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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO HEALTH AND SAFETY -- RHODE ISLAND CESSPOOL PHASE-OUT ACT
OF 2004

Introduced By: Senator June N. Gibbs

Date Introduced: February 11, 2004

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "Health and Safety" is hereby
2 amended by adding thereto the following chapter:

3 CHAPTER 19.15

4 THE RHODE ISLAND CESSPOOL PHASE-OUT ACT OF 2004

5 **23-19.15-1. Short title.** – This chapter shall be known and may be cited as the “Rhode
6 Island Cesspool Phase-Out Act of 2004.”

7 **23-19.15-2. Legislative findings.** – The general assembly hereby recognizes and declares
8 that:

9 (1) there exists within the state the need to abate pollution caused by cesspools.

10 (2) It is estimated that there are approximately sixty thousand (60,000) cesspools within
11 the state as of 2004.

12 (3) Cesspools are a substandard and often inadequate means of sewage treatment and
13 disposal.

14 (4) Many cesspools contribute directly to groundwater and surface water contamination.

15 (5) Cesspools degrade water quality and have been identified as a source of pollution in
16 several waterbodies throughout the state, including portions of Narragansett Bay.

17 (6) Wastewater disposed from cesspools contains bacteria, viruses, ammonimu, and other
18 pollutants with high biochemical oxygen demand, and may also include phosphates, chlorides,

1 grease, and chemicals used to clean cesspools.

2 (7) Wastewater disposed from cesspools frequently exceeds drinking water health
3 standards for certain trace contaminants.

4 (8) Areas that rely on cesspools are more likely to rely on groundwater for their drinking
5 water supplies.

6 (9) Replacement of cesspools with modern ISDS technology reduces risks to public
7 health and the environment.

8 (10) Appropriate treatment of sanitary sewage disposed into the ground is essential to the
9 protection of groundwater resources, drinking water supplies, and tributary surface waters.

10 (11) A fund exists to assist homeowners with the costs of removing cesspools and
11 inadequate septic systems and replacing them with an approved ISDS if the community in which
12 the homeowner resides has created a wastewater management district in accordance with chapter
13 45-24.5.

14 **23-19.15-3. Declaration of purpose.** – The purpose of this chapter is to phase- out use of
15 cesspools that are deemed to present unacceptable risks to public health or the environment.

16 **23-19.15-4. Definitions.** – For the purposes of this chapter the following terms shall
17 mean:

18 (1) “Cesspool” means any buried chamber, including, but not limited to, any metal tank,
19 perforated concrete vault or covered hollow or excavation, or any combination of buried
20 chambers, tile drains, piping or stone trenches constructed prior to April 9, 1968, which receives
21 discharges of sanitary sewage from a building for the purpose of collecting solids and discharging
22 liquids to the surrounding soil.

23 (2) “Department” means the department of environmental management as established in
24 chapter 42-17.1.

25 (3) “Director” means the director of the department of environmental management or his
26 or her designee.

27 (4) “Failed cesspool” means a cesspool where one or more of the following conditions
28 exist: (i) the cesspool fails to accept or dispose of sewage, as evidenced by indicators of sewage at
29 the ground surface above or adjacent to the cesspool, or in the building served; (ii) the liquid
30 depth in a cesspool is less than six (6) inches from the inlet pipe invert or the remaining available
31 volume within the cesspool above the liquid depth is less than one-half (1/2) of one day’s design
32 flow; (iii) pumping is required more than four (4) times a year; or (iv) the cesspool is shown to
33 have contaminated a drinking water well or watercourse.

34 (5) “Individual sewage disposal system” or “ISDS” means any cesspool, or system of

1 1 piping, tanks, disposal areas, alternative toilets or other facilities designed to function as a unit to
2 convey, store, treat and/or dispose of sanitary sewage, by means other than discharge into a public
3 sewer system.

4 (6) “System inspector” means a person approved by the department as capable of
5 properly assessing the condition of an ISDS.

6 (7) “Watercourse” means any river, stream, brook, pond, lake, swamp, marsh, bog, fen,
7 wet meadow, tidewater, or any other standing or flowing body of water.

8 **23-19.15-5. Inspection.** – (a) The owner of property served by a cesspool shall cause an
9 inspection to be performed on said cesspool by a system inspector in accordance with a schedule
10 established by the department but no later than January 1, 2010. The inspection shall be
11 conducted and reported in accordance with procedures required by the department, and the results
12 shall be recorded on forms prescribed by the department.

13 (b) Unless exempted under section 23-19.15-8, a cesspool shall be inspected by a system
14 inspector at, or within three (3) years before, the time of transfer of title to the facility served by
15 the cesspool. If weather conditions preclude inspection at the time of transfer, the inspection may
16 be completed as soon as weather permits, but in no event later than six (6) months after the
17 transfer, provided that the seller notifies the buyer in writing of the inspection requirement at the
18 time of transfer. A copy of the inspection report shall be submitted to the buyer or other person
19 acquiring title to the facility served by the system.

20 **23-19.15-6. Cesspool removal and replacement.** – (a) Cesspools shall be properly
21 abandoned and replaced with an approved ISDS or connected into a public sewer system in
22 accordance with the following risk-based schedule.

23 (1) Tier 1 – Any cesspool deemed by the department of system inspector to be failed in
24 accordance with this chapter shall be properly abandoned and replaced with an approved ISDS
25 within one (1) year of discovery unless a shorter period of time is set by the department based on
26 the existence of an imminent health hazard or environmental threat.

27 (2) Tier 2 – Any cesspool within fifty (50) feet of any private drinking water well, or
28 within two-hundred (200) feet of a public drinking water well, or within fifty (50) feet of a
29 watercourse or any drain that is likely to received groundwater flow from the location of the
30 cesspool, shall be properly abandoned and replaced with an approved ISDS by January 1, 2010.

31 (3) Tier 3 – Any cesspool between fifty (50) feet and one-hundred (100) feet of any
32 private drinking water well, or between fifty (50) feet and one-hundred (100) feet of any
33 watercourse or drain that is likely to receive groundwater flow from the location of the cesspool,
34 shall be properly abandoned and replaced with an approved ISDS by January 1, 2015.

1 (4) Tier 4 – Any cesspool between one-hundred (100) feet and two-hundred (200) feet of
2 any private drinking water well, or between one-hundred (100) feet and two-hundred (200) feet of
3 any watercourse or drain that is likely to receive groundwater flow from the location of the
4 cesspool, or where the bottom of the cesspool extends below the seasonal high groundwater table,
5 shall be properly abandoned and replaced with an approved ISDS by January 1, 2020.

6 (b) In the event of transfer of title of the property served by a cesspool requiring
7 replacement under any tier listed in subsection 23-19.15-6(a), the deadline for replacement of the
8 cesspool shall be two (2) years from the date of initial transfer.

9 (c) The department may, by regulation, exempt certain cesspools from the phase-out
10 requirements in subsection 23-19.15-6(a) where the cesspool provides treatment equivalent to the
11 standards required under state regulations in effect as of 1968.

12 **23-19.15-7. Waiver.** – The director may grant a waiver, to the extent necessary, from
13 applicable provisions listed in subsection 23-19.15-6(a) provided the homeowner demonstrates
14 undue hardship and the cesspool is not a failed system as defined herein. No waiver shall exceed
15 five (5) years from the dates specified in subsection 23-19.15-6(a).

16 **23-19.15-8. Exemption.** – The provisions of sections 23-19.15-5 and subsection 23-
17 19.15-6(a) shall not apply to any cesspool: (1) located in a community that has adopted an on-site
18 wastewater management ordinance that requires the risk-based phase-out of cesspools on an
19 alternative schedule, but no later than the dates specified in subsection 23-19.15-6(a) located on a
20 property that is properly designated to be sewered no later than five (5) years after the applicable
21 deadlines provided in subsection 23-19.15-6(a) provided: (i) it is not a failed cesspool as defined
22 herein; (ii) the owner does not increase the design sewage flow into the cesspool or add bedrooms
23 to the facility served by the cesspool; (iii) the municipality holds bonding authorization of some
24 other dedicated financial surety for expansion of sewers to the area of the building served by the
25 cesspool; and (iv) the property owner certifies, in writing, that the dwelling/building will be
26 connected to the sewer system within six (6) months of receipt of the notification to connect to
27 the sewer system.

28 **23-19.15-9. Notice to remove and replace cesspools.** – (a) The owner of any cesspool
29 which has not been properly abandoned and replaced with an approved ISDS as required by this
30 act shall be in violation of this chapter and subject to enforcement action by the department in
31 accordance with chapter 42-17.6 of the general laws.

32 (b) Notwithstanding the above provisions, the director may require the abandonment and
33 replacement of any cesspool with an approved ISDS prior to the dates specified in subsection 23-
34 19.15-6(a) if one or more of the following conditions exist:

- 1 (1) a failed cesspool is indicated;
2 (2) as a result of a watershed plan, such as a special area management (SAM) plan or a
3 total maximum daily load (TMDL) study, a determination has been made that a cesspool within a
4 particular geographic area must be abandoned and replaced earlier than as provided for in this
5 chapter; and
6 (3) the cesspool is a large capacity cesspool as defined pursuant to applicable federal
7 regulations governing underground injection control (UIC) facilities.

8 **23-19.15-10. Connection to available sewers.** – Any owner of property served by a
9 cesspool requiring replacement under any tier listed in subsection 23-19.15-6(a) which has a
10 sewer stub enabling connection to public sewer shall be required to connect into the sewer and
11 properly abandon the cesspool within two (2) years from the date an inspection by a system
12 inspector establishes that the cesspool requires replacement in accordance with subsection 23-
13 19.15-6(a). The operator of the wastewater treatment facility may grant an extension if
14 insufficient capacity exists to accept additional connections at that time.

15 **23-19.15-11. Regulations.** – The department shall promulgate rules and regulations as
16 may be necessary to implement and carry out the provisions of this chapter.

17 **23-19.15-12. Severability and construction.** – The provisions of this chapter shall be
18 severable, and if any court declares any phrase, clause, sentence, or provision of this chapter to be
19 invalid, or its applicability to any government, agency, person, or circumstance is declared
20 invalid, the remainder of the chapter and its relevant applicability shall not be affected. The
21 provisions of this chapter shall be liberally construed to give effect to the purposes thereof.

22 SECTION 2. Section 520.8-2 of the General Laws in Chapter 520.8 entitled "Real
23 Estate Sales Disclosures" is hereby amended to read as follows:

24 **5-20.8-2. Disclosure requirements.** -- (a) As soon as practicable, but in any event, no
25 later than prior to signing any agreement to transfer real estate, the seller of the real estate shall
26 deliver a written disclosure to buyer and to each agent with whom seller knows he or she or buyer
27 has dealt in connection with the real estate. The written disclosure shall comply with the
28 requirements set forth in subsection (b) and shall state all deficient conditions of which the seller
29 has actual knowledge. Agent shall not communicate the offer of buyer until buyer has received a
30 copy of the written disclosure and signed a written receipt of same. If buyer refuses to sign a
31 receipt pursuant to this section, the seller or agent shall immediately sign and date a written
32 account of the refusal. The agent is not liable for the accuracy or thoroughness of representations
33 made by seller in the written disclosure or for deficient conditions not disclosed to the agent by
34 the seller.

1 (b) (1) The Rhode Island real estate commission may approve a form of written
2 disclosure as required under this chapter or the seller may use a disclosure form substantially
3 conforming to the requirements of this section. The following provisions shall appear
4 conspicuously at the top of any written disclosure form: "Prior to the signing of an agreement to
5 transfer real estate (vacant land or real property and improvements consisting of a house or
6 building containing one (1) to four (4) dwelling units), seller is providing buyer with this written
7 disclosure of all deficient conditions of which seller has knowledge. This is not a warranty by
8 seller that no other defective conditions exist, which there may or may not be. Buyer should
9 estimate the cost of repair or replacement of deficient conditions prior to submitting an offer on
10 this real estate. Buyer is advised however not to rely solely upon the representation of seller made
11 in this disclosure, but to conduct any inspections or investigations which buyer deems to be
12 necessary to protect his or her best interest." Nothing contained in this section shall be construed
13 to impose an affirmative duty on the seller to conduct inspections as to the condition of this real
14 estate.

15 (2) The disclosure form shall include the following information:

16 (i) Seller Occupancy -- (Length of Occupancy)

17 (ii) Year Built

18 (iii) Basement -- (Seepage, Leaks, Cracks, etc. Defects)

19 (iv) Sump Pump -- (Operational, Location, and Defects)

20 (v) Roof (Layers, Age and Defects)

21 (vi) Fireplaces -- (Number, Working and Maintenance, Defects)

22 (vii) Chimney -- (Maintenance History, Defects)

23 (viii) Woodburning Stove -- (Installation Date, Permit Received, Defects)

24 (ix) Structural Conditions -- (Defects)

25 (x) Insulation -- (Wall, Ceiling, Floor, UFFI)

26 (xi) Termites or other Pests -- (Treatment Company)

27 (xii) Radon -- (Test, Company) "Radon has been determined to exist in the State of
28 Rhode Island. Testing for the presence of radon in residential real estate prior to purchase is
29 advisable."

30 (xiii) Electrical Service -- (Imp. & Repairs, Electrical Service, Amps, Defects)

31 (xiv) Heating System -- (Type, Imp. & Repairs, Underground Tanks, Zones,
32 Supplemental Heating, Defects)

33 (xv) Air Conditioning -- (Imp. & Repairs, Type, Defects)

34 (xvi) Plumbing -- (Imp. & Repairs, Defects)

1 (xvii) Sewage System -- (Assessment, Annual Fees, Type, Cesspool/Septic Location,
2 Last Pumped, Maintenance History, Defects); [deadlines for replacement of cesspools as provided](#)
3 [in subsection 23-19.15-6\(a\) of chapter 23-19.15.](#)

4 (xviii) Water System -- (Imp. & Repairs, Type, Defects) Private water supply (well).
5 "Buyer understands that this property is, or will be served, by a private water supply (well) which
6 may be susceptible to contamination and potentially harmful to health. If a public water supply is
7 not available, the private water supply must be tested in accordance with regulations established
8 by the Rhode Island department of health pursuant to section 23-1-5.3. The seller of that property
9 is required to provide the buyer with a copy of any previous private water supply (well) testing
10 results in the seller's possession and notify the buyer of any known problems with the private
11 water supply (well)."

12 (xix) Domestic Hot Water -- (Imp. & Repairs, Type, Defects, Capacity of Tank)

13 (xx) Property Tax

14 (xxi) Easements

15 (xxii) Deed -- (Type, Number of Parcels)

16 (xxiii) Zoning -- (Permitted use, Classification) "Buyers of real estate in the state of
17 Rhode Island are legally obligated to comply with all local real estate ordinances; including, but
18 not limited to, ordinances on the number of unrelated persons who may legally reside in a
19 dwelling, as well as ordinances on the number of dwelling units permitted under the local zoning
20 ordinances." If the subject property is located in a historic district, that fact must be disclosed to
21 the buyer, together with the notification that "property located in a historic district may be subject
22 to construction, expansion or renovation limitations. Contact the local building inspection official
23 for details."

24 (xxiv) Restrictions -- (Plat or Other)

25 (xxv) Building Permits

26 (xxvi) Minimum Housing -- (Violations)

27 (xxvii) Flood Plain -- (Flood Insurance)

28 (xxviii) Wetlands -- The location of coastal wetlands, bay, fresh water wetlands, pond,
29 marsh, river bank or swamp, as those terms are defined in chapter 1 of title 2 and the associated
30 buffer areas may impact future property development. Seller must disclose to the buyer any such
31 determination on all or part of the land made by the department of environmental management.

32 (xxix) Multi-family or other Rental Property -- (Rental Income)

33 (xxx) Pools & Equipment -- (Type, Defects)

34 (xxxii) Lead Paint -- (Inspection) Every buyer of residential real estate built prior to 1978

1 is hereby notified that those properties may have lead exposures that may place young children at
2 risk of developing lead poisoning. Lead poisoning in young children may produce permanent
3 neurological damage, including learning disabilities, reduced IQ behavioral problems, and
4 impaired memory. The seller of that property is required to provide the buyer with a copy of any
5 lead inspection report in the seller's possession and notify the buyer of any known lead poisoning
6 problem. Environmental lead inspection is recommended prior to purchase.

7 (xxxii) Fire

8 (xxxiii) Hazardous Waste -- (Asbestos and Other Contaminants)

9 (xxxiv) Miscellaneous

10 (c) Any agreement to transfer real estate shall contain an acknowledgement that a
11 completed real estate disclosure form has been provided to the buyer by the seller in accordance
12 with the provisions of this section.

13 (d) The Rhode Island real estate commission has the right to amend the seller disclosure
14 requirements by adding or deleting requirements when there is a determination that health, safety,
15 or legal needs require a change. Any change to requirements shall be a rule change, subject to the
16 administrative procedures act. The power of the commission to amend the written disclosure
17 requirements are liberally construed so as to allow additional information to be provided as to the
18 structural components, housing systems, and other property information as required by this
19 chapter.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- RHODE ISLAND CESSPOOL PHASE-OUT ACT
OF 2004

- 1 This act would create a new chapter to phase- out many cesspools currently in use in the
- 2 state.
- 3 This act would take effect upon passage.

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