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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO HEALTH AND SAFETY -- HAZARDOUS WASTE MANAGEMENT

Introduced By: Representatives Carson, and Morales

Date Introduced: January 12, 2023

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

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

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

4 When used in this chapter:

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

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

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

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

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

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

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

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

6 (iii) Hazardous waste does not include waste or a combination of wastes that are recycled
7 as legitimate recycled hazardous waste pursuant to title 40 of the Code of Federal Regulations
8 (CFR) section 260.43.

9 ~~(5)~~(6) “Hazardous waste generation” means the act or process of producing hazardous
10 waste;

11 ~~(6)~~(7) “Hazardous waste management” means the systematic control of the collection,
12 source separation, storage, transportation, processing, treatment, recovery, and disposal of
13 hazardous wastes;

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

18 ~~(8)~~(9) “Landfill” means any disposal facility or part of a facility where hazardous waste is
19 placed in or on land;

20 ~~(9)~~(10) “Manifest” means the form used for identifying the quantity, composition, and the
21 origin, routing, and destination of hazardous waste during its transportation from the point of
22 generation to the point of disposal, treatment, or storage;

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

27 ~~(11)~~(12) “Storage” means the actual or intended containment of hazardous waste, either on
28 a temporary basis or for a period of years, in such a manner as not to constitute disposal of the
29 hazardous waste;

30 ~~(12)~~(13) “Transfer station” means an intermediate point in the transport of hazardous
31 wastes where the wastes are brought, stored, and transferred to vehicles for movement to other
32 intermediate points or to the point of ultimate storage or disposal;

33 ~~(13)~~(14) “Transport” means the movement of wastes from the point of generation to any
34 intermediate points, and finally to the point of ultimate storage or disposal;

1 ~~(14)~~(15) “Treatment” means any method, technique, or process, including neutralization
2 or incineration, designed to change the physical, chemical, or biological character or composition
3 of any hazardous waste as to neutralize the waste or so as to render the waste less hazardous,
4 nonhazardous, safer to transport, amenable to storage, or reduced in volume, except any method or
5 technique that may be included as part of the manufacturing process at the point of generation.

6 **23-19.1-18. Criminal penalties — Payment of restoration costs.**

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

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

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

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

31 (e) Transportation of hazardous wastes in Rhode Island without a valid permit issued by
32 the department of environmental management is prohibited, and any person who knowingly
33 transports hazardous wastes in Rhode Island without a valid permit issued by the department of
34 environmental management, or who reasonably should know that he or she is transporting or

1 causing to be transported hazardous wastes without a permit, shall be guilty of a felony.

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

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

16 (h) The use of hazardous waste as defined in § 23-19.1-4 as fill on any construction site
17 project is prohibited and any person who knowingly uses, or transports for use, hazardous waste as
18 fill on any construction site project in Rhode Island, or who reasonably should know that such fill
19 is hazardous waste, shall be guilty of a felony.

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

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

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

31 **23-19.1-18.1. Determination of restoration costs — Judgment — Other relief not**
32 **precluded.**

33 (a) In any case where the court is of the opinion that the sentence should consist of or
34 include the amount of the cost of restoring to its original state the area where hazardous wastes

1 were stored, treated, or disposed of, or where soil containing hazardous waste was used as fill, in
2 violation of the provisions of this chapter, the court shall order a hearing to determine the amount
3 of the cost of the restoration. For the purposes of this section, the “original state of the area” means
4 the reasonably ascertainable condition of the property immediately prior to the unlawful storage,
5 treatment, ~~or~~ disposal, or use of soil containing hazardous waste as fill, or, if impracticable to
6 determine the condition, then it shall be the reasonable environmentally sound condition of the
7 property. The order must be filed with the clerk of the court and must specify a date for the hearing
8 not less than ten (10) days after the filing of the order.

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

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

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

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

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

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

34 (3) Where the court orders the defendant to perform duties of restoration to the property,

1 the court may authorize the department of environmental management to supervise and report to it
2 on the conduct of the duties.

3 (4) In order to most likely assure the restoration of the property, where there are two or
4 more defendants, the court may apportion the costs or assign the performance of duties of
5 restoration, or both, between or among the defendants as the interests of justice may appear to the
6 court.

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

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

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

14 **23-19.1-22.1. Use of hazardous waste in soil as fill prohibited.**

15 (a) Any person who shall violate the provisions of this chapter through the use of hazardous
16 waste as defined in § 23-19.1-4 as fill on any construction site project in the state, or who shall
17 have caused the use of hazardous waste as fill on any construction site project in the state shall be
18 liable for the cost of containment, cleanup, restoration, and removal of the fill, and for all damages,
19 losses, or injuries, including environmental, which result directly or indirectly from the use of the
20 soil containing hazardous waste as fill.

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

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

28 (d) The court may award treble the amount of the costs, damages, losses, or injuries
29 whenever it finds that an individual has used soil containing hazardous waste as fill in violation of
30 this chapter or the rules and regulations promulgated pursuant to this chapter in a willful and
31 knowing manner.

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

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

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

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