(b) To exercise all functions, powers, and duties heretofore vested in the department of~~
11 ~~agriculture and conservation, and in each of the divisions of the department, such as the~~
12 ~~promotion of agriculture and animal husbandry in their several branches, including the inspection~~
13 ~~and suppression of contagious diseases among animals, the regulation of the marketing of farm~~
14 ~~products, the inspection of orchards and nurseries, the protection of trees and shrubs from~~
15 ~~injurious insects and diseases, protection from forest fires, the inspection of apiaries and the~~
16 ~~suppression of contagious diseases among bees, prevention of the sale of adulterated or~~
17 ~~misbranded agricultural seeds, promotion and encouragement of the work of farm bureaus in~~
18 ~~cooperation with the university of Rhode Island, farmers' institutes and the various organizations~~
19 ~~established for the purpose of developing an interest in agriculture, together with such other~~

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

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

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

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

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

33 ~~(g) To cooperate with, advise, and guide conservation commissions of cities and towns~~
34 ~~created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter~~

1 203 of the Public Laws, 1960;

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

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

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

14 ~~-(k) To provide for the maintenance of waterways and boating facilities, consistent with~~
15 ~~chapter 6.1 of title 46, by: (1) establishing minimum standards for upland beneficial use and~~
16 ~~disposal of dredged material; (2) promulgating and enforcing rules for water quality, ground~~
17 ~~water protection, and fish and wildlife protection pursuant to section 42-17.1-24; (3) planning for~~
18 ~~the upland beneficial use and/or disposal of dredged material in areas not under the jurisdiction of~~
19 ~~the council pursuant to section 46-23-6(2); and (4) cooperating with the coastal resources~~
20 ~~management council in the development and implementation of comprehensive programs for~~
21 ~~dredging as provided for in sections 46-23-6(1)(ii)(H) and 46-23-18.3 and (5) monitoring dredge~~
22 ~~material management and disposal sites in accordance with the protocols established pursuant to~~
23 ~~section 46-6.1-5(3) and the comprehensive program provided for in section 46-23-6(1)(ii)(H); no~~
24 ~~powers or duties granted herein shall be construed to abrogate the powers or duties granted to the~~
25 ~~coastal resources management council under chapter 23 of title 46, as amended;~~

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

29 ~~-(m) To enforce, by such means as provided by law, the standards for the quality of air,~~
30 ~~and water, and the design, construction and operation of all sewage disposal systems; any order or~~
31 ~~notice issued by the director relating to the location, design, construction or maintenance of a~~
32 ~~sewage disposal system shall be eligible for recordation under chapter 13 of title 34. The director~~
33 ~~shall forward the order or notice to the city or town wherein the subject property is located and~~
34 ~~the order or notice shall be recorded in the general index by the appropriate municipal official in~~

1 ~~the land evidence records in the city or town wherein the subject property is located. Any~~
2 ~~subsequent transferee of that property shall be responsible for complying with the requirements of~~
3 ~~the order or notice. Upon satisfactory completion of the requirements of the order or notice, the~~
4 ~~director shall provide written notice of the same, which notice shall be similarly eligible for~~
5 ~~recordation. The original written notice shall be forwarded to the city or town wherein the subject~~
6 ~~property is located and the notice of satisfactory completion shall be recorded in the general index~~
7 ~~by the appropriate municipal official in the land evidence records in the city or town wherein the~~
8 ~~subject property is located. A copy of the written notice shall be forwarded to the owner of the~~
9 ~~subject property within five (5) days of a request for it, and, in any event, shall be forwarded to~~
10 ~~the owner of the subject property within thirty (30) days after correction;~~

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

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

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

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

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

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

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

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

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

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

18 ~~(2) (A) Whenever the director determines that there exists a violation of any law, rule, or~~
19 ~~regulation within his or her jurisdiction which requires immediate action to protect the~~
20 ~~environment, he or she may, without prior notice of violation or hearing, issue an immediate~~
21 ~~compliance order stating the existence of the violation and the action he or she deems necessary.~~
22 ~~The compliance order shall become effective immediately upon service or within such time as is~~
23 ~~specified by the director in such order. No request for a hearing on an immediate compliance~~
24 ~~order may be made.~~

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

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

1 ~~any manner provided for the service of the notice in this section.~~

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

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

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

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

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

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

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

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

34 ~~(b) For purposes of calculating the time within which a claim for a hearing is made~~

1 pursuant to section ~~42-17.1-2(u)(1)~~ heretofore, service shall be deemed to be the date of receipt of
2 such notice or three (3) days from the date of mailing of said notice, whichever shall first occur.

3 ~~(x) (1) To conduct surveys of the present private and public camping and other~~
4 ~~recreational areas available and to determine the need for and location of such other camping and~~
5 ~~recreational areas as may be deemed necessary and in the public interest of the state of Rhode~~
6 ~~Island and to report back its findings on an annual basis to the general assembly on or before~~
7 ~~March 1 of every year;~~

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

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

17 ~~(z) To establish fee schedules by regulation with the approval of the governor for the~~
18 ~~processing of applications and the performing of related activities in connection with the~~
19 ~~department's responsibilities pursuant to subdivision (1) of this section, chapter 19.1 of title 23 as~~
20 ~~it relates to inspections performed by the department to determine compliance with chapter 19.1~~
21 ~~and rules and regulations promulgated in accordance therewith, chapter 18.9 of title 23 as it~~
22 ~~relates to inspections performed by the department to determine compliance with chapter 18.9~~
23 ~~and the rules and regulations promulgated in accordance therewith, chapters 19.5 and 23 of title~~
24 ~~23; chapter 12 of title 46 insofar as it relates to water quality certifications and related reviews~~
25 ~~performed pursuant to provisions of the federal Clean Water Act, the regulation and~~
26 ~~administration of underground storage tanks and all other programs administered under chapter~~
27 ~~12 of title 46 and section 2-18 et seq., and chapter 13.1 of title 46 insofar as it relates to any~~
28 ~~reviews and related activities performed under the provisions of the Groundwater Protection Act,~~
29 ~~and chapter 17.7 of this title insofar as it relates to administrative appeals of all enforcement,~~
30 ~~permitting and licensing matters to the administrative adjudication division for environmental~~
31 ~~matters. Two fee ranges shall be required: for "Appeal of enforcement actions", a range of fifty~~
32 ~~dollars (\$50) to one hundred dollars (\$100), and for "Appeal of application decisions", a range of~~
33 ~~five hundred dollars (\$500) to ten thousand dollars (\$10,000). The monies from the~~
34 ~~administrative adjudication fees will be deposited as general revenues and the amounts~~

1 ~~appropriated shall be used for the costs associated with operating the administrative adjudication~~
2 ~~division.~~

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

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

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

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

26 ~~-(2) The term "public land trust" means any public instrumentality created by a Rhode~~
27 ~~Island municipality for the purposes stated herein and financed by means of public funds~~
28 ~~collected and appropriated by the municipality. The term "private land trust" means any group of~~
29 ~~five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode~~
30 ~~Island as a nonbusiness corporation for the purposes stated herein, or a national organization such~~
31 ~~as the nature conservancy. The main purpose of either a public or a private land trust shall be the~~
32 ~~protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other~~
33 ~~natural features, areas, or open space for the purpose of managing or maintaining, or causing to~~
34 ~~be managed or maintained by others, the land, water, and other natural amenities in any~~

1 undeveloped and relatively natural state in perpetuity. A private land trust must be granted
2 exemption from federal income tax under Internal Revenue Code 501(c)(3) [26 U.S.C. section
3 501(c)(3)] within two (2) years of its incorporation in Rhode Island or it may not continue to
4 function as a land trust in Rhode Island. A private land trust may not be incorporated for the
5 exclusive purpose of acquiring or accepting property or rights in property from a single
6 individual, family, corporation, business, partnership, or other entity. Membership in any private
7 land trust must be open to any individual subscribing to the purposes of the land trust and
8 agreeing to abide by its rules and regulations including payment of reasonable dues.

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

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

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

28 ~~In the event that the director determines that a public or private land trust holding land or~~
29 ~~interest in land appears to have become inactive, he or she shall initiate proceedings to effect the~~
30 ~~termination of the land trust and the transfer of its lands, assets, land rights, and land interests to~~
31 ~~the successor organization named in the defaulting trust's by laws or articles of association or to~~
32 ~~another organization created for the same or similar purposes. Should such a transfer not be~~
33 ~~possible, then the land trust, assets, and interest and rights in land will be held in trust by the state~~
34 ~~of Rhode Island and managed by the director for the purposes stated at the time of original~~

1 acquisition by the trust. Any trust assets or interests other than land or rights in land accruing to
2 the state under such circumstances will be held and managed as a separate fund for the benefit of
3 the designated trust lands.

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

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

27 ~~**42-17.1-20. Powers and duties of deputy director for environmental quality.**~~

28 ~~**[Effective until July 1, 2002.]** -- The deputy director for environmental quality shall have the~~
29 ~~following powers and duties:~~

30 ~~-(a) Oversight of and participation in the environmental quality study commission created~~
31 ~~by section 42-17.1-21;~~

32 ~~-(b) Collaboration with the director of the department of environmental management to~~
33 ~~effectuate a smooth operation of regulatory functions;~~

34 ~~-(c) Preparation of a budget to address the needs of the environmental regulatory~~

1 ~~programs in fiscal year 1990;~~

2 ~~(d) Subject to the authority of the director, exercise of all functions currently assigned to~~
3 ~~the director of the department of environmental management within the divisions of air and~~
4 ~~hazardous materials, water resources, and groundwater and freshwater wetlands.~~

5 SECTION 2. Chapter 42-17.1 of the General Laws entitled “Department of
6 Environmental Management [Effective until July 1, 2002]”, is hereby amended by adding thereto
7 the following section:

8 **42-17.1-2. Functions and purposes of department -- Powers and duties of director.-**

9 The department of environmental management shall have the following functions, purposes and
10 operating principles and the director of environmental management shall have the following
11 powers and duties:

12 (1) Functions and purposes. The department of environmental management shall have
13 the following functions and purposes:

14 (i) To provide for the protection, enhancement, development and planning of the natural
15 resources of the state, including, but not limited to, air, water, land, upland, habitat, wildlife,
16 plants, trees, soil, clay, sand, gravel, rocks and other minerals, mammals, birds, reptiles,
17 amphibians, fish, shellfish, and other forms of aquatic, insect, and animal life; and to promote the
18 sustainable use of such resources; and to develop minimum standards for the establishment and
19 maintenance of salutary environmental conditions;

20 (ii) To protect and improve water quality in the state by controlling point and non-point
21 sources of water pollution consistent with the federal clean water act, as amended; by protecting
22 and by educating the public with regard to the value of watersheds, rivers, streams, wetlands
23 within the jurisdiction of the department, lakes, ponds and aquifers, and groundwater resources;
24 by establishing and enforcing standards pertaining to the alteration of wetlands, by regulating
25 individual sewage disposal systems, and by establishing and enforcing minimum standards
26 relating to the location, design, construction and maintenance of all sewage disposal, septage and
27 waste oil systems; by inspecting dams and other means of channelizing or impounding water to
28 assure their safety, and by serving as the agency to administer the federal clean water act, as
29 amended, including responsibilities in the state for fresh water and for salt water in a manner that
30 is coordinated and, to the extent allowable by federal law, consistent with plans and regulatory
31 programs of the coastal resources management council, including, but not limited to, those
32 pertaining to dredging as set forth in section 42-23-6(A); and by cooperating with the water
33 resources board and the department of health to assure the availability of adequate safe drinking
34 water supplies in the state, as a matter of state priority;

1 (iii) To preserve, protect and improve air quality in the state; to prepare, adopt,
2 implement and evaluate the plans and programs to monitor air quality; and to adopt and enforce
3 regulations and standards for point sources and mobile sources of air pollution, including motor
4 vehicles and to serve as the agency to administer the federal clean air act, as amended;

5 (iv) To protect, by acquisition, and to enhance open space, habitats, and scenic resources
6 in the state; to identify and assist and coordinate with federal agencies in the protection of
7 endangered species in the state and unique natural areas and high habitats value areas in the state;
8 to cooperate with, advise, and guide conservation commissions of cities and towns, created under
9 chapter 45-35; to establish and maintain a list or inventory of areas within the state worthy of the
10 designation “scenic” to include, but not be limited to, certain state roads and highways, scenic
11 vistas and scenic areas and to make the list available to the public; to establish and maintain an
12 inventory of all interests in land held by public and private land trusts, to exercise all powers
13 established by this chapter for the preservation of all identified lands; and to cooperate with and
14 assist public and private entities in preserving open space, habitat, and scenic areas, especially to
15 preserve biological diversity or to enhance recreational opportunities;

16 (v) To promote and assist agriculture, animal husbandry, orchards, turf, nurseries and
17 tree farms in Rhode Island as a priority of the state; to assist persons engaged commercially in
18 these activities to plan and implement best management practices, and consistent with such
19 practices, to interpret the requirements of the department in a manner that facilitates the
20 sustainability of such activities; to advise and cooperate with the Rhode Island economic
21 development corporation to assist and promote such activities; and to assist and cooperate with
22 entities, including, but not limited to, conservation districts, cooperative extension of the
23 University of Rhode Island, the U.S. department of agriculture and its natural resource
24 conservation service, which have as a purpose providing assistance to persons engaged in these
25 activities;

26 (vi) To protect forests and woodlands in the state; to protect trees and shrubs from
27 injurious insects and diseases and from fires, especially forest fires; to assist persons engaged in
28 woodland and forest management to adopt and implement best management practices; and to
29 promote the development and use on a sustainable basis of forest products in the state;

30 (vii) To protect, restore and enhance the fishery resources of the state, including fin fish
31 and shellfish; to promote and regulate the use of fishery resources in a manner that provides for
32 their long-term sustainability and that recognizes that preservation of the fishing industry is a
33 priority of the state; to take actions to assure that the facilities needed by people engaged in the
34 fishing industry are available; to assist and coordinate with the department of health in the

1 protection, enhancement and assurance of the quality of fishery products from the state; and to
2 cooperate with the Rhode Island Economic Development Corporation in its planning,
3 promotional, and assistance for fisheries;

4 (viii) To protect and manage the wildlife resources of the state;

5 (ix) To promote and regulate marine safety in the state; to cooperate with the Coastal
6 Resources Management Council, the Rhode Island Economic Development Corporation and
7 cities and towns to assure the maintenance and the usability of port facilities, ports, harbors,
8 channels and navigable waters, recognizing that the maintenance of navigation is a priority of the
9 state; and to provide for the registration of boats in the state;

10 (x) To protect the public health and Rhode Island’s environment from pollution and
11 contamination by establishing and enforcing minimum standards;

12 (A) for the design, construction, operation, and maintenance of solid, industrial and
13 hazardous waste disposal facilities;

14 (B) for the generation handling, transport, treatment, storage for petroleum except as
15 provided in chapter 46-23 of the general laws, and disposal of hazardous waste;

16 (C) for underground storage tanks, petroleum products and hazardous materials; and

17 (D) for waste oil; by exercising all functions necessary for the administration of chapter
18 23-19.1 entitled “Rhode Island Hazardous Waste Management Act”; by establishing procedures
19 for identifying, monitoring, remediating instances of contamination that affect either the public
20 health or the environment, which procedures shall include specific provisions for coordination
21 with other state and federal agencies and for notification to the highest elected official, the chief
22 administrative officers, and the members of the general assembly of cities and towns directly
23 impacted by instances of contamination of the identification of the contamination and plans for
24 monitoring and remediating such contamination;

25 (xi) To promote, encourage, assist, and facilitate the reuse of land that has been
26 previously developed and/or contaminated; to encourage and foster the continued development
27 and redevelopment of the cities, town centers and villages of the state by interpreting its rules and
28 regulations, to the extent allowable by federal law and consistent with public health standards, in
29 a manner that fosters compact development patterns and does not induce dispersion of
30 development into less developed and underdeveloped areas;

31 (xii) To acquire, provide, manage, regulate, maintain, and operate recreational areas,
32 facilities, parks, and management areas; to provide public access to the shore through land
33 acquisition; and to provide public access to swimmable, fishable, and canoable water bodies; to
34 locate and to provide and maintain appropriate trails for hiking, bicycling, and horseback riding;

1 to preserve, manage, and maintain areas for hunting and fishing; to license hunting and fishing; to
2 assist in the establishment of greenways in the state with the goal of creating a statewide system
3 of greenways; to facilitate, provide for, and promote nature-based tourism and eco-tourism in the
4 state; and to cooperate with the Rhode Island Economic Development Corporation in its planning
5 and promotional functions related to recreation and tourism;

6 (xii)(A) To conduct surveys of the present private and public camping and other
7 recreational areas available and to determine the need for and location of such other camping and
8 recreational areas as may be deemed necessary and in the public interest of the state of Rhode
9 Island and to report back its findings on an annual basis to the general assembly on or before
10 March 1 of every year;

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

15 (14) To prepare and implement an environmental management and sustainability plan by
16 October 1, 2002, to implement the plan, and to revise said plan as necessary but no later than
17 every four (4) years. The plan shall be submitted to the governor, speaker of the house, and the
18 senate majority leader by November 1, 2002, and no later than every four (4) years thereafter;

19 (a) The plan shall describe the science and the management practices that serve as the
20 basis for the programs of the department and shall (1) establish goals and objectives, (2) set forth
21 measurable performance standards, benchmarks, and milestones, (3) provide an evaluation of the
22 regulatory programs within the department, which review shall describe the nature, purpose, and
23 basic requirements of each regulatory program, identify the degree to which any regulatory
24 program must extend beyond the express provisions of statute in order to accomplish purposes
25 established by law, and identify conflicts among regulatory programs; the department shall
26 provide for at least two (2) meetings, no less than forty- five (45) days apart, for the public review
27 and comment of this portion of the plan, and (4) include an implementation program;

28 (b) The plan shall have, but not be limited to, plan elements pertaining to:

29 (1) Sustainability of agriculture, fisheries, wildlife, forestry, recreational uses and related
30 tourism development, fish and wildlife habitat, ecosystems and water resources;

31 (2) Environmental equity, with specific attention to: (i) levels of pollution and
32 environmental contamination in areas where median family income is less than the statewide
33 median family income and to programs, which shall be consistent with such public standards,
34 goals, objectives, as may from time to time be established by the department of health, to correct,

1 eliminate, or mitigate such pollution and contamination; (ii) access to natural resources,
2 greenways, and recreational opportunities in urban areas; and (iii) environmental remediation and
3 site reuse consistent with the policies set forth in section 23-19.14-2;

4 (3) The status of the major environmental categories including, but not limited to, the air,
5 the water, and the land environment and the living resources of the state;

6 (4) Current and foreseeable trends in the quality, management, and utilization of the
7 environment and the effect of such trends on the social, economic and health requirements of the
8 state;

9 (5) A review of the programs and activities of the department, and its agencies, boards,
10 commissions, partnerships, agreements and cooperative agreements;

11 (c) In developing the plan, the director shall consider other important state interests,
12 including, but not limited to, economic development, job creation, social equity, and public
13 health;

14 (d) The director shall annually hold a conference to assess achievement of the goals and
15 objectives established in the plan and to encourage public discussion of the environmental
16 concerns. The director shall submit annually, except in years when a revised plan is being
17 submitted, to the governor and general assembly a report setting forth the progress towards
18 achievement of the goals and objectives established in the plan.

19 (B) Operating principles. The department shall have and be guided by the following
20 operating principles in the overall conduct of its functions and purposes:

21 (1) To use the best available science in protecting and improving air and water quality,
22 regulating waste disposal, correcting conditions of contamination, and achieving and maintaining
23 the sustainability of agriculture, fisheries, forestry, recreational uses, wildlife and wildlife habitat,
24 and water supply, taking into account economic and social considerations to the extent permitted
25 by federal law;

26 (2) To manage and coordinate the programs and activities of the department in a manner
27 that is comprehensive and integrated in its approach;

28 (3) To manage and coordinate this program and activities of the department in a manner
29 that encourages and facilitates beneficial use of resources, pollution prevention, waste reduction,
30 and voluntary compliance with environmental standards;

31 (4) To manage and coordinate the functions and activities of the department in a manner
32 that provides, fosters and facilitates stewardship of resources, and community-based and
33 watershed-based environmental protection;

1 (5) To be user friendly and customer oriented with regard to permit applications and
2 efforts to achieve beneficial use of resources, pollution prevention, waste reduction, and
3 voluntary compliance with standards; to use assistance and incentives to secure outcomes that
4 either achieve more than compliance with minimum standards established by law or regulation or
5 advance the goals of resource stewardship, ecosystems protection, or watershed based-
6 management and to encourage and facilitate information sharing and the importing of advice
7 between citizens, organizations, institutions and stakeholders in issues and the department;

8 (6) To enforce standards, rules and regulations, license conditions, permit conditions and
9 requirements for permits and for remediation of contamination in a manner that (a) is prompt,
10 clear, vigorous, and fair, (b) protects public health and the environment, (c) is coordinated as
11 appropriate with federal agencies, other state agencies, and local agencies, and (d) promotes
12 respect for and compliance with environmental protection standards, roles, goals and objectives,
13 and deters future violations;

14 (7) To work in partnership and in collaboration with and to create, enter into, and
15 participate in agreements with federal, state, and local government agencies, private firms,
16 individuals, foundations, land trusts, non-profit organizations, watershed organizations and
17 associations, institutions of higher education, and other organizations and entities to accomplish
18 the purposes of the department;

19 (8) To work in collaboration and to coordinate plans, programs, and activities with other
20 state agencies, including, but not limited to, the statewide planning program in the department of
21 administration, the economic development corporation, the coastal resources management
22 council, the water resources board, the resource recovery corporation, the department of health,
23 and the department of transportation; and to establish appropriate mechanism of communication
24 and exchange of information with these agencies and departments and other divisions, entities,
25 corporations and political subdivisions of the state.

26 (C) General powers and duties. The director of environmental management shall have
27 the powers necessary and the duty to put into effect the functions and purposes of the department
28 set forth in subsection (A) of this section and such other functions and purposes as may be
29 assigned to the department or the director by law, and all the powers of the department (except
30 those of administrative adjudication as set forth in chapter 42-17.7) shall be vested in the director,
31 who may, at his or her discretion, delegate such powers in writing to officials in the department
32 consistent with the provisions of law pertaining to the department, which powers shall include
33 the power:

1 (1) To administer, manage, supervise, and control the department, and to establish
2 guidelines and standards for the performance of the functions of the department by its employees;

3 (2) To issue, adopt, and enforce, by such means as provided by law, regulations and
4 minimum standards, as necessary and appropriate to carry out the provisions, which shall include,
5 but not be limited to, regulations and minimum standards for air quality, water quality, and the
6 alteration of wetlands within the jurisdiction of the department, for the location, design,
7 construction, and operation of waste and refuse disposal and all sewage disposal systems; the
8 management, transport, and disposal of hazardous materials and hazardous wastes; the
9 remediation of conditions of contamination; for underground storage tanks, for petroleum and
10 petroleum products and hazardous materials; and for the establishment and maintenance of
11 salutary environmental conditions;

12 (3) To cooperate with and to enter into performance partnerships, agreements and
13 contracts with federal, state and local government agencies, private firms, individuals,
14 foundations, land trusts, non-profit organizations, watershed organizations and associations,
15 institutions of higher education, and other organizations and entities;

16 (4) To assign and reassign any functions, duties, or powers established by this chapter to
17 any bureau, office or division within the department and to establish such operating units
18 coordinating mechanisms as may be necessary to effect the purposes of this chapter, consistent
19 with the objectives of making the department efficient and effective, having the department be
20 responsive to the public, and achieving the sustainability of ecosystems and resources, provided
21 that such assignment or reassignment is in writing and is either consistent with a duly adopted
22 plan of organization for the department or is adopted by rule in accordance with the provisions of
23 section 42-35-2 (a) (1); and provided further that said assignment or reassignment shall be
24 consistent with statute, including section 42-17.1-5 of this chapter;

25 (5) 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; provide, however, that enforcement powers of the coastal resources
29 management council shall be assigned only to employees of the department of environmental
30 management, except as provided in chapter 23 of title 46;

31 (6) To issue compliance orders, to conduct investigations, to hold hearings, and to
32 impose administrative penalties in accordance with the provisions of chapter 17.6 of this title and
33 to direct that such penalties to be paid into the account established by subsection (D)(5)(b) of this

1 section; and to issue, deny, suspend, and revoke such licenses as may be necessary to enforce
2 those rules, regulations and orders;

3 Provided, however, that in any case, hearing, or administrative proceeding wherein the
4 maximum penalty that could be imposed on a party includes a monetary fine but not
5 imprisonment, then the standard of proof applied therein shall be by clear and convincing
6 evidence; and provided further, in any such matter wherein the maximum penalty that could be
7 imposed on a party includes imprisonment, then the standard of proof applied therein shall be by
8 proof of knowing and willful conduct;

9 (7) To give notice of an alleged violation of law, consistent with the provisions of
10 subsection (D)(4) of this section, to the person responsible thereof whenever the director
11 determines that reasonable belief exists, based on objective evidence, that there is a violation of
12 any provision of law within his or her jurisdiction or of any rules or regulation adopted pursuant
13 to authority granted to him or her, unless other notice and hearing procedure is specifically
14 provided by that law. Nothing in this chapter shall limit the authority of the attorney general to
15 prosecute offenders as required by law;

16 (8) To enter, examine or survey at any reasonable time such places as the director, if
17 reasonable belief exists, based on objective evidence, deems necessary to carry out his or her
18 responsibilities under any provision of law, subject to the limitations set forth in subsection
19 (D)(3) of this section;

20 (9) To conduct studies and engage in research, to establish and maintain lists, inventories
21 and information, which shall as appropriate be made available to the public; to arrange and hold
22 meetings, conferences and events; and to promulgate, adopt, implement and evaluate programs
23 and plans;

24 (10) To apply for grants and to accept gifts, grants, bequests, donations, and
25 appropriations for the purposes of carrying out the functions and purposes of the department; and
26 where appropriate with the approval of the director of administration, in which case the funds
27 shall be deposited as general revenues and appropriations made shall be expended in accordance
28 with the provisions of the grant or bequest;

29 (11) To establish fee schedules by regulation and with the approval of the governor for
30 the processing of applications and performing related activities, consistent with the provisions of
31 subsection (D)(5)(a) of this section; and

32 (12) To report annually, by April 1 of each year, to the governor, the general assembly,
33 and the public on environmental conditions and the effectiveness of environmental programs in
34 Rhode Island, and to keep the governor and the general assembly apprised in a timely manner of

1 conditions affecting public health and environment; this shall include the number of permit
2 applications received during the previous calendar year, the number found complete, the number
3 processed within established time tables, and the number which took longer than established time
4 tables, and the number of enforcement actions taken, the number completed, and the status of
5 enforcement in general; the format for this report shall be established by rule no later than
6 December 31, 2002.

7 (D) Specific functions, powers, and duties. The director shall have the following
8 specific functions, powers and duties, in order to put the functions of the department into force
9 and effect and to accomplish the purposes as necessary and appropriate of the general powers and
10 duties set forth in subsection (c) above:

11 (1) Enforcement of standards. (a) The director shall have the power to enforce, by such
12 means as provided by law standards for the quality of air and water and the location, design,
13 construction and operation or maintenance of all sewage disposal systems; refuse disposal
14 facilities; hazardous waste management facilities, consistent with the provisions of chapter 23-
15 19.1; and underground storage facilities used for storing petroleum products or hazardous
16 materials. Any order notice issued by the director relating to the location, design, construction,
17 operation or maintenance of a sewage disposal system or an underground storage facility used for
18 storing petroleum products or hazardous materials shall be eligible for recordation under chapter
19 13 of title 34. The director shall forward the order or notice to the city or town wherein the
20 subject property is located and the order or notice shall be recorded in the general index by the
21 appropriate municipal official in the land evidence records in the city or town wherein the subject
22 property is located. Any subsequent transferee of the property shall be reasonable for complying
23 with the requirements of the order or notice. Upon satisfactory completion of the requirements of
24 the order or notice, the director shall provide written notice of the same, which notice shall be
25 similarly eligible for recordation. The original written notice shall be forwarded to the city or
26 town wherein the subject property is located and the notice of satisfactory completion shall be
27 recorded in the general index by the appropriate municipal official in the land evidence records in
28 the city or town wherein the subject property is located. A copy of the written notice shall be
29 forwarded to the owner of the subject property within five (5) days of a request for it, and, in any
30 event, shall be forwarded to the owner of the subject property within thirty (30) days after
31 correction; (b) The director shall have the power, consistent with the federal standards to issue
32 and enforce such rules, regulations and orders as may be necessary to establish requirements for
33 maintaining evidence of financial responsibility for taking corrective actions and compensating

1 third parties for bodily injury and property damage caused by sudden and non-sudden accidental
2 releases arising from operation underground storage tanks;

3 (2) Investigations, hearings, and licenses. The director shall have the power to conduct
4 such investigations and hearings, except for those subject to the provisions of chapter 17.7 of this
5 title, and to issue, deny, suspend and, revoke such licenses as may be necessary to enforce the
6 rules, regulations, and orders of the department, subject to the provisions of paragraph (6) of this
7 subsection.

8 Provided, however, that in any case, hearing, or administrative proceeding wherein the
9 maximum penalty that could be imposed on a party includes a monetary fine but not
10 imprisonment, then the standard of proof applied therein shall be by clear and convincing
11 evidence; and provided further, in any such matter wherein the maximum penalty that could be
12 imposed on a party includes imprisonment, then the standard of proof applied therein shall be by
13 proof of knowing and willful conduct.

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

19 (3) Inspections and searches. The director shall have the power to enter, examine or
20 survey at any reasonable time such places as he or she deems necessary to carry out his or her
21 responsibilities under any provision of law; provided, that no such entry, examination or survey
22 shall occur unless reasonable belief exists, based on objective evidence, that at a minimum a
23 violation has and/or is taking place. Further, any such entry, examination, or survey shall be
24 subject to the following additional provisions and restrictions:

25 (a) For criminal investigations, the director shall, unless a search without a warrant is
26 otherwise allowed by law, seek a search warrant from an official of a court authorized to issue
27 warrants;

28 (b) For civil inspections conducted after March 15, 2002, to determine compliance with
29 the regulations of the department, whenever the Constitution of the United States or the
30 Constitution of the State of Rhode Island requires an administrative search warrant to obtain entry
31 to property for the purpose of inspection, or whenever the director in his/her discretion deems an
32 administrative search warrant advisable, such warrant shall be issued by a court of appropriate
33 jurisdiction upon a showing by the director (i) that the inspection is being sought pursuant to a
34 reasonable legislative or administrative program, (ii) that the desired inspection fits within that

1 program, (iii) that the requested inspection is reasonable, and (iv) that reasonable belief exists,
2 based on objective evidence, that at a minimum a violation has and/or is taking place;

3 (c) The director shall develop, adopt and implement prior to March 15, 2003, guide lines
4 and departmental manual for the conduct of civil inspection by DEM employees. Before the
5 guidelines and manual are finalized, the department will hold at least one public meeting on the
6 guidelines and manual and offer the public an opportunity to comment on the draft guidelines and
7 manual. The guidelines and manual shall as a minimum, include:

8 (i) A description of the professional standard expected for all civil inspectors in the
9 performance of their duties;

10 (ii) An explanation of the constitutional right to privacy and its relevance to civil
11 inspections conducted by the department;

12 (iii) An outline of the various statutory authorizations for civil inspections conducted by
13 the department and the requirements contained therein;

14 (iv) Reasonable limits on the time, manner of entry, and scope of civil inspections, which
15 shall include limiting inspections to activities to determine whether the provisions of law or
16 regulation that are the basis for the inspection have been complied with, including whether or not
17 an operation may be subject to such provisions;

18 (v) The manual shall be updated at least every three (3) years, to incorporate any changes
19 in law or practice;

20 (vi) Every person in the department who conducts civil inspections for the department
21 after April 1, 2003, shall receive training with regard to the guidelines and manual and shall be
22 expected to follow the guidelines and the provisions of the manual in conducting inspections.

23 (4) Notice of violation. The director shall have the power to give notice of an alleged
24 violation of law to the person responsible therefor whenever the director determines that
25 reasonable belief exists, based on objective evidence, that there is a violation of any provision of
26 law within his or her jurisdiction or of any rule or regulation adopted pursuant to authority
27 granted to him or her, unless other notice and hearing procedure is specifically provided by the
28 law. Nothing in this chapter shall limit the authority of the attorney general to prosecute
29 offenders as required by law;

30 (a) The notice shall provide for a time within which the alleged violation shall be
31 remedied, and shall inform the person to whom it is directed that a written request for a hearing
32 on the alleged violation may be filed with the director within ten (10) days after service of the
33 notice. The notice will be deemed properly served upon a person if a copy thereof is served to
34 him or her personally, or sent by registered or certified mail to his or her last known address, or if

1 he or she is served with notice by any other method of service now or hereafter authorized in a
2 civil action under the laws of this state. If no written request for a hearing is made pursuant to the
3 provisions of chapter 42-11 within ten (10) days of the service of notice, the notice shall
4 automatically become a compliance order;

5 (b)(i) Whenever the director determines that there exists a violation of any law, rule, or
6 regulation within his or her jurisdiction which requires immediate action to protect the
7 environment or the public health, he or she may, without prior notice of violation or hearing,
8 issue an immediate compliance order stating the existence of the violation and the action he or
9 she deems necessary. The compliance order shall become effective immediately upon service or
10 within such time as is specified by the director in such order. No request for a hearing on an
11 immediate compliance order may be made;

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

16 (c) If a person upon whom a notice of violation has been served under the provisions of
17 this section or if a person aggrieved by any such notice of violation requests a hearing, the
18 provisions of chapter 42-11 governing administrative hearings shall control the hearing process.
19 Provided, however, that in any case, hearing, or administrative proceeding wherein the maximum
20 penalty that could be imposed on a party includes a monetary fine but not imprisonment, then the
21 standard of proof applied therein shall be by clear and convincing evidence; and provided further,
22 in any such matter wherein the maximum penalty that could be imposed on a party includes
23 imprisonment, then the standard of proof applied therein shall be by proof of knowing and willful
24 conduct;

25 (d) The compliance order shall state a time within which the violation shall be remedied,
26 and the original time specified in the violation shall be extended to the set time in the order;

27 (e) Whenever a compliance order has become effective, whether automatically where no
28 hearing has been requested, where an immediate compliance order has been issued, or upon
29 decision following hearing, the director may institute injunction proceedings in the superior court
30 of the state for enforcement of the compliance order and for appropriate temporary relief, and in
31 that proceeding the correctness of a compliance order shall be presumed and the person attacking
32 the order shall bear the burden of proving error in the compliance order, except that the director
33 shall bear the burden of proving in the proceeding the correctness of an immediate compliance
34 order. The remedy provided for in this section shall be cumulative and not exclusive and shall be

1 in addition to remedies relating to the removal or abatement of nuisances or any other remedies
2 provided by law;

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

8 (5) Fee schedules for applications and other activities. (a) The director shall have the
9 power to establish fee schedules by regulation with the approval of the governor for the
10 processing of applications and the performing of related activities in connection with the
11 department's responsibilities pursuant to this section, chapter 19.1 of title 23 as it relates to
12 inspections performed by the department to determine compliance with chapter 19.1 and rules
13 and regulations promulgated in accordance therewith, chapter 18.9 of title 23 as it relates to
14 inspections performed by the department to determine compliance with chapter 18.9 and the rules
15 and regulations promulgated in accordance therewith, chapters 19.5 and 23 of title 23; chapter 12
16 of title 46 insofar as it relates to water quality certifications and related reviews performed
17 pursuant to provisions of the federal clean water act, the regulation and administration of
18 underground storage tanks and all other programs administered under chapter 12 of title 46 and
19 section 2-1-18 et seq., and chapter 13.1 of title 46 insofar as it relates to any reviews and related
20 activities performed under the provisions of the Groundwater Protection Act, and chapter 17.7 of
21 this title insofar as it relates to administrative appeals of all enforcement, permitting and licensing
22 matters to the administrative adjudication division of environmental matters. Two (2) fee ranges
23 shall be required: for "Appeal of enforcement actions," a range of fifty dollars (\$50.00) to one
24 hundred dollars (\$100), and for "Appeal of application decisions," a range of five hundred dollars
25 (\$500) to ten thousand dollars (\$10,000);

26 (b) There is hereby established an account within the general fund to be called the water
27 and air protection program. The account shall consist of sums representing fees obtained under
28 the authority of this subdivision and is hereby restricted for the purposes of administering and
29 operating the fresh water wetlands program and the sewage disposal system program and related
30 water and air pollution control and waste monitoring programs and the administrative
31 adjudication program and the state controller is hereby authorized and directed to draw his or her
32 orders upon the general treasurer for the payment of such sums or such portions thereof as may
33 be required from time to time upon receipt by him or her of properly authenticated vouchers. The
34 director shall submit to the house fiscal advisor and the senate fiscal advisor by January 15 of

1 each year, a detailed report on the amount of funds obtained from fines and fees and the uses
2 made of such funds;

3 (c) The director shall establish, not later than March 15, 2003, regulations for the
4 payment by the department for penalties after March 15, 2003 to persons who are applicants and
5 do not receive a decision from the department on the application in a timely manner. The
6 penalties assessed on the department and payable to the applicant shall be as follows:

7 (i) for decisions on applications that are more than thirty (30) days but less than sixty (60)
8 days overdue, the penalty shall be equal to twenty-five (25) percent of the application fee;

9 (ii) for decisions on applications that are sixty (60) days or more but less than ninety (90)
10 days overdue, the penalty shall be equal to fifty (50) percent of the application fee;

11 (iii) for decisions on applications that are ninety (90) days or more overdue, the penalty
12 shall be equal to one hundred (100) percent of the application fee.

13 The time table for the timely issue of permits shall be either the amount of the time
14 specified in statute or regulation or as follows: within fifteen (15) days after the submission of a
15 permit application, the director shall notify the applicant of whether or not the application is
16 complete, and if the application is incomplete, the director shall indicate what information is
17 missing or needed for the application to be complete; if additional information as herein provided
18 is reviewed by the department, the department shall notify the applicant within ten (10) days if
19 the application is complete, or whether additional information is needed; upon the determination
20 that the application is complete, the department shall notify the applicant of its decision on
21 application within forty-five (45) days. The provisions of this paragraph shall not apply, if the
22 number of applications to be processed exceeds by at least fifteen (15) percent the number of
23 permit applications processed in the same quarter of the previous calendar year; if the department
24 must rely on another public body or private entity outside the control or supervision of the
25 department to process all or part of the application and the delay is caused by the public body or
26 private entity, in which case the time table for penalties herein set forth shall be extended by the
27 amount of such delay measured in days; if there is mutual agreement between the applicant and
28 the department for an extended timetable for review of the application because a variance is being
29 sought or for other good reason; if the application is for an activity that is substantial whether in
30 terms of its size and nature or its impact on the environment; or if other conditions exist that give
31 the agency good cause for exceeding the established period and the director notifies the applicant
32 of the additional time that will be required to reach the decision no later than the notice that the
33 application is complete;

34 (6) Final actions of the department. The director shall accept the recommendation of the

1 hearing officer pursuant to section 47-17.7-6 as the final agency action unless the director shall
2 find that such recommendation is contrary to law or regulation or is not supported by the
3 substantial evidence in the record as a whole, in which case the director may amend or reject the
4 decision of the hearing officer;

5 (7) The director shall have the duty and power:

6 (a) To establish and maintain a list or inventory of areas within the state worthy of
7 special designation as “scenic” to include, but not be limited to, certain state roads or highways,
8 scenic vistas and scenic areas, and to make the list available to the public;

9 (b) To establish and maintain an inventory of all interests in land held by public and
10 private land trusts and to exercise all powers vested herein to insure the preservation of all
11 identified lands;

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

18 (2) The term “public land trust” means any public instrumentality created by a Rhode
19 Island municipality for the purposes stated herein and financed by means of public funds
20 collected and appropriated by the municipality. The term “private land trust” means any group of
21 five (5) or more private citizens of Rhode Island who shall incorporate under the laws of Rhode
22 Island as a nonbusiness corporation for the purposes stated herein, or a national organization such
23 as the nature conservancy. The main purpose of either a public or a private land trust shall be the
24 protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, and/or other
25 natural features, areas, or open space for the purpose of managing or maintaining, or causing to
26 be managed or maintained by others, the land, water, and other natural amenities in any
27 undeveloped and relatively natural state in perpetuity. A private land trust must be granted
28 exemption from federal income tax under Internal Revenue Code 501c(3) [26 U.S.C. section
29 501(c)(3)] within two (2) years of its incorporation in Rhode Island or it may not continue to
30 function as a land trust in Rhode Island. A private land trust may not be incorporated for the
31 exclusive purpose of acquiring or accepting property or rights in property from a single
32 individual, family, corporation, business, partnership, or other entity. Membership in any private
33 land trust must be open to any individual subscribing to the purposes of the land trust and
34 agreeing to abide by its rules and regulations including payment of reasonable dues;

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

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

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

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

30 (E) Transfer of functions to the department. There are hereby transferred to the
31 department of environmental management the following functions, powers, duties and
32 responsibilities:

33 (1) Agriculture. The department of environmental management shall have all the
34 functions, powers, and duties heretofore vested in the department of agriculture and conservation

1 and its divisions, including promotion of agriculture and animal husbandry in their several
2 branches, including the inspection and suppression of contagious diseases among animals, the
3 regulation of the marketing of farm products, the inspection of orchards and nurseries, the
4 protection of trees and shrubs from injurious insects and diseases, protection from forest fires, the
5 inspection of apiaries and the suppression of contagious diseases among bees, prevention of the
6 sale of adulterated or misbranded agricultural seeds, promotion and encouragement of the work of
7 farm bureaus in cooperation with the University of Rhode Island, farmers' institutes and the
8 various organizations established for the purpose of developing an interest in agriculture, together
9 with such other agencies and activities as the governor and the general assembly may from time
10 to time place under the control of the department, and as heretofore vested by such of the
11 following chapters and sections of the general laws as are presently applicable to the department
12 of environmental management and which were previously applicable to the department of natural
13 resources and the department of agriculture and conservation or to any of its divisions: chapters 1
14 through 22, inclusive, as amended, in title 2 entitled "Agriculture and Forestry"; chapters 1
15 through 17, inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry"; chapters 1
16 through 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife"; chapters 1 through 32,
17 inclusive, as amended, in title 21 entitled "Food and Drugs"; chapter 7 of title 23 as amended,
18 entitled "Mosquito Abatement"; and by any other general or public law relating to the department
19 of agriculture and conservation or to any of its divisions or bureaus; and the department of
20 environmental management shall have all the functions, powers, and duties heretofore vested in
21 the department of health by chapters 3, 4, 5, 6, 7, 9, 11, 13, 18, and 19 of title 4, as amended,
22 entitled "Animals and Animal Husbandry"; and those functions, powers, and duties specifically
23 vested in the director of environmental management by the provisions of section 21-2-22, as
24 amended, entitled "Inspection of Animals and Milk"; the department of environmental
25 management shall further have all the functions, powers, and duties heretofore vested in the
26 department of health for livestock and other animals by chapters 4-3 (garbage feeding); 4-4
27 (animal diseases in general); 4-5 (tuberculosis control) [involving bovine animals]; 4-6
28 (brucellosis control); 4-7 (cattle dealers); 4-9 (biological products); 4-11 (psittacine birds); 4-13
29 (dogs); 4-18 (importation of wild animals); and 4-19 (animal care). The department of
30 environmental management shall have all the functions, powers, and duties heretofore vested in
31 the department of health by chapter 23-25 (pesticide control);

32 (2) Parks and recreation. The department of environmental management shall have all
33 the functions, powers, and duties heretofore vested in the division of parks and recreation of the
34 department of public works by chapters 1, 2, and 5 in title 32 entitled "Parks and Recreational

1 Areas"; by chapter 22.5 of title 23, as amended, entitled "Drowning Prevention and Lifesaving";
2 and by any other general or public law relating to the division of parks and recreation;

3 (3) Harbors, rivers, waters, water pollution control, water supply, and boating. The
4 department of environmental management shall have all the functions, powers, and duties
5 heretofore vested in the division of harbors and rivers of the department of public works, or in the
6 department itself by such as were previously applicable to the division or the department, of
7 chapters 1 through 22 and sections therein, as amended, in title 46 entitled "Waters and
8 Navigation"; and by any other general or public law relating to the division of harbors and rivers;

9 (4) Pollution prevention and control, and water supply. The department of environmental
10 management shall have all the functions, powers, and duties heretofore vested in the department
11 of health by chapters 23-18.9 (Refuse disposal); 23-19.5 (Percolation tests); 46-12 (water
12 pollution); and 46-16 (New England Interstate Water Pollution Control Compact); and in the
13 department of community affairs relating to the sewage and water supply failure and transferred
14 by section 18 of this chapter to the department of environmental management;

15 (5) Planning. The department of environmental management shall have all the functions,
16 powers, and duties necessary to prepare and adopt an environmental management and
17 sustainability plan as set forth in subsection 42-17.1-2(A)(12) of this section, including as
18 necessary those functions of strategic planning transferred to the department of administration by
19 section 17 of this chapter but not put into full force and effect or implemented by the department
20 of administration.

21 (F) Definitions. The following definitions shall apply in the interpretation of the
22 provisions of this chapter:

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

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

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

32 (b) For purposes of calculating the time within which a claim for a hearing is made
33 pursuant to section 42-17.1-2(D)(4) heretofore, service shall be deemed to be the date of receipt

1 of such notice or three (3) days from the date of mailing of said notice, whichever shall first
2 occur.

3 (G) Nothing in this section or chapter shall be deemed to abrogate the powers and duties
4 of the coastal resources management council under chapter 23 of title 46.

5 (H) Habitat and ecosystems. The coastal resources management council, as the principal
6 mechanism for management of the state's coastal resources, shall have the responsibility for the
7 protection and enhancement of habitat and ecosystems in areas under its jurisdiction, and the
8 terms "habitat" and "ecosystems" as they are used in this chapter shall not be deemed to confer
9 functions, duties, or powers on the department in areas under the jurisdiction of the council,
10 unless such habitat and ecosystem enhancement and protection activities are coordinated between
11 the department and council; and provided further, that protection and enhancement activities shall
12 not:

13 (i) Conflict with any resources management plan or program;

14 (ii) Make any area unsuitable for any uses or activities to which it is allocated by a
15 resources management plan or program adopted by the council.

16 (I) Water Quality Certifications. In order to accomplish the purposes of the "Marine
17 Infrastructure Maintenance Act of 1996," chapter 281 of the public laws of 1996, and to facilitate
18 the continuation of existing recreation and commercial use of marine resources;

19 (1) The coastal resources management council is hereby designated as the state water
20 pollution control agency for this state for purposes of the federal clean water act, as amended [33
21 U.S.C.1251], only as that act applies to dredging, port development in tidal waters of the state,
22 and the transportation and disposal of dredging material. The department shall continue to serve
23 as the primary water pollution control agency for this state, except for the limited issuance of
24 water certification as set forth herein. The coastal resource management council is hereby
25 authorized to take all action necessary or appropriate, to include the issuance of water quality
26 certifications, to secure to this state the benefits of that act for the limited purposes set forth
27 herein. This section shall take effect six (6) months from the date of passage during which time
28 the coastal resources management council shall pursue appropriate authorities as provided for in
29 the clean water act, as amended;

30 (2) In connection with the dredging and transportation and disposal of dredge material,
31 the coastal resources management council shall issue or deny water quality certificates to
32 implement water quality standards as adopted by the department pursuant to 46-12-3(x) for
33 dredging, port development in the tidal waters of the state, and the transportation and disposal of

1 dredge materials in territorial waters, including, but not limited to, the federal environmental
2 protection agency's rules and regulations for deviating from said standards;

3 (3) The department shall exercise its powers under section 46-12-5 in a manner not
4 inconsistent with the powers and duties conferred upon the Coastal Resources Management
5 Council by this subsection (I).

6 SECTION 3. Sections 42-17.1-4 and 42-17.1-5 of the General Laws in Chapter 42-17.1
7 entitled, "Department of Environmental Management [Effective until July 1, 2002]" are hereby
8 amended to read as follows:

9 **42-17.1-4. Divisions within department. [Effective until July 1, 2002]. Bureaus,**
10 **offices, and divisions within department. -- (a) Bureaus.** Within the department of
11 environmental management there are established the following bureaus, which shall constitute the
12 basic operating structure of the department; and there shall further be such offices, divisions or
13 other operating units within the department as set forth in a plan of organization adopted pursuant
14 to section 42-17.1-2(c)(4), to carry out the powers, duties and functions of the department. It shall
15 be the responsibility of the director to delegate such powers, duties and functions to such bureaus,
16 offices and divisions as the director shall deem appropriate.

17 (1) A bureau of administration and planning, which shall house the human resources,
18 budgeting, financial management purchasing, information technology, management services, boat
19 registration and licensing, planning, development and programming functions of the department
20 and shall be directed by a deputy director who shall have the title and responsibilities of chief
21 operating officer of the department;

22 (2) Bureau of national resources, which shall house the parks and recreation, natural
23 resource services, including agriculture and resource marketing, forest environment, fish and
24 wildlife, coastal resources including port facility operation and management and boating safety,
25 and enforcement functions of the department and shall be directed by an associate director;

26 (3) Bureau of environmental protection which shall house the regulatory, permitting,
27 technical and customer assistance, and compliance and inspection functions of the department,
28 including air quality, water resources, and waste management, and shall be directed by an
29 associate director;

30 (b) Offices and programs. In addition to an office of the director, there shall be the
31 following offices, which may either report to the office of the director, or be assigned to a bureau,
32 unless otherwise specified by law;

33 (1) an office of legal services;

34 (2) an office of criminal investigation which shall report to the director and which shall

1 coordinate all criminal enforcement proceedings for the department as set forth below. The
2 director shall have the authority to appoint such number of investigative agents, under the
3 supervision of a chief, as may be necessary for the detection and prosecution of any violation of
4 the laws of the state enumerated in this act. The chief and investigative agents of the office of
5 criminal investigation shall have all the powers and duties of conservation officers as set forth in
6 section 20-1-8 of the general laws, and shall be deemed peace officers within the meaning of
7 section 12-7-21. In the event that any member of the office of criminal investigation is deputized
8 by a federal law enforcement agency, or by an enforcement agency of the state or of its
9 municipalities, such deputization shall be authorized only by the director, and shall be reported to
10 the superintendent of state police. The chief of the office of criminal investigation shall report
11 directly to the director. Without limiting any of the foregoing powers, the director and each
12 investigative agent shall have the power:

13 (i) To enforce all laws, rules, and regulations of the state pertaining to:

14 (A) Hazardous and solid waste transportation, storage, and disposal and any other laws of
15 the state pertaining to solid and/or hazardous waste;

16 (B) Air pollution and water pollution, including groundwater pollution;

17 (C) Freshwater wetlands within the jurisdiction of the department, dams;

18 (D) Drinking water supplies, provided, nothing contained herein shall abrogate or affect
19 the powers and duties of the department of health in chapters 13 and 14 of title 46;

20 (E) To investigate the violation of any other criminal statute arising from any
21 investigation conducted pursuant to this chapter.

22 (ii) To issue summonses and to execute all warrants and search warrants for the violation
23 of the laws, rules and regulations enumerated in this chapter and subsection (6);

24 (iii) To serve subpoenas for the trial or hearing of all offenses against the laws, rules, and
25 regulations enumerated by this chapter;

26 (iv) To arrest without a warrant any person found violating any law, rule, or regulation
27 enumerated in this chapter, take such person before a court of competent jurisdiction and detain
28 such person in custody of the state until arraignment except when a summons can be issued in
29 accordance with section 12-7-11;

30 (v) To carry firearms or other weapons, concealed or otherwise, in the course of and in
31 the performance of the duties of the office;

32 (vi) To arrest without a warrant, to execute complaints within said district to the justice or
33 clerk of the district court without recognizance, or surety, against any person for assault; assault
34 with a dangerous weapon; larceny, vandalism; and obstructing an officer in the execution of his

1 or her duty.

2 (3)(a) A division of administrative adjudication;

3 (b) Members of the department shall have no communication directly or indirectly, with
4 a hearing officer, excluding testimony presented at such hearing, relating to any issue of fact or of
5 law on any matter then pending before the hearing officer.

6 ~~(A) A division of parks and recreation which shall carry out those functions of the~~
7 ~~department relating to the operation and maintenance of parks and recreation areas and the~~
8 ~~establishment and maintenance of such additional recreation areas as may from time to time be~~
9 ~~acquired and such other functions and duties as may from time to time be assigned by the~~
10 ~~director;~~

11 ~~(B) A division of fish and wildlife which shall carry out those functions of the department~~
12 ~~relating to the administration of hunting, fishing, and shell fisheries; the preservation of wetlands,~~
13 ~~marsh lands, and wildlife and such other functions and duties as may from time to time be~~
14 ~~assigned by the director;~~

15 ~~(C) A division of agriculture which shall carry out those functions of the department~~
16 ~~relating to agriculture, entomology and plant industry and such other functions and duties as may~~
17 ~~from time to time be assigned by the director;~~

18 ~~(D) A division of coastal resources which shall carry out those functions of the~~
19 ~~department relating to harbors and harbor lines, pilotage, flood control, shore development,~~
20 ~~construction of port facilities, and the registration of boats and such other functions and duties as~~
21 ~~may from time to time be assigned by the director, except that the division shall not be~~
22 ~~responsible for the functions of inspection of dams and reservoirs, approving plans for~~
23 ~~construction or improvement of dams, reservoirs and other structures in non-tidal waters, and the~~
24 ~~operation of stream gauging stations in cooperation with the United States geological survey, and~~
25 ~~provided further that the division and its staff shall be responsible through the director of~~
26 ~~environmental management, to the coastal resources management council, and the chief and the~~
27 ~~staff of the division shall serve as staff to the council;~~

28 ~~(E) A division of planning and development which shall carry out those functions of the~~
29 ~~department relating to planning, programming, acquisition of land, engineering studies and such~~
30 ~~other studies as the director may direct, and which shall work with the board of governors for~~
31 ~~higher education and the board of regents for elementary and secondary education, with~~
32 ~~educational institutions at all levels and with the public in the dissemination of information and~~
33 ~~education relating to natural resources and shall perform the publication and public relations~~
34 ~~functions of the department, the functions of inspection of dams and reservoirs, approving plans~~

1 ~~for construction or improvement of dams, reservoirs, and other structures in non-tidal waters, and~~
2 ~~the operation of stream-gauging stations in cooperation with the United States geological survey;~~

3 ~~(F) A division of enforcement which shall enforce all of the laws and regulations of the~~
4 ~~department and the coastal resources management council, which shall cooperate with the other~~
5 ~~enforcement agencies of the state and its municipalities, and which shall administer all of the~~
6 ~~policing, enforcing, licensing, registration, and inspection functions and of the department and~~
7 ~~such other functions and duties as may from time to time be assigned by the director;~~

8 ~~(G) A division of forest environment which shall carry out those functions of the~~
9 ~~department relating to the administration of forests and natural areas, including programs for~~
10 ~~utilization, conservation, forest fire protection, and improvements of these areas; assisting other~~
11 ~~agencies and local governments in urban programs relating to trees, forests, green belts, and~~
12 ~~environment and such other functions and duties as may from time to time be assigned by the~~
13 ~~director;~~

14 (4) (A) A boating safety program which shall carry out those functions of the department
15 relating to the development and administration of a coordinated safe boating program in
16 accordance with the Model Safe Boating Act of 1971 as approved by the national association of
17 state boating law administrators;

18 (B) Administration of the division of boating safety shall be the responsibility of the state
19 boating law administrator whose duties shall include:

20 (a) The enforcement of all laws relating to the act;

21 (b) The powers vested in the state boating law administrator and boating safety
22 enforcement officer shall include the enforcement of laws, rules and regulations relating to
23 "Regulation of Boats," title 46, chapter 22 and shall also include the power to:

24 (i) Execute all warrants and search warrants for the violation of laws, rules and
25 regulations relating to the act;

26 (ii) Serve subpoenas issued for the trial of all offenses hereunder;

27 (iii) To carry fire arms or other weapons, concealed or otherwise, in the course of and in
28 performance of their duties under this chapter;

29 (iv) To arrest without warrant and on view any person found violating any law, rule, or
30 regulation relating to the act, take that person before a court having jurisdiction for trial, detain
31 that person in custody at the expense of the state until arraignment and to make and execute
32 complaints within any district to the justice or clerk of the court against any person for any of the
33 offenses enumerated under the act committed within the district;

34 (v) Boating safety enforcement officers shall not be required to give surety for costs upon

1 any complaint made by him or her.

2 (C) The development and administration of a coordinated safe boating program.

3 (D) The establishment and enforcement of such rules and regulations as are deemed
4 necessary to achieve the purposes of the Model Safe Boating Act as approved by the state boating
5 law administrators.

6 (E) The state boating law administrator shall serve as the liaison to the United States
7 coast guard.

8 **42-17.1-5. Deputy director -- Assistant directors and heads of divisions. [Effective**
9 **until July 1, 2002.] -- Deputy director, associate directors, assistant directors and heads of**
10 **divisions. -- (a) There shall be a deputy director for environmental quality in the unclassified**
11 **service and appointed by the governor and an assistant director for operations, an assistant**
12 **director for regulation, an assistant director for legal services, and an assistant director for**
13 **administration, all of whom shall be in the classified service; and a head of each of the divisions**
14 **of the department, all of whom shall be in the classified service. administration and planning, who**
15 **shall be appointed by the director, and who shall be the chief operating officer of the department**
16 **and may in the absence of the director have all of the powers of the director, and who shall be in**
17 **the unclassified service.**

18 (b) There shall be an associate director for natural resources and an associate director for
19 environmental protection, each of whom shall be appointed by the director, and each of whom
20 shall be in the unclassified service.

21 (c) There shall be a chief legal counsel, who shall be appointed by the director, and who
22 shall be the head of the office of legal services, and who shall be in the unclassified service.

23 (d) The director may, in his or her discretion appoint a person currently serving in the
24 classified service to the position of deputy director, or associate director or chief legal counsel
25 and, if so appointed, such person or persons shall serve at the pleasure of the appointing authority
26 and shall be in the unclassified service and not in the classified service, nor shall the provisions of
27 section 36-4-59 apply in any way to such person or persons so appointed.

28 (e) The director may appoint such assistant directors and heads of divisions as may be
29 necessary to perform the functions of the department consistent with a duly adopted
30 organizational plan, and each such assistant director and department head may be in the classified
31 service.

32 (f) Nothing herein shall require an employee to be separated from state service solely by
33 reason of the passage of this section; provided, however, that nothing contained herein shall
34 prohibit the reassignment of said employee or employees to other duties.

1 SECTION 4. Sections 42-17.7-1, 42-17.7-3, 42-17.7-5, and 42-17.7-6 of the General
2 Laws in Chapter 42-17.7 entitled "Administrative Adjudication for Environmental Matters" are
3 hereby amended to read as follows:

4 **42-17.7-1. Establishment.** -- Prior to January 1, 1990, there shall be established a
5 division for administrative adjudication ~~with~~ within the department of environmental
6 management. Such division shall be an independent and discrete entity but shall exercise its
7 functions with facilities, support services, and administrative assistance from the department
8 under the control of the director of environmental management.

9 **42-17.7-3. Hearing officers -- Appointment -- Qualifications -- Compensation.** -- (1)
10 The governor, with the advice and consent of the senate, shall appoint up to four (4) hearing
11 officers, who shall be attorneys-at-law who have substantial expertise in the area of
12 environmental law who prior to their appointment shall have practiced law for a period of not less
13 than five (5) years, for a term of five (5) years each; provided, however, that of such initial four
14 (4) hearing officers, one shall be appointed for a term of two (2) years, one shall be appointed for
15 a term of three (3) years, one shall be appointed for a term of four (4) years, and one shall be
16 appointed for a term of five (5) years, and they shall be addressed as hearing officers.

17 (2) The governor shall designate one of these hearing officers as chief hearing officer.
18 The hearing officers shall hear proceedings as provided by this chapter, and the director with the
19 assistance of the chief hearing officer may promulgate such rules and regulations as shall be
20 necessary or desirable to effect the purposes of this chapter.

21 (3) A hearing officer shall devote full-time to these administrative duties and shall not
22 otherwise practice law while holding office nor be a partner nor an associate of any person in the
23 practice of law.

24 (4) Compensation for hearing officers shall be determined by the unclassified pay board.

25 (5) The chief hearing officer may in his discretion appoint outside hearing officers who
26 shall have appropriate qualifications to so serve.

27 **42-17.7-5. Prehearing procedure -- Depositions -- Exhibits -- Formulating issues --**
28 **Other procedures.** -- (1) Prior to the commencement of any hearing, the hearing officer may in
29 his or her discretion direct the parties or their attorneys to appear before him or her for such
30 conferences as shall be necessary. At such conferences the hearing officer may order any party to
31 file, prior to the commencement of any formal hearing, any exhibits the party intends to use in the
32 hearing and the names and addresses of witnesses the party intends to produce in its direct case
33 together with a short statement of the testimony of each witness. Following entry of such an
34 order, a party shall not be permitted, except in the discretion of the hearing officer, to introduce

1 into evidence in said party's direct case exhibits which are not filed in accordance with the order.
2 At such conference, the hearing officer may designate a date before which he or she requires any
3 party to specify what issues are conceded and further proof of conceded issues shall not be
4 required. The hearing officer shall also require the parties to simplify the issues, to consider
5 admissions of fact and of documents which will avoid unnecessary proof and to limit the number
6 of expert witnesses. The hearing officer shall enter an order reciting the concessions and
7 agreements made by the parties, and shall enter an order on such other matters as are pertinent to
8 the conduct of the hearing, and, unless modified, the hearing shall be conducted by the order.

9 (2) The hearing officer may also order the parties to file prior to the commencement of
10 any hearing the testimony of any or all of their respective witnesses and to submit such testimony
11 to the hearing officer and the opposing party or the opposing counsel by such date as the hearing
12 officer shall determine. The witness shall testify under oath, and all of such testimony shall be in
13 a question and answer format. Save for good cause shown, said testimony shall be the direct
14 examination of said witness, provided, however, that said witness shall be available at the hearing
15 for cross-examination by the opposing party or opposing counsel.

16 (3) The director with the ~~assistance~~ concurrence of the chief hearing officer shall
17 promulgate by regulation such other prehearing procedures and/or hearing procedures as deemed
18 necessary including the use of portions of the superior court civil rules of discovery where they
19 are not inconsistent with the applicable provisions of the Administrative Procedures Act, chapter
20 35 of this title.

21 **42-17.7-6. Hearings -- Orders -- Concurrent jurisdiction.** -- (1) Subject to the
22 provisions of section 42-17.7-2, every hearing for the adjudication of a violation or for a license
23 shall be held before a hearing officer. The chief hearing officer shall assign a hearing officer to
24 each matter. In any adjudication of a violation wherein the maximum penalty that could be
25 imposed on a party includes a monetary fine but not imprisonment, then the standard of proof
26 applied therein shall be by clear and convincing evidence; and provided further, in any such
27 matter wherein the maximum penalty that could be imposed on a party includes imprisonment,
28 then the standard of proof applied therein shall be by proof of knowing and willful conduct. After
29 due consideration of the evidence and arguments, the hearing officer shall make written proposed
30 findings of fact and proposed conclusions of law which shall be made public when submitted to
31 the director for review. The director ~~may in his or her discretion adopt, modify, or reject such~~
32 ~~findings of fact and/or conclusions of law provided, however, that any such modification or~~
33 ~~rejection of the proposed findings of fact or conclusions of law shall be in writing and shall state~~
34 ~~the rationale therefor.~~ shall accept the recommendation of the hearing officer as the final agency

1 action unless the director shall find that such recommendation is contrary to law or regulation or
2 is not supported by the substantial evidence in the record as a whole, in which case the director
3 may amend or reject the recommendation of the hearing officer.

4 (2) The department of environmental management and the coastal resources management
5 council shall promulgate such rules and regulations, not inconsistent with law, as to assure
6 uniformity of proceedings as applicable.

7 (3) Except as otherwise provided by law, judicial review or other required review shall
8 be in accordance with sections 42-35-15, 42-35-15.1 and 42-35-16 of the Rhode Island general
9 laws as amended.

10 SECTION 5. Chapter 42-17.1 of the General Laws entitled "Department of The
11 Environment [Effective July 1, 2002.]" is hereby repealed in its entirety.

12 CHAPTER 17.1

13 ~~Department of the Environment [Effective July 1, 2002]~~

14 ~~**42-17.1-1 Department established -- Definitions. [Effective July 1, 2000.]**~~

15 ~~(a) There is hereby established within the executive branch of the state government a~~
16 ~~department of the environment. The head of the department shall be the director of the~~
17 ~~department of the environment, who shall be in the unclassified service and who shall be~~
18 ~~appointed by the governor, with the advice and consent of the senate, and shall serve at the~~
19 ~~pleasure of the governor.~~

20 ~~(b) The following definitions shall apply in the interpretation of the provisions of this~~
21 ~~chapter:~~

22 ~~(1) "Commissioner of coastal resources" shall mean the commissioner or his or her duly~~
23 ~~authorized agent established in section 42-17.1-12.~~

24 ~~(2) "Commissioner of environmental management" shall mean the commissioner or his~~
25 ~~or her duly authorized agent established in section 42-17.1-10 herein.~~

26 ~~(3) "Commissioner of environmental protection" shall mean the commissioner or his or~~
27 ~~her duly authorized agency established in section 42-17.1-11.~~

28 ~~(4) "Director" shall mean the director of the department of the environment of the state~~
29 ~~of Rhode Island or his or her duly authorized agent.~~

30 ~~(5) "Person" shall include any individual, group of individuals, firm, corporation,~~
31 ~~association, partnership, or private or public entity, including a district, county, city, town, or~~
32 ~~other governmental unit or agent thereof, and in the case of a corporation, any individual having~~
33 ~~active and general supervision of the properties of such corporation.~~

34 ~~(6) "Service" upon a corporation under this section shall be deemed to include service~~

1 upon both the corporation and upon the person having active and general supervision of the
2 properties of such corporation.

3 **42-17.1-2 Branches established. [Effective July 1, 2002.]**

4 ~~Within the department of the environment there are established the following offices and
5 branches:~~

6 ~~(a) An administrative adjudication branch which shall carry out those functions of the
7 department pursuant to the provisions of chapter 17.7 of this title;~~

8 ~~(b) An environmental management branch which shall carry out those functions of the
9 divisions of agriculture, ports and harbors, enforcement, fish and wildlife, forest environment,
10 parks and recreation, and boating safety and including but not limited to those functions
11 enumerated in section 42-17.1-3;~~

12 ~~(c) An environmental protection branch which shall carry out those permitting,
13 enforcement, and regulatory functions of the divisions of air, solid and hazardous waste,
14 groundwater and individual sewage disposal systems, freshwater wetlands and water pollution
15 control and including but not limited to those functions enumerated in section 42-17.1-4;~~

16 ~~(d) A policy and planning branch which shall carry out the functions of program
17 initiatives, crossmedia and intergovernmental planning, disbursement of grants and loans, review
18 and approval of legislatively mandated watershed protection plans, and land acquisition, and
19 which shall assist with coastal resources planning;~~

20 ~~(e) An administration branch consisting of the offices of business affairs and employee
21 relations and which branch shall carry out the functions of said offices;~~

22 ~~(f) An information, education, and special projects branch which shall carry out those
23 functions of information, assistance, publications, media releases, workshops, and programs for
24 environmental education, waste reduction, recycling, and pollution source reduction, including
25 but not limited to those functions enumerated in chapters 18.8, 19.6, 19.9, 19.10 and 19.11 of title
26 23.~~

27 ~~(g) A water resources management branch which will carry out those functions of water
28 supply management under the provisions of chapter 15 of title 46 and which shall administer
29 agreements for bond programs for water supply.~~

30 **42-17.1-2.1 Coastal resources management branch. [Effective July 1, 2002.]**

31 ~~There shall be a coastal resources management branch which shall be a part of the
32 department of environment for the purpose of developing and implementing a coordinated
33 program of environmental protection and resource management and which shall carry out
34 planning, management, permitting, enforcement, and regulatory functions at the direction of the~~

1 coastal resources management council.

2 ~~42-17.1-3 Divisions within the branch of environmental management. [Effective~~
3 ~~July 1, 2002.]~~

4 ~~Within the environmental management branch, the following divisions are established:~~

5 ~~(a) A division of agriculture which shall carry out those functions of the branch relating~~
6 ~~to agriculture, entomology, plant industry, and those divisions of agriculture functions of title 2~~
7 ~~and section 2-1-22(i), and those functions in chapters 25, 25.2 and 25.3 of title 23, and chapter~~
8 ~~17.2 of title 46, and such other functions as may from time to time be assigned by the~~
9 ~~commissioner;~~

10 ~~(b) A division of ports and harbors which shall carry out those functions of the branch~~
11 ~~relating to harbors and harbor lines, pilotage, flood control, construction of port facilities, and~~
12 ~~such other functions and duties as may from time to time be assigned by the commissioner,~~
13 ~~except that the division shall not be responsible for the functions of inspection of dams and~~
14 ~~reservoirs, approving plans for construction or improvement of dams, reservoirs, and other~~
15 ~~structures in non-tidal waters, and the operation of stream-gauging stations in cooperation with~~
16 ~~the United States geological survey;~~

17 ~~(c) A division of enforcement which shall enforce the laws and regulations of the~~
18 ~~department. In connection with such enforcement, the powers and duties of the director set forth~~
19 ~~in sections 20-1-4 and 20-1-5 to the extent that those sections authorize the director to enforce~~
20 ~~laws, rules, and regulations and prosecute violations thereof, and sections 20-1-6, 20-1-7, and 20-~~
21 ~~1-8 pertaining to appointment and powers of conservation officers and deputy wardens, are~~
22 ~~hereby transferred to the commissioners for environmental management and environmental~~
23 ~~protection as required to effectuate the provisions of this chapter, and the term "director" as used~~
24 ~~in said sections shall be deemed to mean "commissioner for environmental management" or~~
25 ~~"commissioner of environmental protection" as the case may be to the extent required to comply~~
26 ~~with this section. The division of enforcement shall cooperate with the enforcement personnel of~~
27 ~~the coastal resources management council and with other enforcement agencies of the state and~~
28 ~~its municipalities, and shall administer all of the policing, enforcing, licensing, registration, and~~
29 ~~inspection functions of the department and such other functions and duties as may from time to~~
30 ~~time be assigned by the commissioner;~~

31 ~~(d) A division of fish and wildlife which shall carry out those functions of the branch~~
32 ~~relating to the administration of hunting, fishing, and shell fisheries; wetlands, marshlands, and~~
33 ~~wildlife in title 20, and such other functions and duties as may from time to time be assigned by~~
34 ~~the commissioner;~~

1 ~~(e) A division of forest environment which shall carry out those functions of the branch~~
2 ~~relating to the administration of forests and natural areas, including programs for utilization,~~
3 ~~conservation, forest fire protection, and improvements of these areas; assisting other agencies and~~
4 ~~local governments in urban programs relating to trees, forests, green belts, and the environment,~~
5 ~~and management of properties controlled by the water resources board; and those forestry~~
6 ~~functions in title 2; and such other functions and duties as may from time to time be assigned by~~
7 ~~the commissioner;~~

8 ~~(f) A division of parks and recreation which shall carry out those functions of the branch~~
9 ~~relating to the operation and maintenance of parks and recreational areas and the establishment~~
10 ~~and maintenance of such additional recreational areas as may from time to time be acquired and~~
11 ~~such other functions and duties as may from time to time be assigned by the commissioner;~~

12 ~~(g) (1) A division of boating safety which shall carry out those functions of the~~
13 ~~department relating to the development and administration of a coordinated safe boating program~~
14 ~~as approved by the national association of state boating law administrators;~~

15 ~~(2) Administration of the division of boating safety shall be the responsibility of the state~~
16 ~~boating law administrator (administrator) whose duties shall include:~~

17 ~~(A) The enforcement of all laws relating to the chapter;~~

18 ~~(B) The enforcement, along with the boating safety enforcement officer, of laws, rules~~
19 ~~and regulations relating to "Regulation of Boats", title 46, chapter 22, including the power:~~

20 ~~(i) To execute all warrants and search warrants for the violation of laws, rules, and~~
21 ~~regulations relating to the chapter.~~

22 ~~(ii) To serve subpoenas issued for the trial of all offenses hereunder.~~

23 ~~(iii) To carry firearms or other weapons, concealed or otherwise, in the course of and in~~
24 ~~performance of their duties under this chapter.~~

25 ~~(iv) To arrest without warrant and on view any person found violating any law, rule, or~~
26 ~~regulation relating to the chapter, take that person before a court having jurisdiction for trial,~~
27 ~~detain that person in custody at the expense of the state until arraignment and to make and~~
28 ~~execute complaints within any district to the justice or clerk of the court against any person for~~
29 ~~any of the offenses enumerated under the chapter committed within the district.~~

30 ~~(v) Boating safety enforcement officers shall not be required to give surety for costs~~
31 ~~upon any complaint made by him or her.~~

32 ~~(C) The development and administration of a coordinated safe boating program.~~

33 ~~(D) The establishment and enforcement of such rules and regulations as are deemed~~
34 ~~necessary to achieve the purposes of the Model Safe Boating Act as approved by the~~

1 administrator.

2 ~~(E) Serving as the liaison to the United States coast guard.~~

3 ~~(F) The administration of the operation and control of all state owned and state~~
4 ~~maintained boat ramps. The administrator shall permit the use of such ramps by Rhode Island~~
5 ~~owners of any boat or motorboat consistent with the limitations on speed on bodies of water as set~~
6 ~~forth in chapter 22 of title 46. This authority shall not supercede any currently existing state or~~
7 ~~federal requirements or program oversight.~~

8 ~~(G) The administration of the registration process for all boats.~~

9 ~~42-17.1-4 Divisions within the branch of environmental protection. [Effective July~~
10 ~~1, 2002.]~~

11 ~~Within the environmental protection branch, the following divisions are established:~~

12 ~~(a) A division of air pollution control which shall carry out those functions including but~~
13 ~~not limited to permitting, enforcement, and regulatory matters relating thereto including but not~~
14 ~~limited to those functions in chapters 23 and 23.1 of title 23, and such other functions and duties~~
15 ~~as may from time to time be assigned by the commissioner;~~

16 ~~(b) A division of solid and hazardous waste which shall carry out those functions~~
17 ~~including but not limited to permitting, enforcement and regulatory functions relating to but not~~
18 ~~limited to chapters 18.9, 19.1, 19.4, 19.8 of title 23, and such other functions and duties as may~~
19 ~~from time to time be assigned by the commissioner;~~

20 ~~(c) A division of groundwater and individual sewage disposal systems which shall carry~~
21 ~~out those permitting, enforcement, and regulatory functions relating to groundwater protection~~
22 ~~and regulation of individual sewage disposal systems, including, but not limited to those~~
23 ~~functions set forth in section 42-17.1-9(h)(1) herein and chapter 19.5 and chapters 12, 12.1, 13.1,~~
24 ~~and 13.2 of title 46, and such other functions and duties as may from time to time be assigned by~~
25 ~~the commissioner.~~

26 ~~(d) A division of freshwater wetlands which shall carry out those functions including but~~
27 ~~not limited to permitting, enforcement, and regulatory functions relating but not limited to those~~
28 ~~functions in chapter 19 of title 46, and in section 2-1-18 et seq., except where the authority is~~
29 ~~vested in the division of agriculture under section 2-1-22, and such other functions and duties as~~
30 ~~may from time to time be assigned by the commissioner;~~

31 ~~(e) A division of water pollution control which shall carry out those permitting,~~
32 ~~enforcement, and regulatory functions relating thereto including, but not limited to those~~
33 ~~functions in chapters 12, 16 and 17.1 of title 46 and chapter 8.1 of title 20, and such other~~
34 ~~functions and duties as may from time to time be assigned by the commissioner.~~

1 ~~(f) A division of criminal investigation, which shall coordinate all criminal enforcement~~
2 ~~proceedings for the department. The commissioner for environmental protection shall have the~~
3 ~~authority to assign investigative agents to other branches or divisions, or to the director, as~~
4 ~~required to effectuate the purposes of this chapter, and in addition thereto, shall have authority to~~
5 ~~appoint such number of investigative agents, under the supervision of a commander, as may be~~
6 ~~necessary for the detection and prosecution of any violation of the laws of the state enumerated in~~
7 ~~this chapter. Investigative agents shall be deemed peace officers within the meaning of section~~
8 ~~11 32-1. The commissioner of environmental protection, and each investigative agent, shall have~~
9 ~~the power:~~

10 ~~(1) To enforce all laws, rules, and regulations of the state pertaining to:~~

11 ~~(i) Hazardous and solid waste transportation, storage, and disposal and any other laws of~~
12 ~~the state pertaining to solid and/or hazardous waste;~~

13 ~~(ii) Air pollution and water pollution, including groundwater pollution;~~

14 ~~(iii) Freshwater wetlands, dams;~~

15 ~~(iv) Drinking water supplies;~~

16 ~~Nothing contained herein shall abrogate or affect the powers and duties of the~~
17 ~~department of health in chapters 13 and 14 of title 46.~~

18 ~~(2) To issue summonses and to execute all warrants and search warrants for the violation~~
19 ~~of the laws, rules, and regulations enumerated in this chapter and subsection (6);~~

20 ~~(3) To serve subpoenas for the trial or hearing of all offenses against the laws, rules, and~~
21 ~~regulations enumerated by this chapter and subsection (6);~~

22 ~~(4) To arrest without a warrant any person found violating any law, rule, or regulation~~
23 ~~enumerated in this chapter or in subsection (6), take such person before a court of competent~~
24 ~~jurisdiction and detain such person in custody of the state until arraignment except when a~~
25 ~~summons can be issued in accordance with section 12-7-11;~~

26 ~~(5) To carry firearms or other weapons, concealed or otherwise, in the course of and in~~
27 ~~the performance of the duties of the office;~~

28 ~~(6) To arrest without a warrant, to execute all warrants and search warrants, and to make~~
29 ~~and execute complaints within said district to the justice or clerk of the district court without~~
30 ~~recognizance or surety, against any person for assault; assault with a dangerous weapon; larceny;~~
31 ~~vandalism; and obstructing an officer in the execution of his or her duty.~~

32 ~~**42-17.1-5 Appointment of commissioners -- Assistant commissioners. [Effective July**~~
33 ~~**1, 2002.]**~~

34 ~~(a) The head of the environmental protection branch shall be the commissioner of~~

1 environmental protection, who shall be in the unclassified service and shall be appointed by the
2 governor, with the advice and consent of the senate. There shall be an assistant commissioner of
3 environmental protection who shall be in the classified service.

4 ~~(b) The head of the environmental management branch shall be the commissioner of
5 environmental management, who shall be in the unclassified service and shall be appointed by the
6 governor, with the advice and consent of the senate. There shall be an assistant commissioner for
7 environmental service who shall be in the classified service.~~

8 ~~(c) The head of the coastal resources management branch shall be the commissioner of
9 coastal resources who shall be in the unclassified service and shall be appointed by the coastal
10 resources management council. There shall be an assistant commissioner for coastal resources
11 management who shall be in the unclassified service and who shall be appointed by the coastal
12 resources management council.~~

13 ~~**42-17.1-6 Director's staff. [Effective July 1, 2002.]**~~

14 ~~The director shall designate an assistant, a legislative liaison, and a secretary who shall
15 perform such functions necessary to assist the director in the performance of his or her powers
16 and duties.~~

17 ~~**42-17.1-7 Appointment of assistant directors. [Effective July 1, 2002.]**~~

18 ~~The director shall appoint the assistant directors who shall be in the classified service.
19 The head of the policy and planning branch shall be the assistant director for policy and planning.
20 The head of the administration branch shall be the assistant director for administration. The head
21 of the information, education, and special projects branch shall be the assistant director for
22 information, education, and special projects. The head of the water resources management branch
23 shall be the assistant director for water resources management.~~

24 ~~**42-17.1-8 Appointment of attorneys. [Effective July 1, 2002.]**~~

25 ~~The director shall assign and appoint attorneys to represent the interests of the
26 department. The commissioners of environmental management and environmental protection
27 shall assign and appoint attorneys to represent the interests of their respective branches. The
28 coastal resources management council shall appoint attorneys to represent the coastal resources
29 management branch.~~

30 ~~**42-17.1-9 Powers and duties of the director. [Effective July 1, 2002.]**~~

31 ~~The director of the department of the environment shall have the following powers and
32 duties:~~

33 ~~(a) To develop policies to guide all environmental programs;~~

34 ~~(b) To advocate and represent the interests of the environment before the federal and~~

1 state governments, agencies, courts and the general assembly;

2 ~~(c) To oversee and coordinate the activities of the branches of environmental~~
3 ~~management and environmental protection and to supervise and control the branches of policy~~
4 ~~and planning, administration, information, education and special projects, and water resource~~
5 ~~management;~~

6 ~~(d) To prepare an annual state of the environment report for presentation to the governor~~
7 ~~and the general assembly;~~

8 ~~(e) To prepare an annual five (5) year plan for environmental protection and~~
9 ~~management for presentation to the governor and the general assembly;~~

10 ~~(f) To participate as an advocate in environmental permitting, licensing, and enforcement~~
11 ~~proceedings within the branches of environmental management, environmental protection, or~~
12 ~~coastal resources management or to intervene, as a matter of right, in any such proceeding~~
13 ~~pending in the administrative adjudication branch or in the federal and state courts, provided,~~
14 ~~however, that except as otherwise specifically provided in this chapter, the director shall have no~~
15 ~~authority to issue or to deny or to modify or to amend a permit or a license, arising from the~~
16 ~~regulatory authority contained in the environmental management, environmental regulatory or~~
17 ~~coastal resources management branches provided, however, that the director shall have the~~
18 ~~authority to initiate a civil action in any court of competent jurisdiction against any person to~~
19 ~~enforce, or to restrain the violation of, any promulgated state or federal environmental quality~~
20 ~~standard which is designed to prevent or minimize pollution, impairment, or destruction of the~~
21 ~~environment.~~

22 ~~(g) To establish policies for the coordinated review of permit applications when review~~
23 ~~and approval of an application is required by more than one branch of the department;~~

24 ~~(h) To develop, adopt, modify, and repeal all rules and regulations to carry out the~~
25 ~~functions of the department under any provision of the laws of this state and under any provision~~
26 ~~of law authorizing the promulgation of rules and regulations by the director of the department of~~
27 ~~environmental management, including but not limited to:~~

28 ~~(1) Establishing minimum standards relating to the location, design, construction, and~~
29 ~~maintenance of all sewage disposal systems;~~

30 ~~(2) Establishing minimum standards for the establishment and maintenance of salutary~~
31 ~~environmental conditions;~~

32 ~~(3) Establishing minimum standards for permissible types of septage, industrial waste~~
33 ~~disposal sites, and waste oil sites;~~

34 ~~(4) Establishing minimum standards for permissible types of refuse disposal facilities,~~

1 ~~the design, construction, operation, and maintenance of disposal facilities; and the location of~~
2 ~~various types of facilities, except those mandated by statute;~~

3 ~~(5) Establishing standards for all administrative and enforcement functions necessary for~~
4 ~~the administration of chapters 19.1 and 19.4 of title 23.~~

5 ~~(6) Designating in writing with the approval of the applicable commissioner any person~~
6 ~~in any department of the state government or any official of a district, county, city, town, or other~~
7 ~~governmental unit, with that official's consent, to enforce any rule, regulation, or order~~
8 ~~promulgated and adopted by the director under any provision of law;~~

9 ~~(7) Issuing such rules, regulations, and/or orders as may be necessary to carry out the~~
10 ~~duties assigned to the director or to the commissioners and/or to the department by any provision~~
11 ~~of law;~~

12 ~~(8) Establishing fee schedules by regulation with the approval of the governor for the~~
13 ~~processing of applications and the performing of related activities in connection with the~~
14 ~~department's responsibilities including but not limited to applications pursuant to section 42-17.1-~~
15 ~~4; chapters 18.9, 19.1, 19.5, and 23 of title 23; and chapters 12 and 13.1 of title 46, insofar as such~~
16 ~~relate to water quality certifications and related reviews performed pursuant to provisions of the~~
17 ~~federal Clean Water Act, 33 U.S.C. section 1251 et seq., the regulation and administration of~~
18 ~~underground storage tanks and all other programs administered, under that chapter 12.1 and~~
19 ~~reviews related to activities performed under the provisions of the Groundwater Protection Act,~~
20 ~~and section 2-1-18 et seq.~~

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

26 ~~(i) To cooperate with, advise, and guide conservation commissions of cities and towns~~
27 ~~created under chapter 35 of title 45.~~

28 ~~(j) To assist municipal water supply agencies and commercial, residential, and~~
29 ~~institutional water users in developing and implementing programs, plans, and policies for the~~
30 ~~safe and efficient administration, management, conservation, and protection of the water supply,~~
31 ~~including plans for water supply emergencies;~~

32 ~~(k) To assist municipal water supply agencies in implementing plans and programs~~
33 ~~developed by the division of planning of the department of administration for the augmentation of~~
34 ~~water supplies when demonstrable need exists following the achievement of reasonable levels of~~

1 conservation, management, and protection;

2 ~~-(l) To assist municipal water supply agencies in implementing plans and programs~~
3 ~~developed by the division of state planning of the department of administration for integrating~~
4 ~~public water supply systems with public sewer systems;~~

5 ~~-(m) To conduct biennial on-site inspections of all public water supply wells and surface~~
6 ~~water supplies and to report to the director of the department of health and to any community~~
7 ~~serviced by such supply any recommendations for the safe and efficient administration,~~
8 ~~management, and protection of such wells and supplies;~~

9 ~~-(n) To regulate the proper development, protection, conservation, and use of the water~~
10 ~~resources of the state pursuant to chapter 15 of title 46;~~

11 ~~-(o) To apply for and accept grants and bequests of funds from other states, interstate~~
12 ~~agencies and independent authorities, and private firms, individuals and foundations, for the~~
13 ~~purpose of carrying out his lawful responsibilities. The funds shall be deposited with the general~~
14 ~~treasurer in a restricted receipt account established within the department to permit funds to be~~
15 ~~expended in accordance with the provisions of the grant or bequest;~~

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

20 ~~-(q) To take such steps including but not limited to matters related to funding as may be~~
21 ~~necessary to establish recreational facilities and areas as are deemed to be in the public interest; to~~
22 ~~acquire any interest in land by purchase, gift, bequest or devise necessary or incidental for~~
23 ~~carrying out his or her duties and responsibilities under this chapter, and/or to enter into contracts~~
24 ~~and agreements with persons or groups to facilitate acquisition of land for preservation or~~
25 ~~development of recreational resources for the benefit of the public;~~

26 ~~-(r) To exercise the powers and duties as set forth in chapter 24.3 of title 23;~~

27 ~~-(s) Subject to the prior approval of the governor, to assign or reassign any functions,~~
28 ~~duties, or powers established by this chapter to any agency within the department, except as~~
29 ~~hereinafter limited;~~

30 ~~-(t) To establish and maintain a list or inventory of areas within the state worthy of~~
31 ~~special designation as "scenic" to include but not be limited to certain state roads or highways,~~
32 ~~scenic vistas and scenic areas, and to make the list available to the public;~~

33 ~~-(u) In order for the director to effectuate the powers and duties given to him or her~~
34 ~~herein, the director is authorized to issue licenses and permits and to take administrative, civil~~

1 and/or criminal action to enforce the authorities delegated as enforcement programs to the policy
2 and planning branch, the information, education and special projects branch, the water resources
3 branch, and the administrative branch. Nothing herein shall be construed to abrogate or assume
4 the powers granted to the commissioners;

5 ~~(v) To conduct surveys of the present private and public camping and other recreational~~
6 ~~areas available and to determine the need for and location of such other camping and recreational~~
7 ~~areas as may be deemed necessary and in the public interest;~~

8 ~~(w) Additionally, the commissioner for environmental management shall take such~~
9 ~~additional steps including but not limited to matters related to funding as may be necessary to~~
10 ~~establish such other additional recreational facilities and areas as are deemed to be in the public~~
11 ~~interest;~~

12 ~~(x) To annually prepare in consultation with the commissioners of environmental~~
13 ~~management and environmental protection branches an operating budget and a capital~~
14 ~~development budget for the department of the environment and its various branches; said budgets~~
15 ~~to be submitted by the director to the governor for his or her approval;~~

16 ~~(1) The operating budget shall account for and provide for the disbursement, subject to~~
17 ~~statutory limitations on disbursements from restricted receipt accounts of all anticipated revenues,~~
18 ~~grants, and receipts, regardless of their source, including restricted receipt accounts, collected by~~
19 ~~any branch of the department necessary to support the operations, activities and responsibilities of~~
20 ~~the department and its branches.~~

21 ~~(2) The operating budget shall likewise identify funds requested to be appropriated by~~
22 ~~the General Assembly to support the operations, activities, and responsibilities of the department~~
23 ~~and its branches.~~

24 ~~(3) The capital development budget shall likewise account for and provide for the~~
25 ~~disbursement, subject to statutory limitations on disbursements from restricted receipt accounts,~~
26 ~~of all anticipated revenues, grants and receipts, regardless of their source, collected by any branch~~
27 ~~of the department, including restricted receipt accounts, necessary to undertake the development~~
28 ~~of or improvement of facilities maintained by the department and its branches and shall~~
29 ~~additionally identify funds requested to be obtained by the sale of bonds.~~

30 ~~(y) Nothing contained in this section shall abrogate or affect the powers of the coastal~~
31 ~~resources management council enumerated in chapter 23 of title 46 and, provided further, that the~~
32 ~~coastal resources management council budget shall be submitted by the commissioner of coastal~~
33 ~~resources to the director of the environment to be included as a separate item in the budget~~
34 ~~submission to the governor and all present services provided by the department of environmental~~

1 management to the coastal resources management council shall be provided to the coastal
2 resources management council by the department of the environment.

3 ~~42-17.1-10 Powers and duties -- Commissioner of environmental management~~
4 ~~branch. [Effective July 1, 2000.]~~

5 ~~The commissioner of environmental management shall have the following powers and~~
6 ~~duties:~~

7 ~~(a) To supervise and control the implementation of departmental laws, departmental~~
8 ~~policies, and regulations relating to the protection, development, and utilization of the natural~~
9 ~~resources of the state;~~

10 ~~(b) To exercise all functions, powers, and duties relating to the implementation of laws,~~
11 ~~departmental policies and regulations heretofore vested in the department of agriculture and~~
12 ~~conservation, and in each of the divisions of the department, such as the promotion of agriculture~~
13 ~~and animal husbandry in their several divisions, including the inspection and suppression of~~
14 ~~contagious diseases among animals, the regulation of the marketing of farm products, the~~
15 ~~inspection of orchards and nurseries, the protection of trees and shrubs from injurious insects and~~
16 ~~diseases, protection from forest fires, the inspection of apiaries and the suppression of contagious~~
17 ~~diseases among bees, prevention of the sale of adulterated or misbranded agricultural seeds,~~
18 ~~promotion and encouragement of the work of farm bureaus in cooperation with the University of~~
19 ~~Rhode Island farmers' institutes and the various organizations established for the purpose of~~
20 ~~developing an interest in agriculture, together with such other agencies and activities as the~~
21 ~~governor and the general assembly may from time to time place under the control of the~~
22 ~~department and the branch, and as heretofore vested by such of the following chapters and~~
23 ~~sections of the general laws as are presently applicable to the department and which were~~
24 ~~previously applicable to the department of environmental management, department of natural~~
25 ~~resources, and the department of agriculture and conservation or to any of its divisions; sections~~
26 ~~2-1-1, 2-1-10 and 2-1-21(i), and chapters 2-23 of title 2; chapters 1-17, inclusive, in title 4;~~
27 ~~chapters 1-19, inclusive, of title 20; chapters 1-32, inclusive, of title 21; chapter 7 of title 23;~~
28 ~~and by any other general or public law relating to the department of agriculture and conservation~~
29 ~~or to any of its divisions or bureaus;~~

30 ~~(c) To exercise all the functions, powers, and duties relating to the implementation of the~~
31 ~~General Laws and departmental policies and regulations heretofore vested in the division of parks~~
32 ~~and recreation of the department of public works by chapters 1 and 5 of title 32; by chapter 22.5~~
33 ~~of title 23; and by any other general or public law relating to the division of parks and recreation;~~

34 ~~(d) To exercise all the functions, powers, and duties relating to the implementation of~~

1 departmental policies and regulations heretofore vested in the division of harbors and rivers of the
2 department of public works, or in the department itself by such as were previously applicable to
3 the division or the department, of chapters 1—11 and chapters 22 and 22.1 and sections thereof,
4 of title 46, and by any other general or public law relating to the division of harbors and rivers,
5 except those duties delegated to the coastal resources management council;

6 ~~(e) To exercise all the functions, powers, and duties relating to the implementation of~~
7 ~~departmental policies and regulations heretofore vested in the department of health by chapter 25~~
8 ~~of title 23, and including but not limited to chapters 3, 4, 5, 6, 7, 9, 11, 13, 18, and 19 of title 4,~~
9 ~~and those functions, powers, and duties formerly vested in the director of the department of~~
10 ~~environmental management by the provisions of section 21-2-22, together with other powers and~~
11 ~~duties of the director of the department of health as are incidental to or necessary for the~~
12 ~~performance of the functions herein;~~

13 ~~(f) To enter, examine, or survey at any reasonable time such places as the commissioner~~
14 ~~deems necessary to carry out his or her responsibilities under any provision of law;~~

15 ~~(g) To give notice of an alleged violation of law to the person responsible therefor~~
16 ~~whenever the commissioner determines that there are reasonable grounds to believe that there is a~~
17 ~~violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted~~
18 ~~pursuant to authority granted to the department of the environment, unless other notice and~~
19 ~~hearing procedure is specifically provided by that law;~~

20 ~~(h) To impose administrative penalties in accordance with the provisions of chapter 17.6~~
21 ~~of this title and to direct that these penalties be paid into the environmental protection branch~~
22 ~~fund;~~

23 ~~(i) To cooperate with, advise, and guide conservation commissions of cities and towns~~
24 ~~created under chapter 35 of title 45;~~

25 ~~(j) To make recommendations to the director relative to rules and regulations~~
26 ~~promulgated by the director;~~

27 ~~(k) To bring civil or injunctive actions in any court of competent jurisdiction if in the~~
28 ~~judgment of the commissioner any firm, person, or corporation has violated the provisions of any~~
29 ~~law, rule, or regulation within his or her jurisdiction. Whenever such a prosecution shall take~~
30 ~~place, the commissioner shall not be required to give surety for the payment of costs. Any~~
31 ~~criminal prosecutions brought in the name of the commissioner shall be prosecuted by the~~
32 ~~attorney general.~~

33 ~~42-17.1-11 Powers and duties -- Commissioner of environmental protection branch.~~

34 ~~[Effective July 1, 2002.]~~

1 ~~The commissioner of environmental protection shall have the following powers and~~
2 ~~duties:~~

3 ~~(a) To enforce, by such means as provided by law, the policies and regulations adopted~~
4 ~~by the director for the quality of air, water, solid and hazardous waste, freshwater wetlands,~~
5 ~~groundwater, and the design, construction and operation of all sewage disposal systems. Any~~
6 ~~order or notice issued by the said commissioner relating to the location, design, construction or~~
7 ~~maintenance of a sewage disposal system shall be eligible for recording under chapter 13 of title~~
8 ~~34. The commissioner shall forward the order or notice to the city or town wherein the subject~~
9 ~~property is located and the order or notice shall be recorded in the general index by the~~
10 ~~appropriate municipal official in the land evidence records in the city or town wherein the subject~~
11 ~~property is located. Any subsequent transferee of that property shall be responsible for complying~~
12 ~~with the requirements of the order or notice. Upon satisfactory completion of the requirements of~~
13 ~~the order or notice, the commissioner shall provide written notice of the same, which notice shall~~
14 ~~be similarly eligible for recording. The original written notice shall be forwarded to the city or~~
15 ~~town wherein the subject property is located and the notice of satisfactory completion shall be~~
16 ~~recorded in the general index by the appropriate municipal official in the land evidence records in~~
17 ~~the city or town wherein the subject property is located. A copy of the written notice shall be~~
18 ~~forwarded to the owner of the subject property within five (5) days of a request for it, and, in any~~
19 ~~event, shall be forwarded to the owner of the subject property within thirty (30) days after~~
20 ~~satisfactory completion. Nothing herein shall be construed to abrogate or modify any recording~~
21 ~~provision embodied in other titles of the General Laws.~~

22 ~~(b) (1) To carry out all functions, powers, and duties relating to the implementation of~~
23 ~~departmental policies and regulations for the administration of chapters 18.9, 19.1, 19.4, 19.5,~~
24 ~~19.8, and 23.1 of title 23; and chapters 12, 12.1, 13, 13.1, 13.2, 16, 17.1, and 19 of title 46; and~~
25 ~~section 2-1-18 et seq., in title 2.~~

26 ~~(2) Nothing contained herein shall abrogate or affect the powers and duties of the~~
27 ~~department of health in chapter 13 of title 46, or in chapter 14 of title 46.~~

28 ~~(c) (1) To enforce such laws, rules, and regulations, and/or orders as may be necessary to~~
29 ~~carry out the duties assigned by the director or to the commissioner, and/or to the department by~~
30 ~~any provision of law; and to conduct such investigations and hearings and to issue, suspend, and~~
31 ~~revoke such permits or licenses as may be necessary to enforce those rules, regulations, and~~
32 ~~orders.~~

33 ~~(2) Notwithstanding the provisions of section 42-35-9 to the contrary, no informal~~
34 ~~disposition of a contested permitting and/or licensing matter shall occur where resolution~~

1 substantially deviates from the original application unless all interested parties shall be notified of
2 said proposed resolution and provided with opportunity to comment upon said resolution pursuant
3 to applicable law and any rules and regulations established by the director;

4 ~~(d) To enter, examine, or survey at any reasonable time such places as the commissioner
5 deems necessary to carry out his or her responsibilities under any provision of law;~~

6 ~~(e) To give notice of an alleged violation of law to the person responsible therefor
7 whenever the commissioner determines that there are reasonable grounds to believe that there is a
8 violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted
9 pursuant to authority granted to the department of the environment, unless other notice and
10 hearing procedure is specifically provided by that law;~~

11 ~~(f) To impose administrative penalties in accordance with the provisions of chapter 17.6
12 of this title and to direct that such penalties be paid into the environmental protection branch
13 fund;~~

14 ~~(g) Consistent with federal standards, enforce such rules, regulations and orders as may
15 be promulgated by the director which establish requirements for maintaining evidence of
16 financial responsibility for taking corrective action and compensating third parties for bodily
17 injury and property damage caused by sudden and nonsudden accidental releases arising from
18 operating underground storage tanks;~~

19 ~~(h) To make recommendations to the director relative to rules and regulations
20 promulgated by the director;~~

21 ~~(i) To bring civil or injunctive actions in any court of competent jurisdiction if in the
22 judgment of the commissioner any firm, person, or corporation has violated the provisions of any
23 law, rule, or regulation within his or her jurisdiction. Whenever such a prosecution shall take
24 place, the commissioner shall not be required to give surety for the payment of costs. Any
25 criminal prosecutions brought in the name of the commissioner shall be prosecuted by the
26 attorney general.~~

27 ~~**42-17.1-12 Powers and duties -- Commissioner of coastal resources management**
28 **branch.** [Effective July 1, 2002.]~~

29 ~~The commissioner of the coastal resources management branch shall have the following
30 powers and duties:~~

31 ~~(a) To issue, modify, or deny permits for any work in, above, or beneath the areas under
32 coastal resources management council jurisdiction, including conduct of any form of aquaculture,
33 at the direction of the coastal resources management council.~~

34 ~~(b) To issue, modify, or deny permits for dredging, filling, or any other physical~~

1 alteration of coastal wetlands and all directly related contiguous areas which are necessary to
2 preserve the integrity of the wetlands, at the direction of the coastal resources management
3 council.

4 ~~(c) To grant licenses, permits, and easements for the use of coastal resources which are
5 held in trust by the state for all its citizens, and impose fees for private use of these resources, at
6 the direction of the coastal resources management council.~~

7 ~~(d) To carry out all other functions and duties delegated by the coastal resources
8 management council.~~

9 ~~(e) Nothing contained herein shall abrogate or affect the powers and duties of the
10 director and/or the commissioners of environmental management and environmental protection in
11 areas of their respective jurisdiction.~~

12 ~~**42-17.1-13. Advisory council on environmental affairs. [Effective July 1, 2002;
13 effective until January 7, 2003.]**~~

14 ~~(a) The advisory council on environmental affairs shall,
15 among other things, advise the governor and the director on matters involving environmental
16 management, environmental protection, natural resources, policies, plans, and goals for the
17 department, identify problems within the various functions of the department, assist the director
18 in the exploration and development of new initiatives, review quarterly, annual, and five (5) year
19 reports prepared by the director, review the interim and final reports prepared by the
20 environmental quality study commission and explore and develop alternatives for the
21 implementation of the goals, initiatives, and directives from the reports. The council shall report
22 to the governor, the general assembly and the director and shall meet not less than once every
23 three (3) months. The members shall meet initially at the call of the governor and shall at their
24 first meeting elect a chairman, secretary and any other officers which are deemed necessary.
25 Council members shall not be compensated for services. Meetings may be called by the chairman
26 or by any five (5) members. The chairman shall establish the agenda for council meetings. The
27 assistant director for planning for the department may provide to the council, following a request,
28 technical assistance, resources and/or support staff.~~

29 ~~(b) The council shall consist of eleven (11) members as follows: one member from the
30 Rhode Island senate appointed by the senate majority leader; one member from the Rhode Island
31 house of representatives appointed by the speaker of the house of representatives; and nine (9)
32 members from the general public appointed by the governor. The general public members shall
33 have interest in natural resources, environmental management and protection, and/or public or
34 environmental health and may be selected from residential and/or commercial builders or land
35 developers, marine industries, agricultural industries, hunting and sport fishing groups,~~

1 environmental advocacy groups, conservation groups, academicians, and engineering or
2 consulting firms. The governor shall endeavor to appoint members representing the diverse
3 constituents of the department.

4 ~~(e) When this chapter takes effect, the governor shall appoint four (4) members who
5 shall serve until the thirtieth day of June, 1991, and five (5) members who shall serve until the
6 thirtieth day of June, 1992, and all to serve until their successors are appointed and qualified. In
7 the month of May, 1991, and in the month of May in each applicable year thereafter, the governor
8 shall appoint successors to the members of the council whose terms shall expire in such year, to
9 hold office commencing on the first day of July in said year for three (3) year terms and until
10 their respective successors are appointed and qualified. The appointees of the senate majority
11 leader and the speaker of the house of representatives shall serve until the thirtieth day of June,
12 1991, and shall serve until their successors are appointed and qualified. In the month of May,
13 1991, and in the month of May in each applicable year thereafter, the senate majority leader shall
14 appoint a successor to the member of the council whose term shall expire in such year to hold
15 office commencing on the first day of July in said year for a three (3) year term and until a
16 successor is appointed and qualified. In the month of May, 1991, and in the month of May in each
17 applicable year thereafter, the speaker of the house of representatives shall appoint a successor to
18 the member of the council whose term shall expire in such year to hold office commencing on the
19 first day of July in said year for a three (3) year term and until a successor is appointed and
20 qualified. Any vacancy which may occur in the council shall be filled by the applicable
21 appointing official for the remainder of the unexpired term.~~

22 ~~**42-17.1-13. Advisory council on environmental affairs. [Effective January 7, 2003].**~~

23 ~~(a) The advisory council on environmental affairs shall, among other things, advise the governor
24 and the director on matters involving environmental management, environmental protection,
25 natural resources, policies, plans, and goals for the department, identify problems within the
26 various functions of the department, assist the director in the exploration and development of new
27 initiatives, review quarterly, annual, and five (5) year reports prepared by the director, review the
28 interim and final reports prepared by the environmental quality study commission and explore
29 and develop alternatives for the implementation of the goals, initiatives, and directives from the
30 reports. The council shall report to the governor, the general assembly and the director and shall
31 meet not less than once every three (3) months. The members shall meet initially at the call of the
32 governor and shall at their first meeting elect a chairman, secretary and any other officers which
33 are deemed necessary. Council members shall not be compensated for services. Meetings may be
34 called by the chairman or by any five (5) members. The chairman shall establish the agenda for~~

1 council meetings. The assistant director for planning for the department may provide to the
2 council, following a request, technical assistance, resources and/or support staff.

3 ~~(b) The council shall consist of eleven (11) members as follows: one member from the
4 Rhode Island senate appointed by the president of the senate; one member from the Rhode Island
5 house of representatives appointed by the speaker of the house of representatives; and nine (9)
6 members from the general public appointed by the governor. The general public members shall
7 have interest in natural resources, environmental management and protection, and/or public or
8 environmental health and may be selected from residential and/or commercial builders or land
9 developers, marine industries, agricultural industries, hunting and sport fishing groups,
10 environmental advocacy groups, conservation groups, academicians, and engineering or
11 consulting firms. The governor shall endeavor to appoint members representing the diverse
12 constituents of the department.~~

13 ~~(c) When this chapter takes effect, the governor shall appoint four (4) members who
14 shall serve until the thirtieth day of June, 1991, and five (5) members who shall serve until the
15 thirtieth day of June, 1992, and all to serve until their successors are appointed and qualified. In
16 the month of May, 1991, and in the month of May in each applicable year thereafter, the governor
17 shall appoint successors to the members of the council whose terms shall expire in such year, to
18 hold office commencing on the first day of July in said year for three (3) year terms and until
19 their respective successors are appointed and qualified. The appointees of the president of the
20 senate and the speaker of the house of representatives shall serve until the thirtieth day of June,
21 1991, and shall serve until their successors are appointed and qualified. In the month of May,
22 1991, and in the month of May in each applicable year thereafter, the president of the senate shall
23 appoint a successor to the member of the council whose term shall expire in such year to hold
24 office commencing on the first day of July in said year for a three (3) year term and until a
25 successor is appointed and qualified. In the month of May, 1991, and in the month of May in each
26 applicable year thereafter, the speaker of the house of representatives shall appoint a successor to
27 the member of the council whose term shall expire in such year to hold office commencing on the
28 first day of July in said year for a three (3) year term and until a successor is appointed and
29 qualified. Any vacancy which may occur in the council shall be filled by the applicable
30 appointing official for the remainder of the unexpired term.~~

31 ~~**42-17.1-14 Statewide environmental plan. [Effective July 1, 2002.]**~~

32 ~~(a) The director of the department of the environment shall formulate and from time to
33 time revise a statewide environmental plan for the management and protection of the quality of
34 the environment and the natural resources of the state in furtherance of the legislative policy. The~~

1 ~~plan shall establish environmental goals and objectives and describe strategies for their~~
2 ~~achievement. In developing the plan the director shall consider any other statewide policies and~~
3 ~~plans he or she deems appropriate. The first of such plans shall be submitted to the governor and~~
4 ~~the general assembly on or before January 1, 1992, and revisions, at intervals of five (5) years~~
5 ~~thereafter, shall be made thereto. This plan shall serve as a guide for the people of the state and~~
6 ~~for the state and its political subdivisions for the preservation of the environment.~~

7 ~~(b) The advisory council to the department of the environment shall assist the director in~~
8 ~~preparing the plan and any revisions thereto.~~

9 ~~(c) The director shall annually conduct a conference to report achievement of the goals~~
10 ~~and objectives established in the plan and to encourage public discussion of environmental~~
11 ~~concerns.~~

12 ~~(d) The director of the department of the environment shall submit annually to the~~
13 ~~governor and the general assembly an environmental quality report, which shall set forth:~~

14 ~~(1) The status of the major environmental categories including, but not limited to, the air,~~
15 ~~the water and the land environment;~~

16 ~~(2) Current and foreseeable trends in the quality management and utilization of the~~
17 ~~environment and the effect of such trends on the social, economic, and health requirements of the~~
18 ~~state;~~

19 ~~(3) The adequacy of available natural resources for fulfilling human and economic~~
20 ~~requirements of the state in the light of projected population pressures;~~

21 ~~(4) A review of the programs and activities of the state and local governments and~~
22 ~~private organizations with particular reference to their effect on the environment and on the~~
23 ~~conservation, development, and utilization of natural resources;~~

24 ~~(5) A program for remedying the deficiencies of existing programs and activities,~~
25 ~~together with recommendations for legislation; and~~

26 ~~(6) The progress towards achievement of the goals and objectives established in the~~
27 ~~statewide environmental plan.~~

28 ~~**42-17.1-15 Powers of the policy and planning branch. [Effective July 1, 2002.]**~~

29 ~~The policy and planning branch shall consist of the division of planning and~~
30 ~~development, the Narragansett Bay Project, and the division of environmental planning. The~~
31 ~~division of environmental planning shall coordinate the administration of permitting of projects~~
32 ~~within the branches of environmental management and environmental protection, coordinate all~~
33 ~~data base activities, and coordinate the development of rules and regulations to be administered~~
34 ~~by all branches, provided, however, that this section shall not abrogate or affect the powers and~~

1 duties of the coastal resources management council under chapter 23 of title 46.

2 ~~42-17.1-16 Powers of the water supply management branch. [Effective July 1,~~
3 ~~2002.]~~

4 ~~The water supply management branch shall serve as staff to the water resources board~~
5 ~~established in chapter 15.1 of title 46 and shall perform water supply planning, development, and~~
6 ~~protection, and shall oversee and coordinate water supply use and reduction of use and such other~~
7 ~~functions and duties as may from time to time be assigned by the director. Nothing contained~~
8 ~~herein shall abrogate or affect the powers and duties of the coastal resources management council~~
9 ~~under chapter 23 of title 46.~~

10 ~~42-17.1-17 Permits and licenses -- Issuance or denial -- Judicial review. [Effective~~
11 ~~July 1, 2002.]~~

12 ~~(a) The commissioner of the branch with jurisdiction over the permit, license, or~~
13 ~~enforcement proceeding shall review all decisions rendered by the administrative adjudication~~
14 ~~branch as pertaining to permitting, licensing, or enforcement proceedings. The commissioner may~~
15 ~~in his or her discretion adopt, modify, or reject the findings of fact or conclusions of law~~
16 ~~provided, however, that any such modification or rejection of the proposed findings of fact or~~
17 ~~conclusions of law shall be in writing and shall state the rationale therefor. In all permitting or~~
18 ~~licensing proceedings, and based upon said review, the commissioner shall issue or deny the~~
19 ~~permit or the license. The commissioner shall have no direct or indirect involvement in the~~
20 ~~investigation of or presentation of any contested permitting, licensing, or enforcement~~
21 ~~proceeding. Notwithstanding the provisions of section 42-35-13, the commissioner shall have no~~
22 ~~communication, directly or indirectly, with a hearing officer relating to any issue of fact or law on~~
23 ~~any matter then pending before the hearing officer.~~

24 ~~(b) Any party or intervenor to a contested permitting, licensing, or enforcement~~
25 ~~proceeding aggrieved by the decision of the commissioner may, within thirty (30) days from the~~
26 ~~date of issuance of the commissioner's decision, obtain judicial review in the manner and~~
27 ~~according to the standards and procedures provided in chapter 35 of title 42.~~

28 ~~(c) There are hereby transferred from the director of the department of environmental~~
29 ~~management to the respective commissioners of the department of the environment all functions~~
30 ~~of the director as apply to these commissioners relating to enforcement, permitting, or licensing~~
31 ~~proceedings and including all administrative adjudication proceedings wherein said director~~
32 ~~adopts, modifies, or rejects a decision rendered by a hearing officer of said administrative~~
33 ~~adjudication branch. Nothing herein shall abrogate or effect the powers and duties of the coastal~~
34 ~~resources management council in chapter 23 of title 46.~~

1 ~~42-17.1-18 Transfer of functions from existing divisions of the department to the~~
2 ~~environmental~~ protection branch. [Effective July 1, 2002.]

3 ~~(a) There are hereby transferred to the division of air pollution control, those functions of~~
4 ~~the division of air and hazardous materials of the department of environmental management as~~
5 ~~pertain to air and air pollution control.~~

6 ~~(b) There are hereby transferred to the division of solid and hazardous waste, those~~
7 ~~functions of the department of environmental management as pertain to hazardous wastes and~~
8 ~~materials and those functions of the division as pertain to solid waste.~~

9 ~~(c) There are hereby transferred to the division of groundwater and individual sewage~~
10 ~~disposal systems those functions of the division of groundwater and freshwater wetlands of the~~
11 ~~department of environmental management as pertain to groundwater and individual sewage~~
12 ~~disposal systems.~~

13 ~~(d) There are hereby transferred to the division of freshwater wetlands those functions of~~
14 ~~the division of groundwater and freshwater wetlands of the department of environmental~~
15 ~~management as pertain to freshwater wetlands.~~

16 ~~(e) There are hereby transferred to the environmental protection branch, from the~~
17 ~~department of environmental management, so much of the other functions or parts of functions,~~
18 ~~employees, and resources, which are related thereto for administration, as are incidental to and~~
19 ~~necessary for the performance of the functions set forth in subsections (a) — (d).~~

20 ~~42-17.1-19 Notice of violations. [Effective July 1, 2002.]~~

21 ~~(a) The commissioner with jurisdiction over an alleged violation of any law or any~~
22 ~~departmental rule or regulation, shall give notice of the violation and shall have authority to~~
23 ~~impose an administrative penalty pursuant to chapter 17.6 of title 42. The notice shall provide for~~
24 ~~a time within which the alleged violation shall be remedied, and shall inform the person to whom~~
25 ~~it is directed that a written request for a hearing on the alleged violation may be filed with the~~
26 ~~administrative adjudication branch within ten (10) days after service of the notice. The notice will~~
27 ~~be deemed properly served upon a person if a copy thereof is served upon him or her personally,~~
28 ~~or sent by registered or certified mail to his or her last known address, or if he or she is served~~
29 ~~with notice by any other method of service now or hereafter authorized in a civil action under the~~
30 ~~laws of this state. If no written request for a hearing is made to the administrative adjudication~~
31 ~~branch within ten (10) days of the service of notice, the notice of violation shall automatically~~
32 ~~become a compliance order. This order shall constitute a final administrative adjudication from~~
33 ~~which no appeal may be taken.~~

34 ~~(b) Whenever the commissioner determines that there exists a violation of any law, rule,~~

1 ~~or regulation within his or her jurisdiction which requires immediate action to protect the~~
2 ~~environment, he or she may, without prior notice of violation or hearing, issue an immediate~~
3 ~~compliance order stating the existence of the violation and the remedial or other action he or she~~
4 ~~deems necessary. The compliance order shall become effective immediately upon service or~~
5 ~~within such time as is specified by the commissioner in the order. No request for a hearing on an~~
6 ~~immediate compliance order may be made.~~

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

10 ~~(d) If a person upon whom a notice of violation has been served under the provisions of~~
11 ~~this section or if a person aggrieved by any such notice of violation requests a hearing before the~~
12 ~~administrative adjudication branch, a time and place for the hearing shall be set by the~~
13 ~~administrative adjudication branch, and shall give the person requesting that hearing at least five~~
14 ~~(5) days' written notice thereof. After the hearing, the hearing officer shall make written proposed~~
15 ~~findings of fact and conclusions of law and shall sustain, modify, or withdraw the notice of~~
16 ~~violation. The hearing officer shall submit the proposed findings of fact and conclusions of law to~~
17 ~~the commissioner for review and final decision. If the commissioner sustains or modifies the~~
18 ~~notice, that decision shall be deemed a final administrative adjudication and compliance order and~~
19 ~~shall be served upon the person responsible in any manner provided for the service of the notice~~
20 ~~in this section.~~

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

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

34 ~~(g) Any party aggrieved by a final judgment of the superior court may, within thirty (30)~~

1 days from the date of entry of such judgment, petition the supreme court for a writ of certiorari or
2 by right as provided by law. Any petition for writ of certiorari shall set forth the errors claimed.
3 Upon the filing of a petition for writ of certiorari with the clerk of the supreme court, the supreme
4 court may, if it sees fit, issue its writ of certiorari.

5 ~~**42-17.1-20 Public and private land trusts. [Effective July 1, 2002.]**~~

6 ~~In addition to the powers and duties in section 42-17.1-9, the director shall have the~~
7 ~~power:~~

8 ~~(a) To establish and maintain an inventory of all interest in land held by public or private~~
9 ~~land trusts and to exercise all powers vested herein to insure the preservation of all identified~~
10 ~~lands.~~

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

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

34 ~~(d) All private land trusts will, in their articles of association or their by laws, as~~

1 appropriate, provide for the transfer to an organization created for the same or similar purposes
2 the assets, lands, and land rights and interests held by the land trust in the event of termination or
3 dissolution of the land trust.

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

11 ~~(f) The director will contact in writing, not less often than once every two (2) years, each
12 public or private land trust to ascertain: (1) that all lands held by the land trust are recorded with
13 the director; (2) the current status and condition of each land holding; (3) that any funds or other
14 assets of the land trust held as endowment for specific lands have been properly audited at least
15 once within the two (2) year period; (4) the name of the successor organization named in the
16 public or private land trust's by laws or articles of association; and (5) any other information the
17 director deems essential to the proper and continuous protection and management of land and
18 interests or rights in land held by the land trust. In the event that the director determines that a
19 public or private land trust holding land or interest in land appears to have become inactive, he or
20 she shall initiate proceedings to effect the termination of the land trust and the transfer of its land,
21 assets, land rights, and land interests to the successor organization named in the defaulting trust's
22 by laws or articles of association or to another organization created for the same or similar
23 purposes. Should such a transfer not be possible, then the land trust, assets, and interest and rights
24 in land will be held in trust by the state of Rhode Island and managed by the director for the
25 purposes stated at the time of original acquisition by the trust. Any trust assets or interests other
26 than land or rights in land accruing to the state under such circumstances will be held and
27 managed as a separate fund for the benefit of the designated trust lands.~~

28 ~~42-17.1-21 Leasing of reverted lands. [Effective July 1, 2002.]~~

29 ~~The commissioner of environmental management of the department of the environment
30 may, at any time when the general assembly shall not be in session, authorize the use by any
31 charitable or educational organization located in this state, any land or buildings of the state
32 which shall have reverted to the state following the lease of the land or building to the United
33 States of America.~~

34 ~~42-17.1-22 Construction of references. [Effective July 1, 2002.]~~

1 ~~(a) Whenever in any general or public law the words "department of agriculture and~~
2 ~~conservation," "bureau of markets," "division of conservation," "division of entomology and plant~~
3 ~~industry," "division of forests," "division of fish and game," "division of parks and recreation,"~~
4 ~~"division of harbors and rivers," "division of boating safety," "division of enforcement," "division~~
5 ~~of coastal resources," or "department of natural resources" shall appear, they shall be deemed to~~
6 ~~refer to and to mean the "department of the environment," except where those powers exist in the~~
7 ~~coastal resources management council.~~

8 ~~(b) Provided, further, that whenever in chapters 3, 4, 5, 6, 7, 9, 11, 13, 18 and 19 of title~~
9 ~~4 the words "director of health" or "department of health" shall appear, they shall be deemed to~~
10 ~~refer to and to mean the "commissioner of environmental management" and "department of the~~
11 ~~environment", respectively.~~

12 ~~**42-17.1-23 Rules and regulations. [Effective July 1, 2002.]**~~

13 ~~Rules and regulations prepared by any department, division, board, commission, or other~~
14 ~~agency, the functions of which are transferred by this chapter to the branches of the department of~~
15 ~~the environment, which rules and regulations are not in conflict with this chapter, shall continue~~
16 ~~in force until such time as the director of the department of the environment or the coastal~~
17 ~~resources management council, as applicable, shall issue new rules and regulations governing~~
18 ~~such activity.~~

19 ~~**42-17.1-24 Designation and assignment of functions. [Effective July 1, 2002.]**~~

20 ~~Whenever the duties of the head of any existing department, division, board,~~
21 ~~commission, or other agency or of any other officer are prescribed by law, and the duties of such~~
22 ~~person have been or shall in the future be transferred to the department of the environment under~~
23 ~~this chapter, and consistent with the provisions of this chapter, the director and/or the applicable~~
24 ~~commissioner may designate some officer or other subordinate within his or her branch to~~
25 ~~perform such duties; provided, however, that any other provision of this chapter notwithstanding,~~
26 ~~the functions, powers and duties of the chief of the division of parks and recreation as set forth in~~
27 ~~title 32 in chapter 22.5 of title 23, and in any other general or public law, and the functions,~~
28 ~~powers, and duties of the chief of the division of harbors and rivers as set forth in title 46, and in~~
29 ~~any other general or public law, shall not be diminished; provided further, however, that all~~
30 ~~planning and law enforcement functions, powers, duties, and personnel shall be transferred to the~~
31 ~~applicable branches established by this chapter, or to the coastal resources management council,~~
32 ~~as applicable.~~

33 ~~**42-17.1-25 Transfer of functions from the assistant director for administration of**~~
34 ~~**the department to the policy and planning branch. [Effective July 1, 2002.]**~~

1 ~~There are hereby transferred from the assistant director for administration of the~~
2 ~~department of environmental management to the policy and planning branch;~~

3 ~~(a) Those environmental planning functions of the office of environmental coordination~~
4 ~~and the division of planning and development; and~~

5 ~~(b) So much of the other functions or parts of functions, employees and resources,~~
6 ~~physical and funded, related thereto of the assistant director for administration as are incidental to~~
7 ~~and necessary for the performance of those functions.~~

8 **42-17.1-26 Assumption of duties. [Effective July 1, 2002.]**

9 ~~Except as otherwise provided in this chapter, the director and/or the commissioners~~
10 ~~assuming any duties formerly imposed upon any other department, division, board, commission,~~
11 ~~or other agency shall perform those duties, notwithstanding that those duties were formerly~~
12 ~~performed by a board, commission, or single officer. Any ruling, decision, or order made by such~~
13 ~~head with regard to matters within his or her jurisdiction shall be subject to any existing right of~~
14 ~~appeal to a court of competent jurisdiction.~~

15 **42-17.1-27 Auxiliary marine patrol. [Effective July 1, 2002.]**

16 ~~(a) The commissioner of environmental management is authorized to recruit, train, and~~
17 ~~organize a volunteer auxiliary marine patrol of such size and qualification as he or she shall~~
18 ~~determine, provided, however, that the total membership in the auxiliary marine patrol shall not~~
19 ~~exceed fifty (50) persons. In selecting those persons who shall become members of the auxiliary~~
20 ~~marine patrol, the commissioner shall consult with and seek the advice and assistance of local~~
21 ~~harbor masters and appropriate city and town officials, provided, however, that the auxiliary~~
22 ~~marine patrol shall at all times be under the direction of the environmental management branch~~
23 ~~and subject to the rules and regulations as prescribed by the commissioner. Members of the~~
24 ~~auxiliary marine patrol shall carry out such duties and functions as may be assigned to them from~~
25 ~~time to time by the commissioner.~~

26 ~~(b) Members of the auxiliary marine patrol shall be equipped with uniforms prescribed~~
27 ~~by the commissioner of environmental management and delegated specific powers and duties~~
28 ~~consistent with those now granted to other members of the department of the environment and~~
29 ~~divisions thereof. They may bear and use firearms only when specifically authorized to do so by~~
30 ~~the commissioner and only when in uniform and assigned to active duty. The duties of the~~
31 ~~members of the auxiliary marine patrol shall include, but in no way be limited to, the patrol of all~~
32 ~~harbors, rivers, docks, and other waterways of this state and the prevention of vandalism and theft~~
33 ~~of all other property used or enjoyed in connection therewith. The patrol may also be called to~~
34 ~~serve and exercise power and duties consistent with those employed by full-time members of the~~

1 department during an emergency or theoretical emergency. The members of the auxiliary marine
2 patrol will serve without pay.

3 ~~**42-17.1-28 Fees for use of state port facilities -- Development fund. [Effective July 1,**~~
4 ~~**2002.]**~~

5 ~~(a) All fees collected by the department of the environment for use of state port facilities~~
6 ~~at Galilee in the Town of Narragansett, including fees collected for leases, licenses, or permits~~
7 ~~involving land, buildings, docks, piers, parking, or berthing space, shall be deposited as general~~
8 ~~revenues.~~

9 ~~(b) All fees collected by the department of the environment for use of state port facilities~~
10 ~~in Newport, including fees collected for leases, licenses, or permits involving land, buildings,~~
11 ~~docks, piers, parking, or berthing space, shall be deposited as general revenues.~~

12 ~~**42-17.1-29 User fees at state beaches, parks, and recreation areas. [Effective July 1,**~~
13 ~~**2002.]**~~

14 ~~(a) The commissioner of environmental management in furtherance of his or her~~
15 ~~administrative duties and responsibilities may charge a user fee for any state beach, or~~
16 ~~recreational area under its jurisdiction, and fees for the use of any of its services or facilities.~~

17 ~~(b) The fee may be on a daily or annual basis, or both, and may be based on vehicle~~
18 ~~parking or other appropriate means. The fees may recognize the contribution of Rhode Island~~
19 ~~taxpayers to support the facilities in relation to other users of the state's facilities. The fee~~
20 ~~structure may acknowledge the need to provide for all people, regardless of circumstances.~~

21 ~~(c) [Deleted by P.L. 1998, ch. 31, art. 8, section 2.]~~

22 ~~(d) An additional fee for camping and other special uses may be charged where~~
23 ~~appropriate. Rates so charged should be comparable to equivalent commercial facilities.~~

24 ~~(e) All such fees shall be established by the director after a public hearing.~~

25 ~~(f) All daily fees from beach parking, which shall also include fees charged and collected~~
26 ~~at Ninigret conservation area and Charlestown breachway, shall be shared with the municipality~~
27 ~~in which the facility is located on the basis of sixty percent (60%) retained by the state and forty~~
28 ~~percent (40%) remitted to the municipality.~~

29 ~~(g) One hundred percent (100%) of all user and concession fees received by the state~~
30 ~~shall be deposited as general revenues. The general revenue monies appropriated may be hereby~~
31 ~~specifically dedicated to meeting the costs of development and renovation by the director of~~
32 ~~recreation projects with an expected life of five (5) or more years, and acquisition by the director~~
33 ~~of state owned recreation areas. Such projects shall include the purchase of vehicles and~~
34 ~~equipment and the repair of facilities which have a life expectancy of five (5) or more years and~~

1 which are used exclusively for state owned recreational areas. Purchases of vehicles and
2 equipment and repairs to facilities shall not exceed four hundred thousand dollars (\$400,000)
3 annually. Notwithstanding the provisions of section 37-1-1 or any other provision of the general
4 laws, the director is hereby authorized to accept any grant, devise, bequest, donation, gift, or
5 assignment of money, bonds, or other valuable securities for deposit as general revenues in the
6 same manner as provided above for user and concession fees retained by the state.

7 **42-17.1-30 Trooper Daniel L. O'Brien Pavilion. [Effective July 1, 2002.]**

8 ~~The pavilion building at East Matunuck state beach shall hereafter be named the Trooper
9 Daniel L. O'Brien Pavilion, and an appropriate plaque in posthumous honor of Trooper O'Brien
10 shall be erected at that location.~~

11 **42-17.1-30.1 Frederick J. Benson Pavilion. [Effective July 1, 2002.]**

12 ~~The pavilion building at Block Island State Beach shall hereafter be named and known
13 as the Frederick J. Benson Pavilion.~~

14 **42-17.1-31 Notification by director. [Effective July 1, 2002.]**

15 ~~Prior to a hearing at which the director of the department seeks to adopt, modify, or
16 repeal standards for air quality, water quality, groundwater quality, or individual sewage disposal
17 systems, the director shall notify the chairperson of the joint committee on water resources and
18 the chairperson of the joint committee on environment and energy of the general assembly, the
19 directors of the departments of administration and health and, the chairman of the advisory
20 council, and provide them with copies of the proposed standards. In addition, the director shall
21 annually provide the general assembly with a copy of all standards and regulations adopted by the
22 department in the previous calendar year.~~

23 **42-17.1-32 Transfer of functions from the department of health to the
24 environmental protection branch. [Effective July 1, 2002.]**

25 ~~There are hereby transferred from the director of the department of health to the
26 commissioner of the environmental protection branch:~~

27 ~~(a) The functions of initial field investigation, enforcement of individual sewage disposal
28 regulation, and watershed protection of the drinking water supply set forth in title 23;~~

29 ~~(b) So much of other functions or parts of functions and employees and resources,
30 physical and funded, related thereto as are incidental to and necessary for the performance of
31 subdivision (a).~~

32 **42-17.1-33 Transfer of powers and functions from department of the environment to
33 the department of administration. [Effective July 1, 2002.]**

34 ~~There are hereby transferred to the department of administration:~~

1 ~~-(a) Those functions of the department of the environment which were administered~~
2 ~~through or with respect to departmental programs in the performance of strategic planning as~~
3 ~~defined in section 42-11-10(c);~~

4 ~~-(b) All officers, employees, agencies, advisory councils, committees, commissions, and~~
5 ~~task forces of the department of the environment who were performing strategic planning~~
6 ~~functions as defined in section 42-11-10(c); and~~

7 ~~-(c) So much of other functions or parts of functions and employees and resources,~~
8 ~~physical and funded, related thereto of the director of environmental management as are~~
9 ~~incidental to and necessary for the performance of the functions transferred by subdivisions (a)~~
10 ~~and (b).~~

11 ~~-(d) Nothing contained herein shall abrogate or affect the powers and duties of the coastal~~
12 ~~resources management council under chapter 23 of title 46.~~

13 ~~**42-17.1-34 Transfer of function from the department of community affairs.**~~

14 ~~**[Effective July 1, 2002.]**~~

15 ~~-(a) There is hereby transferred to the environmental protection branch that function~~
16 ~~formerly administered by the department of community affairs relating to the sewage and water~~
17 ~~supply failure fund established by chapter 44.1 of this title.~~

18 ~~-(b) In addition to any of its other powers and responsibilities, the director is authorized~~
19 ~~and empowered to accept any grants made available by the United States government or any~~
20 ~~agency thereof, and the department, with the approval of the governor, is authorized and~~
21 ~~empowered to perform such acts and enter into all necessary contracts and agreements with the~~
22 ~~United States of America or any agency thereof as may be necessary in such manner and degree~~
23 ~~as shall be deemed to be in the best interest of the state. The proceeds of any grants so received~~
24 ~~shall be paid to the general treasurer of the state and by him or her deposited in a separate fund~~
25 ~~and shall be utilized for the purposes of the grant or grants.~~

26 ~~**42-17.1-35 Preservation of rights and remedies. [Effective July 1, 2002.]**~~

27 ~~The abolition of any division or transfer of any function as provided in this chapter shall~~
28 ~~not impair the obligation of any contract or agreement nor abate any suit, action or other~~
29 ~~proceeding lawfully commenced by or against the head of any agency or officer of the State of~~
30 ~~Rhode Island in his official capacity or in relation to the discharge of his or her official duties but~~
31 ~~the court may on motion filed within twelve (12) months after this chapter takes effect allow such~~
32 ~~a suit, action or proceeding to be maintained by or against the successor of such head or officer in~~
33 ~~his or her official capacity under the reorganization effected by such chapter or, if there be no~~
34 ~~such successor, against such agency or officer in his or her capacity which succeeded to the~~

1 function transferred by this chapter. No person in the service of the state on the effective date of
2 this chapter shall be discharged, separated from service, or downgraded in service by reason of
3 the enactment of this chapter.

4 **42-17.1-36 Liberal construction. [Effective July 1, 2002.]**

5 ~~This chapter shall be liberally construed in aid of its declared purposes, the primary
6 purpose of which is the coordination and integration of functions relating to the environment
7 within one department and the allocation of these functions to the department established by this
8 chapter. Nothing contained herein shall abrogate or affect the powers and duties of the coastal
9 resources management council under chapter 23 of title 46.~~

10 **42-17.1-37 Severability. [Effective July 1, 2002.]**

11 ~~If any provision of this chapter or of any rule or regulation made thereunder, or the
12 application thereof to any person or circumstance, is held invalid by a court of competent
13 jurisdiction, the remainder of the chapter, rule, or regulation and the application of such provision
14 to other persons or circumstances shall not be affected thereby. The invalidity of any section or
15 sections or parts of any section or sections of this chapter shall not affect the validity of the
16 remainder of the chapter.~~

17 **42-17.1-38 Appropriation for expenses. [Effective July 1, 2002.]**

18 ~~(a) The general assembly shall annually appropriate such sum or sums as it may deem
19 necessary for the expenses of the department of the environment and the coastal resources
20 management council in the conduct of its activities and in the implementation of the powers,
21 duties, programs, and authorizations embodied in this chapter; and the state controller is hereby
22 authorized and directed to draw his or her orders upon the general treasurer for the payment of
23 such sum or sums or so much thereof as may from time to time be required upon receipt by him
24 or her of proper vouchers duly authenticated.~~

25 ~~(b) There is hereby established an account within the general fund to be called "the
26 office of the director of the environment fund". The account shall consist of such sums as the
27 state may from time to time appropriate, and/or such sums representing any fees or other amounts
28 obtained as a result of operation, management, regulatory, administrative, permitting, or
29 enforcement activities for which the office of the director of the department of the environment is
30 responsible under the general laws, exclusive, however, of fees and other amounts allocated to the
31 accounts established by subsections (d), (e), (f), and (g) of this section, and this account is hereby
32 restricted for administering and operating the office of the director and the state controller is
33 hereby authorized and directed to draw his or her orders upon the general treasurer for the
34 payment of such sums or portions thereof as may be required from time to time upon receipt by~~

1 ~~him or her of properly authenticated vouchers. The director shall submit to the general assembly~~
2 ~~by January 15 of each year a detailed report on funds received and uses made of such funds.~~

3 ~~-(c) There is hereby established an account within the general fund to be called "the~~
4 ~~department of the environment fund". The account shall consist of such sums as the state may~~
5 ~~from time to time appropriate, and/or such sums representing any fees or other amounts obtained~~
6 ~~under the authority of this chapter and not otherwise allocated by this section for deposit in the~~
7 ~~restricted receipt accounts established in subsections (b), (d), (e), (f) or (g), or to other restricted~~
8 ~~receipt accounts, and such account is hereby restricted for administering and operating the~~
9 ~~department and the state controller is hereby authorized and directed to draw his or her order~~
10 ~~upon the general treasurer for the payment of such sums or portions thereof as may be required~~
11 ~~from time to time upon receipt by him or her of properly authenticated vouchers. The director~~
12 ~~shall submit to the general assembly by January 15 of each year a detailed report on funds~~
13 ~~received and uses made of such funds.~~

14 ~~-(d) There is hereby established an account within the general fund to be called "the~~
15 ~~department of the environment — administrative adjudication branch fund". The account shall~~
16 ~~consist of such sums as the state may from time to time appropriate, and/or such sums~~
17 ~~representing any fees or other amounts obtained by the administrative adjudication branch in~~
18 ~~connection with its activities under chapter 17.7 of this title, including by way of example and not~~
19 ~~of limitation, filing fees, copy fees, hearing costs and the like, provided however that fines and~~
20 ~~penalties assessed or collected in accordance with an order made by a commissioner after hearing~~
21 ~~before the administrative adjudication branch shall not be included for deposit in said account and~~
22 ~~said account is hereby restricted for administering and operating the branch and the state~~
23 ~~controller is hereby authorized and directed to draw his or her orders upon the general treasurer~~
24 ~~for the payment of such sums or portions thereof as may be required from time to time upon~~
25 ~~receipt by him or her of properly authenticated vouchers. The chief hearing officer shall submit to~~
26 ~~the general assembly by January 15 of each year a detailed report on funds received and uses~~
27 ~~made of these funds.~~

28 ~~-(e) There is hereby established an account within the general fund to be called "the~~
29 ~~department of the environment — environmental management branch fund". The account shall~~
30 ~~consist of such sums as the state may from time to time appropriate and/or such sums~~
31 ~~representing any fees or other amounts obtained as a result of operation, management, regulatory,~~
32 ~~administrative, permitting, or enforcement activities for which the environmental management~~
33 ~~branch is responsible under any provision of the general laws, and said account is hereby~~
34 ~~restricted for administering and operating the branch and the state controller is hereby authorized~~

1 and directed to draw his or her orders upon the general treasurer for the payment of such sums or
2 portions thereof as may be required from time to time upon receipt by him or her of properly
3 authenticated vouchers. The commissioner shall submit to the general assembly by January 15 of
4 each year a detailed report on funds received and uses made of these funds.

5 ~~-(f) There is hereby established an account with the general fund to be called "the~~
6 ~~department of the environment—environmental protection branch fund". The account shall~~
7 ~~consist of such sums as the state may from time to time appropriate, and/or such sums~~
8 ~~representing any fees or other amounts obtained as a result of operations, management,~~
9 ~~regulatory, administrative, permitting, or enforcement activities for which the environmental~~
10 ~~protection branch is responsible under any authority of provision of the general laws, and this~~
11 ~~account is hereby restricted for administering and operating the branch and the state controller is~~
12 ~~hereby authorized and directed to draw his or her orders upon the general treasurer for the~~
13 ~~payment of such sums or portions thereof as may be required from time to time upon receipt by~~
14 ~~him or her of properly authenticated vouchers. The commissioner shall submit to the general~~
15 ~~assembly by January 15 of each year a detailed report on funds received and uses made of these~~
16 ~~funds.~~

17 ~~-(g) There is hereby established an account within the general fund to be called "the~~
18 ~~coastal resources management branch fund". The account shall consist of such sums as the state~~
19 ~~may from time to time appropriate and/or such sums representing any fees or other amounts~~
20 ~~obtained as a result of operations, management, regulatory, administrative, permitting, or~~
21 ~~enforcement activities for which the coastal resources management branch is responsible and this~~
22 ~~account is hereby restricted for administering and operating the coastal resources management~~
23 ~~council and the staff of the coastal resources management branch and the state controller is~~
24 ~~hereby authorized and directed to draw his or her orders upon the general treasurer for the~~
25 ~~payment of such sums or portions thereof as may be required from time to time upon receipt by~~
26 ~~him or her of properly authenticated vouchers. The commissioner under the direction of the~~
27 ~~council shall submit to the general assembly by January 15 of each year a detailed report on funds~~
28 ~~received and uses made of these funds.~~

29 ~~-(h) It is the intent of this section that all amounts collected, received, or accepted by the~~
30 ~~department, by way of fees, fines, penalties, costs, gifts, bequests, devise, or in any other manner,~~
31 ~~in connection with its operations, management, regulatory, administrative, permitting, or~~
32 ~~enforcement activities under authority of this chapter or any other provision of the General Laws~~
33 ~~be deposited in restricted receipt accounts within the general fund, which account shall be limited~~
34 ~~as herein provided and subject to budgetary authority of the director pursuant to section 42-17.1-~~

1 9(x), provided however that no such amount shall be deposited in a restricted receipt account
2 established by this section if that amount would otherwise be allocated for deposit in a restricted
3 receipt account, already established by law as of July 1, 1994 [1995], which establishment and
4 which accounts are hereby expressly preserved.

5 **42-17.1-39 Transfer determinations. [Effective July 1, 2002.]**

6 ~~The director of administration, with the approval of the governor, shall make the~~
7 ~~conclusive determination of the number of positions, personnel, property, records, and~~
8 ~~appropriation balances, allocations and other funds of the department of environmental~~
9 ~~management, department of health, water resources board, and such other boards, commissions,~~
10 ~~departments, and/or agencies to be transferred to the department of the environment in connection~~
11 ~~with the transfers thereto by the provisions of this chapter. Such further measures and~~
12 ~~dispositions as the director of administration, with the approval of the governor, shall deem~~
13 ~~necessary in order to effectuate the transfers provided in this chapter shall be carried out as he~~
14 ~~may direct and by such agencies as he shall designate. Nothing contained herein shall abrogate or~~
15 ~~affect the powers and duties of the coastal resources management council under chapter 23 of this~~
16 ~~title.~~

17 **42-17.1-40. Continuity of administrative functions. --** In order to ensure continuity of

18 the administrative business of the state, the actual transfer of functions or any part of that transfer
19 to the department of the environment from the department of environmental management,
20 department of health, water resources board, and other boards, commissions, departments, and/or
21 agencies has been postponed after the effective date of Chapter 461 of the Public Laws of 1990,
22 and the functions and authorities of the department of environmental management, the
23 department of health, water resources board, and other boards, commissions, departments, and/or
24 agencies shall remain unaffected, regardless of the repeal by chapter 461 of the public laws of
25 1990 of any law under which the departments, boards, commissions, or other agencies are
26 empowered, which laws shall remain in effect until July 1, 2002 when the transfers provided in
27 this section can be put into force and effect at which time the repeal of those laws shall become
28 final.

29 **42-17.1-41 Relations with other governmental agencies. [Effective July 1, 2002.]**

30 ~~The department is hereby authorized to cooperate with the appropriate agencies of the~~
31 ~~federal government, this state or other states, and regional and local agencies in the planning,~~
32 ~~design and implementation of any programs and facilities necessary to implement this chapter.~~
33 ~~The department is authorized to apply for and accept funds from federal and regional agencies to~~
34 ~~carry out any of its functions, and to contract with the federal government and regional agencies~~

1 concerning the use and disposition of such funds. Nothing herein shall be contrived to abrogate or
2 affect the director's authority under section 32-1-13.

3 ~~**42-17.1-42 Administrative expenses on behalf of open space and recreational areas.**~~

4 ~~[Effective July 1, 2002.]~~

5 ~~For the period beginning May 1, 1988 and ending November 6, 1990, personnel and~~
6 ~~operating costs may be expended from the recreation area development fund for expenses~~
7 ~~incurred by the department of the environment in the administration of the so-called "open space~~
8 ~~and recreational area" grant program to the various cities and towns under the provisions of~~
9 ~~chapter 425, Public Law 1987.~~

10 ~~**42-17.1-43 Notice of permit -- Recording.**~~ ~~[Effective July 1, 2002.]~~

11 ~~A notice of permit or license shall be eligible for recording under chapter 13 of title 34 as~~
12 ~~determined by the applicable commissioner and shall be recorded at the expense of the applicant~~
13 ~~in the land evidence records of the city or town where the property subject to permit or license is~~
14 ~~located, and any subsequent transferee of the property shall be responsible for complying with the~~
15 ~~terms and conditions of the permit.~~

16 ~~**42-17.1-44 Declaration of intent.**~~ ~~[Effective July 1, 2002.]~~

17 ~~(a) It is the intention of the general assembly in enacting chapter 17.1 of title 42 which~~
18 ~~creates the department of the environment that the director of the department establish any and all~~
19 ~~departmental policies and adopt, modify, and/or repeal all rules and regulations previously~~
20 ~~adopted, modified, or repealed by the director of the department of environmental management~~
21 ~~under any provision of law. It is further the intention of the general assembly that the~~
22 ~~commissioner of environmental management and the commissioner of environmental protection,~~
23 ~~administer and enforce the rules and regulations adopted by the director and carry out the~~
24 ~~functions of the former director of the department of environmental management under any~~
25 ~~provision of law as assigned to the respective commissioners by the provisions of this chapter.~~

26 ~~(b) Whenever in the General Laws the words "department of environmental~~
27 ~~management" shall appear, the words "department of the environment" shall be substituted.~~

28 ~~(c) Whenever in the General Laws the words "director of the department of~~
29 ~~environmental management" shall appear in relation to the authority to develop policy and/or to~~
30 ~~adopt, modify, or repeal rules and regulations, the words "director of the department of the~~
31 ~~environment" shall be substituted therefor.~~

32 ~~(d) Whenever in the General Laws the words "director of the department of~~
33 ~~environmental management" shall appear with respect to the administration and enforcement of~~
34 ~~statutes or programs which have been transferred by this chapter to the commissioner of~~

1 environmental management or commissioner of environmental protection, the words designating
2 the appropriate commissioner of environmental management or environmental protection, as the
3 case may be, by virtue of the functions transferred by this chapter shall be substituted therefor.

4 ~~(e) The omission in this chapter of a citation of any general or public law now in force
5 which makes it mandatory upon or permissive for any department, division, or other agency of
6 the state to perform certain functions which by this chapter are assigned or transferred to the
7 department of the environment and/or to the commissioners for environmental management or
8 environmental protection, shall not (unless otherwise clearly intended) suspend or annul the right
9 of the department of the environment to carry out such functions. No person in the classified
10 service of the state at the effective date of this chapter shall be discharged, separated from service,
11 or downgraded in service by reason of the passage of this chapter. Nothing contained herein shall
12 abrogate or affect the powers and duties of the coastal resources management council under
13 chapter 23 of title 46.~~

14 ~~**42-17.1-45 Certification of underground storage tank professionals. [Effective**~~
15 ~~**January 1, 2002.]**~~

16 ~~No underground storage tank ("UST") or piping system associated therewith shall be
17 installed, substantially modified, closed or precision tightness tested; nor shall any corrosion
18 protection system be installed, repaired or maintained on any such UST or associated piping
19 system unless such work is performed by, or in the presence of, a person who holds a valid,
20 appropriate certification issued in accordance with chapter 27 of title 28 of the Rhode Island
21 general laws.~~

22 SECTION 6. (a) The provisions of section 1 of chapter 461 of the public laws 1990,
23 which repealed the provisions of chapter 42-17.1 of the general laws entitled "department of
24 environmental management," are themselves hereby repealed. No section within said chapter 42-
25 17.1 of the general laws entitled "department of environmental management" shall be deemed
26 repealed by the provisions of section 1 of chapter 461 of the public laws of 1990, and/or by any
27 law extending and/or delaying the effective date of the act.

28 (b) Notwithstanding any other provisions to the contrary, the department of
29 environmental management established pursuant to the provisions of chapter 42-17.1 of the
30 general laws entitled "Department of Environmental Management" shall remain in full force and
31 effect.

32 (c) The office of law revision is directed to remove any reference in the chapter and/or
33 section titles in said chapter 42-17.1 indicating that said chapter is to be effective only up to a
34 specified date.

1 SECTION 7. Section 36-4-2 of the General Laws in Chapter 36-4 entitled "Merit
2 System" is hereby amended to read as follows:

3 **36-4-2. Positions in unclassified service** -- The classified service shall comprise all
4 positions in the state service now existing or hereinafter established, except the following specific
5 positions which with other positions heretofore or hereinafter specifically exempted by legislative
6 act shall constitute the unclassified service:

7 (1) Officers and legislators elected by popular vote and persons appointed to fill
8 vacancies in elective offices.

9 (2) Employees of both houses of the general assembly.

10 (3) Officers, secretaries, and employees of the office of the governor, office of the
11 lieutenant governor, department of state, department of the attorney general, and the treasury
12 department.

13 (4) Members of boards and commissions appointed by the governor, members of the
14 state board of elections and the appointees of the board, members of the commission for human
15 rights and the employees of the commission, and directors of departments.

16 (5) The following specific offices:

17 (i) In the department of administration: director, chief information officer;

18 (ii) In the department of business regulation: director;

19 (iii) In the department of elementary and secondary education: commissioner of
20 elementary and secondary education;

21 (iv) In the department of higher education: commissioner of higher education;

22 (v) In the department of health: director;

23 (vi) In the department of labor and training: director, administrative assistant,
24 administrator of the labor board and legal counsel to the labor board;

25 (vii) In the department of environmental management: director; deputy director for
26 administration and planning, associate director for environmental protection, associate director of
27 natural resources and chief legal counsel;

28 (viii) In the department of transportation: director;

29 (ix) In the department of human services: director;

30 (x) In the state properties committee: secretary;

31 (xi) In the workers' compensation court: judges, administrator, deputy administrator,
32 clerk, assistant clerk, clerk secretary;

33 (xii) In the department of elderly affairs: director;

34 (xiii) In the department of mental health, retardation, and hospitals: director;

1 (xiv) In the department of corrections: director, assistant director
2 (institutions/operations), assistant director (rehabilitative services), assistant director
3 (administration), and wardens;

4 (xv) In the department of children, youth and families: director, one assistant director,
5 one associate director, and one executive director;

6 (xvi) In the public utilities commission: public utilities administrator;

7 (xvii) In the water resources board: general manager.

8 (6) Chief of the hoisting engineers, licensing division, and his or her employees;
9 executive director of the veterans memorial building and his or her clerical employees.

10 (7) One confidential stenographic secretary for each director of a department and each
11 board and commission appointed by the governor.

12 (8) Special counsel, special prosecutors, regular and special assistants appointed by the
13 attorney general, the public defender and employees of his or her office, and members of the
14 Rhode Island bar occupying a position in the state service as legal counsel to any appointing
15 authority.

16 (9) The academic and/or commercial teaching staffs of all state institution schools, with
17 the exception of those institutions under the jurisdiction of the board of regents for elementary
18 and secondary education and the board of governors for higher education.

19 (10) Members of the military or naval forces, when entering or while engaged in the
20 military or naval service.

21 (11) Judges, referees, receivers, clerks, assistant clerks, and clerical assistants of the
22 supreme, superior, family, and district courts, the traffic tribunal, jurors and any persons
23 appointed by any court.

24 (12) Election officials and employees.

25 (13) Sheriffs, deputy sheriffs, and their employees and security officers of the traffic
26 tribunal.

27 (14) Patient or inmate help in state charitable, penal, and correctional institutions and
28 religious instructors of these institutions and student nurses in training, residents in psychiatry in
29 training, and clinical clerks in temporary training at the institute of mental health within the state
30 of Rhode Island medical center.

31 (15) (i) Persons employed to make or conduct a temporary and special inquiry,
32 investigation, project or examination on behalf of the legislature or a committee therefor, or on
33 behalf of any other agency of the state if the inclusion of these persons in the unclassified service
34 is approved by the personnel administrator. The personnel administrator shall notify the house

1 fiscal advisor and the senate fiscal advisor whenever he or she approves the inclusion of a person
2 in the unclassified service.

3 (ii) The duration of the appointment of a person, other than the persons enumerated in
4 this section, shall not exceed ninety (90) days or until presented to the unclassified pay plan
5 board. The unclassified pay plan board may extend the appointment another ninety (90) days. In
6 no event shall the appointment extend beyond one hundred eighty (180) days.

7 (16) Members of the division of state police.

8 (17) Executive secretary of the Blackstone Valley district commission.

9 (18) Artist and curator of state owned art objects.

10 (19) Mental health advocate.

11 (20) Child advocate.

12 (21) The position of aquaculture coordinator within the coastal resources management
13 council.

14 SECTION 8. Section 46-15.1-4.1 of the General Laws in Chapter 46-15.1 entitled "Water
15 Supply Facilities" is hereby amended to read as follows:

16 **46-15.1-4.1. Definitions --** The phrase "water supply facilities" wherever appearing in
17 this chapter and chapter 15 of this title means water reservoirs, wells and well sites, treatment,
18 transmission or distribution systems, steam gauging stations, any and all real estate or interests in
19 real estate held in connection therewith, all equipment and improvements held in connection
20 therewith, and any and all other property or interests therein, real, personal or mixed, used or held
21 to be used in connection therewith.

22 SECTION 9. Section 46-15.7-1 of the General Laws in Chapter 46-15.7 entitled
23 "Management of the Withdrawal and Use of the Waters of the State" is hereby amended to read
24 as follows:

25 **46-15.7-1. Legislative findings and declaration --** (a) The general assembly finds that:

26 (1) The Constitution of the state of Rhode Island charges the general assembly with
27 responsibility for the conservation of all natural resources, including water.

28 (2) The supply of fresh water available to the people of Rhode Island for use in their
29 daily lives and to support agriculture, hydropower, indigenous wildlife and plant species,
30 navigation, water-based recreation, wetlands, and other uses is finite and is not equally available
31 or accessible throughout the state.

32 (3) A significant portion of the fresh water resource of the state is already being used to
33 serve a variety of needs and purposes and the total volume and quality of the remaining fresh
34 water resource of the state is subject to quantitative, qualitative, or geographic constraints on its

1 availability or use.

2 (4) Allocation of the water resource of Rhode Island has thus far been accomplished on a
3 random, first come, first served, or ad hoc basis with minimal or no consideration given to overall
4 allocation of the resource so as to meet all present and foreseeable future needs.

5 (5) All of the data needed to properly manage the allocation and use of the water
6 resource of the state are not available. The responsibility to provide essential data rests primarily
7 upon those who withdraw and use the waters of the state.

8 (b) Therefore, the general assembly declares that:

9 (1) Management of the amounts, purposes, timing, locations, rates, and other
10 characteristics of fresh water withdrawals from ground or surface waters is essential in order to
11 protect the health, safety, and general welfare of the people of the state of Rhode Island, to
12 promote the continued existence, diversity, and health of the state's native wildlife and plant
13 species and communities, and the fair and equitable allocation of the water resource among users
14 and uses, and to insure that long-range rather than short-range considerations remain uppermost.

15 (2) To support these objectives adequate data is essential to determine the capabilities of
16 the states water resources to support various uses and users and the quantities of water needed for
17 these uses.

18 (3) This requirement shall be carried out by management of fresh water resources of the
19 state based on long-range planning for and conservation of these resources; fairness, equitable
20 distribution, and consideration for all human uses; matching the use of water with the quality of
21 water necessary for each use, giving priority to those uses that require the highest quality water;
22 maintenance of native aquatic and terrestrial animal and plant species, populations, and
23 communities and statewide diversity; continued upholding of and improvement in the quality of
24 the environment and especially of the water resources itself; and careful integration with all other
25 social, economic, and environmental objectives, programs, and plans of the state.

26 (4) The water resources board is the state agency which manages the withdrawal and use
27 of the waters of the state of Rhode Island.

28 With regard to agriculture: it is a priority of the state to preserve agriculture; securing this
29 state priority involves allocation of water resources in a manner that provides for agricultural
30 sustainability while recognizing the importance of other water uses, and accordingly, in any
31 program by which water withdrawals may be allocated by the board pursuant to its powers,
32 including, but not limited to, powers set forth in chapters 46-15, 46-15.1, 46-15.3 and 46-15.7, the
33 board shall give priority to commercial agricultural producers, as defined in section 46-15.3-4(2),
34 that have adopted and implemented and agricultural water withdrawal management plan which

1 has been approved by the department of environmental management, division of agriculture. In
2 putting into effect the purposes of this paragraph, the board shall consider the reduction in water
3 withdrawal that has resulted from the implementation of such an agricultural water withdrawal
4 management plan as a credit against any reduction in water withdrawal which would otherwise be
5 required; and to the extent not consistent (a) with the board's obligations to assure drinking water
6 supplies under chapter 46-15.3 and water supplies for fire protection and (b) with federal and
7 state law, the board shall allow such commercial agricultural producers to continue to irrigate
8 commercial crops either in fields or greenhouses, notwithstanding a critical dry period.

9 SECTION 10. Chapter 42-11 of the General Laws entitled "Department of
10 Administration" is hereby amended by adding thereto the following sections:

11 **42-11-22. Establishment of division of administrative adjudication.** -- There is
12 hereby established within the department of administration a division of administrative
13 adjudication. Such division shall exercise its functions pursuant to the provisions of this chapter.

14 **42-11-23. Adjudication of matters from certain agencies.** -- All contested
15 enforcement proceedings, all contested licensing proceedings, and all adjudicatory proceedings
16 under chapter 17.6 of title 42 and all related matters pertaining to the department of
17 environmental management shall be heard by the division of administrative adjudication pursuant
18 to the regulations promulgated by the director of the department of administration.
19 Notwithstanding the foregoing, the director of the department of environmental management
20 shall be authorized, with the consent of all parties, to resolve contested licensing and enforcement
21 proceedings through informal disposition pursuant to regulations promulgated by the director.

22 In so acting, the director of the department of administration shall identify and give
23 substantial consideration to other important state interests, including, but not limited to, economic
24 development, job creation and farming, and shall balance all such interests in the performance of
25 this duty.

26 **42-11-24. Hearing officers – Appointment – Qualifications -- Compensation.** – (a)
27 The governor, with the advice and consent of the senate, shall appoint up to four (4) hearing
28 officers, who shall be in the unclassified service, and who shall be attorneys-at-law who prior to
29 their appointment shall have practiced law for a period of not less than five (5) years, for a term
30 of five (5) years each; provided, however, that of such initial four (4) hearing officers: one (1)
31 shall be appointed for a term of two (2) years; one (1) shall be appointed for a term of three (3)
32 years; one (1) shall be appointed for a term of four (4) years; and one (1) shall be appointed for a
33 term of five (5) years, and they shall be addressed as hearing officers.

34 The hearing officers shall not be deemed to be judges in the state court system. In

1 selecting and approving such persons, the governor and the senate shall seek persons who have at
2 least five (5) years of experience in the areas of environmental and/or administrative law. The
3 number of years of experience required may be reduced if a candidate has an undergraduate
4 degree and/or graduate degree in an appropriate academic discipline, including but not limited to
5 biology, geology, and similar earth sciences.

6 (b) The governor shall designate one of these hearing officers as chief hearing officer.
7 The hearing officers shall hear proceedings as provided by this chapter, and the director with the
8 assistance of the chief hearing officer may promulgate such rules and regulations as shall be
9 necessary or desirable to effect the purposes of this chapter.

10 (c) A hearing officer shall devote full-time to these administrative duties and shall not
11 otherwise practice law while holding office nor be a partner nor an associate of any person in the
12 practice of law.

13 (d) Compensation for hearing officers shall be determined by the unclassified pay board.

14 **42-11-5 Clerk – Appointment – Powers and duties – Compensation.** -- (a) There
15 shall be an administrative clerk of the administrative adjudication court. The governor, with the
16 advice and consent of the senate, shall appoint the administrative clerk.

17 (b) The clerk shall have the custody of the seal of the administrative adjudication court,
18 have general charge of the office, keep a full record of proceedings, file and preserve all
19 documents and papers entrusted to his or here care, prepare such papers and notices as may be
20 required by the director or the hearing officers, and perform such other duties as may be
21 prescribed. The clerk shall have the power to issue subpoenas for witnesses and documents and
22 to administer oaths in all cases before any hearing officer or pertaining to the duties of his or her
23 office.

24 (c) The clerk shall be a member of the classified service.

25 **42-11-26. Prehearing procedure – Depositions – Exhibits – Formulating issues –**
26 **Other procedures.** -- (a) Prior to the commencement of any hearing, the hearing officer may in
27 his or her discretion direct the parties or their attorneys to appear before him or her for such
28 conferences as shall be necessary. At such conferences the hearing officer may order any party to
29 file, prior to the commencement of any formal hearing, any exhibits the party intends to use in the
30 hearing and the names and addresses of witnesses the party intends to produce in its direct case
31 together with a short statement of the testimony of each witness. Following entry of such an
32 order, a party shall not be permitted, except in the discretion of the hearing officer, to introduce
33 into evidence in said party's direct case exhibits which are not filed in accordance with the order.
34 At such conference, the hearing officer may designate a date before which he or she requires any

1 party to specify what issues are conceded and further proof of conceded issues shall not be
2 required. The hearing officer shall also require the parties to simplify the issues, to consider
3 admissions of fact and of documents which will avoid unnecessary proof and to limit the number
4 of expert witnesses. The hearing officer shall enter an order reciting the concessions and
5 agreements made by the parties, and shall enter an order on such other matters as are pertinent to
6 the conduct of the hearing, and, unless modified, the hearing shall be conducted by the order.

7 (b) The hearing officer may also order the parties to file prior to the commencement of
8 any hearing, the testimony of any or all of their respective witnesses and to submit such testimony
9 to the hearing officer and the opposing party or the opposing counsel by such date as the hearing
10 officer shall determine. The witness shall testify under oath, and all of such testimony shall be in
11 a question and answer format. Save for good cause shown, said testimony shall be the direct
12 examination of said witness; provided, however, that said witness shall be available at the hearing
13 for cross-examination by the opposing party or opposing counsel.

14 (c) Requests for a hearing on an immediate compliance order issued by the director of the
15 department of environmental management and/or department of the environment pursuant to the
16 provisions of RIGL section 42-17.1-19 shall be given priority in scheduling.

17 (d) The director with the assistance of the chief hearing officer shall promulgate by
18 regulation such other prehearing procedures and/or hearing procedures as deemed necessary
19 including the use of portions of the superior court civil rules of discovery where they are not
20 inconsistent with the applicable provisions of the administrative procedures act, chapter 35 of this
21 title.

22 **42-11-27. Hearings – Orders – Concurrent jurisdiction.** -- (a) The chief hearing
23 officer shall assign a hearing officer to each matter. After due consideration of the evidence and
24 arguments, the hearing officer shall make a decision containing written findings of fact and
25 conclusions of law and shall issue such orders as are appropriate.

26 (b) The department of administration shall promulgate such rules and regulations, not
27 inconsistent with law, as to assure uniformity of proceedings as applicable.

28 (c) The decision of the hearing officer shall constitute a final order and be subject to
29 review pursuant to the provisions of section 42-35-15, or any other applicable provision of
30 chapter 42-35, the administrative procedures act. Provided, that in any case wherein there is
31 assessed a penalty of more than two thousand five hundred dollars (\$2,500), the aggrieved party
32 shall be entitled to file an appeal to the superior court and request a trial by jury on any and all
33 factual issues raised in the proceeding. Said appeal shall be perfected by filing a claim of appeal

1 and for jury trial with the superior court within twenty (20) days of the date of entry of a final
2 order by the hearing officer.

3 **42-11-28. Ex-parte consultations.** – None of the directors of the departments of
4 administration, health, or the environment, and/or their agents, representatives or employees,
5 and/or agents, representatives or employees of the parties, shall have any ex-parte
6 communications directly or indirectly, with a hearing officer relating to any issue of fact or of law
7 on any matter then pending before said hearing officer. None of the directors identified herein
8 shall have authority to influence the decision of the hearing officer except to appear as an
9 advocate or as a witness before the hearing officer. None of the directors identified herein shall
10 have any authority to reverse, affirm, or modify the decision of the hearing officer.

11 **42-11-29. Oaths - Subpoenas - Powers of hearing officers.** -- The hearing officers are
12 hereby severally authorized and empowered to administer oaths; and the hearing officers, in all
13 cases of every nature pending before them, are hereby authorized and empowered to summon and
14 examine witnesses and to compel the production and examination of papers, books, accounts,
15 documents, records, certificates, and other legal evidence that may be necessary or proper for the
16 determination and decision of any question before or the discharge of any duty required by law of
17 the hearing officer. All subpoenas and subpoena duces tecum shall be signed by a hearing officer
18 or the clerk and shall be served as subpoenas are served in civil cases in the superior court; and
19 witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as are
20 provided for witnesses in civil cases in the superior court. In cases of contumacy or refusal to
21 obey the command of the subpoena so issued, the superior court shall have the jurisdiction upon
22 application of the director with proof by affidavit of the fact, to issue a rule or order returnable in
23 not less than two (2) nor more than five (5) days directing such person to show cause why he or
24 she should not be adjudged in contempt. Upon return of such order, the justice before whom the
25 matter is brought for hearing shall examine under oath such person, and such person shall be
26 given an opportunity to be heard, and if the justice shall determine that this person has refused
27 without reasonable cause or legal excuse to be examined or to answer a legal or pertinent
28 question, he or she may impose a fine upon this offender or forthwith commit the offender to the
29 adult correctional institutions until he or she submits to do the act which he or she was so
30 required to do, or is discharged according to law.

31 SECTION 11. Sections 42-17.6-3, 42-17.6-4 and 42-17.6-5 of the General Laws in
32 Chapter 42-17.6 entitled "Administrative Penalties for Environmental Violations" are hereby
33 amended to read as follows:

34 **42-17.6-3. Notice of violation and assessment of penalty.** -- Whenever the director

1 seeks to assess an administrative penalty on any person, the director shall cause to be served upon
2 the person, either by service, in hand, or by certified mail, return receipt requested, a written
3 notice of its intent to assess an administrative penalty which shall include a concise statement of
4 the alleged act or omission for which the administrative penalty is sought to be assessed, each
5 law, rule, regulation, order, permit, license, or approval which has not been complied with as a
6 result of the alleged act or omission, the amount which the director seeks to assess as an
7 administrative penalty for each alleged act or omission, a statement of the person's right to an
8 adjudicatory hearing before the division of administrative adjudication within the department of
9 administration on the proposed assessment, the requirements the person must comply with to
10 avoid being deemed to have waived the right to an adjudicatory hearing and the manner of
11 payment thereof if the person elects to pay the penalty and waive an adjudicatory hearing. After
12 written notice of noncompliance or intent to assess an administrative penalty has been given, each
13 day thereafter during which the noncompliance occurs or continues shall constitute a separate
14 offense and shall be subject to a separate administrative penalty if reasonable efforts have not
15 been made to promptly come into compliance.

16 **42-17.6-4. Right to adjudicatory hearing.** -- Whenever the director seeks to assess an
17 administrative penalty on any person, the person shall have the right to an adjudicatory hearing
18 under chapter 11 of this title. ~~35 of this title, the provisions of which shall apply except when they~~
19 ~~are inconsistent with the provisions of this chapter.~~

20 (a) A person shall be deemed to have waived his or her right to an adjudicatory hearing
21 unless, within ten (10) days of the date of the director's notice that he or she seeks to assess an
22 administrative penalty, the person files with the director ~~or~~ of the department of environmental
23 management and the clerk of the administrative adjudication division of the department of
24 administration a written statement denying the occurrence of any of the acts or omissions alleged
25 by the director in the notice, or asserting that the money amount of the proposed administrative
26 penalty is excessive. In any adjudicatory hearing authorized pursuant to ~~chapter 35 of title 42, the~~
27 chapter 11 of title 42, the director shall, by a preponderance of the evidence, prove the occurrence
28 of each act or omission alleged by the director.

29 (b) If a person waives his or her right to an adjudicatory hearing, the proposed
30 administrative penalty shall be final immediately upon the waiver.

31 **42-17.6-5. Judicial review.** -- If an administrative penalty is assessed at the conclusion of
32 an adjudicatory hearing authorized pursuant to chapter 11 of title 42, the administrative penalty
33 shall be final upon the expiration of thirty (30) days if no action for judicial review of the decision
34 is commenced pursuant to chapter 35 of this title.

1 SECTION 12. Sections 42-17.7-1, 42-17.7-2, 42-17.7-3, 42-17.7-4, 42-17.7-5, 42-17.7-6,
2 42-17.7-7, 42-17.7-8 and 42-17.7-9 of the General Laws in Chapter 42-17.7 entitled
3 "Administrative Adjudication for Environmental Matters" are hereby repealed.

4 ~~**42-17.7-1. Establishment.** -- Prior to January 1, 1990, there shall be established an
5 administrative adjudication court with the department of environmental management. Such
6 division shall exercise its functions under the control of the director of environmental
7 management.~~

8 ~~**42-17.7-2. Adjudication of environmental licenses and violations -- Informal
9 resolution.** -- All contested enforcement proceedings, all contested licensing proceedings, and all
10 adjudicatory proceedings under chapter 17.6 of title 42 shall be heard by the administrative
11 adjudication court pursuant to the regulations promulgated by the director of environmental
12 management; provided, however, that no adjudicatory proceeding in hearing prior to the
13 establishment of the court by this chapter shall be subject to the provisions of this chapter.
14 Notwithstanding the foregoing, the director shall be authorized in his or her discretion to resolve
15 contested licensing and enforcement proceedings through informal disposition pursuant to
16 regulations promulgated by the director.~~

17 ~~**42-17.7-3. Hearing officers -- Appointment -- Qualifications -- Compensation.** -- (1)
18 The governor, with the advice and consent of the senate, shall appoint up to four (4) hearing
19 officers, who shall be attorneys at law who prior to their appointment shall have practiced law for
20 a period of not less than five (5) years, for a term of five (5) years each; provided, however, that
21 of such initial four (4) hearing officers, one shall be appointed for a term of two (2) years, one
22 shall be appointed for a term of three (3) years, one shall be appointed for a term of four (4) years,
23 and one shall be appointed for a term of five (5) years, and they shall be addressed as hearing
24 officers.~~

25 ~~(2) The governor shall designate one of these hearing officers as chief hearing officer.
26 The hearing officers shall hear proceedings as provided by this chapter, and the director with the
27 assistance of the chief hearing officer may promulgate such rules and regulations as shall be
28 necessary or desirable to effect the purposes of this chapter.~~

29 ~~(3) A hearing officer shall devote full time to these administrative duties and shall not
30 otherwise practice law while holding office nor be a partner nor an associate of any person in the
31 practice of law.~~

32 ~~(4) Compensation for hearing officers shall be determined by the unclassified pay board.~~

33 ~~(5) The chief hearing officer may in his discretion appoint outside hearing officers who
34 shall have appropriate qualifications to so serve.~~

1 ~~**42-17.7-4. Clerk -- Appointment -- Powers and duties -- Compensation.**~~ (1) There
2 shall be an administrative clerk of the administrative adjudication court. The governor, with the
3 advice and consent of the senate, shall appoint the administrative clerk.

4 (2) The clerk shall have the custody of the seal of the administrative adjudication court,
5 have general charge of the office, keep a full record of proceedings, file and preserve all
6 documents and papers entrusted to his or her care, prepare such papers and notices as may be
7 required by the director or the hearing officers, and perform such other duties as may be
8 prescribed. The clerk shall have the power to issue subpoenas for witnesses and documents and
9 to administer oaths in all cases before any hearing officer or pertaining to the duties of his or her
10 office.

11 (3) The clerk shall be a member of the classified service.

12 ~~**42-17.7-5. Prehearing procedure -- Depositions -- Exhibits -- Formulating issues --**~~

13 ~~**Other procedures.**~~ (1) Prior to the commencement of any hearing, the hearing officer may in
14 his or her discretion direct the parties or their attorneys to appear before him or her for such
15 conferences as shall be necessary. At such conferences the hearing officer may order any party to
16 file, prior to the commencement of any formal hearing, any exhibits the party intends to use in the
17 hearing and the names and addresses of witnesses the party intends to produce in its direct case
18 together with a short statement of the testimony of each witness. Following entry of such an
19 order, a party shall not be permitted, except in the discretion of the hearing officer, to introduce
20 into evidence in said party's direct case exhibits which are not filed in accordance with the order.
21 At such conference, the hearing officer may designate a date before which he or she requires any
22 party to specify what issues are conceded and further proof of conceded issues shall not be
23 required. The hearing officer shall also require the parties to simplify the issues, to consider
24 admissions of fact and of documents which will avoid unnecessary proof and to limit the number
25 of expert witnesses. The hearing officer shall enter an order reciting the concessions and
26 agreements made by the parties, and shall enter an order on such other matters as are pertinent to
27 the conduct of the hearing, and, unless modified, the hearing shall be conducted by the order.

28 (2) The hearing officer may also order the parties to file prior to the commencement of
29 any hearing the testimony of any or all of their respective witnesses and to submit such testimony
30 to the hearing officer and the opposing party or the opposing counsel by such date as the hearing
31 officer shall determine. The witness shall testify under oath, and all of such testimony shall be in
32 a question and answer format. Save for good cause shown, said testimony shall be the direct
33 examination of said witness, provided, however, that said witness shall be available at the hearing
34 for cross examination by the opposing party or opposing counsel.

1 ~~(3) The director with the assistance of the chief hearing officer shall promulgate by~~
2 ~~regulation such other prehearing procedures and/or hearing procedures as deemed necessary~~
3 ~~including the use of portions of the superior court civil rules of discovery where they are not~~
4 ~~inconsistent with the applicable provisions of the Administrative Procedures Act, chapter 35 of~~
5 ~~this title.~~

6 ~~**42-17.7-6. Hearings -- Orders -- Concurrent jurisdiction.**~~ (1) ~~Subject to the~~
7 ~~provisions of section 42-17.7-2, every hearing for the adjudication of a violation or for a license~~
8 ~~shall be held before a hearing officer. The chief hearing officer shall assign a hearing officer to~~
9 ~~each matter. After due consideration of the evidence and arguments, the hearing officer shall~~
10 ~~make written proposed findings of fact and proposed conclusions of law which shall be made~~
11 ~~public when submitted to the director for review. The director may in his or her discretion adopt,~~
12 ~~modify, or reject such findings of fact and/or conclusions of law provided, however, that any such~~
13 ~~modification or rejection of the proposed findings of fact or conclusions of law shall be in writing~~
14 ~~and shall state the rationale therefor.~~

15 ~~(2) The department of environmental management and the coastal resources management~~
16 ~~council shall promulgate such rules and regulations, not inconsistent with law, as to assure~~
17 ~~uniformity of proceedings as applicable.~~

18 ~~**42-17.7-7. Ex parte consultations.**~~ Notwithstanding the provisions of section 42-35-
19 13, ~~the director shall have no communication directly or indirectly, with a hearing officer relating~~
20 ~~to any issue of fact or of law on any matter then pending before said hearing officer.~~

21 ~~**42-17.7-8. Oaths -- Subpoenas -- Powers of hearing officers.**~~ The hearing officers
22 ~~are hereby severally authorized and empowered to administer oaths; and the hearing officers, in~~
23 ~~all cases of every nature pending before them, are hereby authorized and empowered to summon~~
24 ~~and examine witnesses and to compel the production and examination of papers, books, accounts,~~
25 ~~documents, records, certificates, and other legal evidence that may be necessary or proper for the~~
26 ~~determination and decision of any question before or the discharge of any duty required by law of~~
27 ~~the hearing officer. All subpoenas and subpoena duces tecum shall be signed by a hearing officer~~
28 ~~or the clerk and shall be served as subpoenas are served in civil cases in the superior court; and~~
29 ~~witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as are~~
30 ~~provided for witnesses in civil cases in the superior court. In cases of contumacy or refusal to~~
31 ~~obey the command of the subpoena so issued, the superior court shall have jurisdiction upon~~
32 ~~application of the director with proof by affidavit of the fact, to issue a rule or order returnable in~~
33 ~~not less than two (2) nor more than five (5) days directing such person to show cause why he or~~
34 ~~she should not be adjudged in contempt. Upon return of such order, the justice before whom the~~

1 matter is brought for hearing shall examine under oath such person, and such person shall be
2 given an opportunity to be heard, and if the justice shall determine that this person has refused
3 without reasonable cause or legal excuse to be examined or to answer a legal or pertinent
4 question, he or she may impose a fine upon this offender or forthwith commit the offender to the
5 adult correctional institutions until he or she submits to do the act which he or she was so required
6 to do, or is discharged according to law.

7 **42-17.7-9. Uniform appeal period established.** --- Regardless of any other provision of
8 the general laws to the contrary, all requests for an adjudicatory hearing within the department of
9 environmental management must be in writing and must be filed with the clerk of the
10 administrative adjudication division for environmental matters within twenty (20) calendar days
11 of receipt of the contested agency action for all enforcement actions. All license and permit
12 appeals must be filed with the clerk of the administrative adjudication division for environmental
13 matters within thirty (30) calendar days of receipt of the contested agency action. Every notice of
14 contested agency action shall provide notice of the twenty (20) day or thirty (30) day appeal
15 period and of the procedures for filing an appeal. The time and manner of filing established in this
16 chapter are mandatory and jurisdictional.

17 SECTION 13. This act shall take effect on July 1, 2002.

18

EXPLANATION
BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

1 This act would amend the provisions of the department of environmental management.

2 This act would also repeal the provisions establishing the department of the environment and
3 would instead provide for the continued existence of the present department of environmental
4 management.

5 This act would also establish a procedure for the administrative adjudication of
6 environmental matters.

7 This act would take effect on July 1, 2002.

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LC00465
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