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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO HEALTH AND SAFETY - INDUSTRIAL PROPERTY REMEDIATION AND
REUSE ACT

Introduced By: Senator Juan M. Pichardo

Date Introduced: February 28, 2013

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-19.14-1 and 23-19.14-4 of the General Laws in Chapter 23-
2 19.14 entitled "Industrial Property Remediation and Reuse Act" are hereby amended to read as
3 follows:

4 **23-19.14-1. Legislative findings.** -- It is recognized and acknowledged by the general
5 assembly that:

6 (1) In Rhode Island, there are hundreds of sites that have varying degrees of
7 contamination from hazardous materials;

8 (2) The contamination is often an obstacle to redevelopment due to the liability relating
9 to the sites;

10 (3) Clean up standards and objectives must be consistent with a site's current and
11 reasonably expected future use;

12 (4) Financial institutions are often cautious or unwilling to lend to businesses that wish
13 to expand at or relocate to sites that have or are feared to be contaminated;

14 (5) Rhode Island's urban corridor contains many sites that have been found by federal or
15 state programs to be contaminated;

16 (6) The following cities and towns have numerous known sites: Cranston, East
17 Providence, Johnston, North Smithfield, Pawtucket, Providence, Warwick, West Warwick,
18 Woonsocket, and Central Falls. There are also many potential sites in these and other

1 municipalities that may have been contaminated by historical industrial activities;

2 (7) [Deleted by P.L. 2002, ch. 186, section 1.]

3 (8) Proper redevelopment and reuse of these properties would not only benefit the state's
4 economy and the employment of those who live in the urban corridor, but would also benefit the
5 state's environment; and

6 (9) The redevelopment and reuse of these impacted sites will control and remove the
7 existing contamination and will reduce the artificial economic incentive to develop previously
8 undisturbed natural resources.

9 **23-19.14-4. Objectives of environmental clean-up.** -- (a) The department of
10 environmental management will develop, maintain and publish numerical objectives for the most
11 commonly found hazardous substances. These objectives will be applicable for the clean-up of
12 contaminated properties to levels which are protective of human health and the environment
13 based on current and reasonably foreseeable future use of a property and the surrounding natural
14 resources. To further ensure the safety of school children while attending school, the department
15 of environmental management, shall:

16 (1) Adopt numerical objectives for properties dedicated to school use equivalent to the
17 numerical objectives set by the department for residential use of such properties;

18 (2) Evaluate chemicals of concern for vapor intrusion and adopt numerical objectives for
19 those contaminants in soil and groundwater where such standards do not already exist in
20 regulation and apply the numerical objectives for residential use established for said chemicals
21 and petroleum to properties dedicated to school use; and

22 (3) Develop and adopt procedures for determining whether levels of chemicals of
23 potential concern for vapor intrusion and petroleum in soil or groundwater pose a reasonable
24 potential for migration of contaminated vapors or gases into structures to be utilized as school
25 facilities.

26 (b) (1) The construction of any new school building; or

27 (2) Construction of an addition to any existing school building; or

28 (3) Leasing of any portion of an existing building to serve as a school shall be prohibited
29 on any portion of a parcel of property for which, upon occupancy, there exists an ongoing
30 potential for hazardous materials and/or petroleum to migrate as vapors or gases into the building
31 from the subsurface of the parcel of property, ~~including any potential failure of engineered~~
32 ~~remedies to address said vapors or gases.~~ unless:

33 (i) At a property where concentrations of chemicals of potential concern for vapor
34 intrusion or petroleum in the subsurface exceed the residential direct exposure criteria in soil,

1 source areas of said chemicals or petroleum within the vadose zone of the site that includes said
2 property shall be remediated:

3 (A) Through the physical removal of said chemicals or petroleum through excavation or
4 in situ treatment; and

5 (B) The school building shall be equipped with both a passive sub slab ventilation system
6 capable of conversion to an active system and a vapor barrier beneath the school building or
7 incorporated in the concrete slab, all in compliance with an approved department of
8 environmental management remedial action work plan and completed prior to the occupancy of
9 the school;

10 (ii) At a property where concentrations of chemicals of potential concern for vapor
11 intrusion or petroleum in the subsurface do not exceed the residential direct exposure criteria in
12 soil but contamination exists on the property due to the presence of any chemicals of potential
13 concern for vapor intrusion or petroleum in groundwater, the department of environmental
14 management shall:

15 (A) Require the property's owner or operator to prepare a site specific conceptual site
16 model and conduct soil gas sampling to determine the location of the source area of said
17 chemicals or petroleum in the site's vadose zone;

18 (B) Evaluate the results of said model and sampling to determine if levels of any
19 chemicals of potential concern for vapor intrusion or petroleum could migrate as vapors or gases
20 into the occupied portions of the building where the school is proposed based on procedures
21 developed pursuant to this chapter; and

22 (C) Where the reasonable potential for migration of contaminated vapors or gases is
23 determined to exist, the department shall require remediation to eliminate said potential as
24 follows:

25 (I) Where the source area is located on the site that includes said property, requiring the
26 physical removal of said chemicals or petroleum in the source area in the vadose zone through
27 excavation or in situ treatment; provided, the concentrations of said chemicals or petroleum in
28 said source area exceed the direct residential exposure criteria in soil; and

29 (II) Requiring the installation of both a passive sub slab ventilation system capable of
30 conversion to an active system and a vapor barrier beneath the school building or incorporated in
31 the concrete slab, all in compliance with an approved department of environmental management
32 remedial action work plan and completed prior to the occupancy of the school; and, provided
33 further, should monitoring of a passive sub-slab ventilation system indicate that active ventilation
34 is necessary to protect the health and safety of users of a school equipped with a passive system,

1 the department of environmental management shall require conversion of the passive system to
2 an active system along with financial assurances to provide for the funding of the operation and
3 monitoring of said active system for as long as active ventilation is deemed necessary by the
4 department.

5 (iii) At a property where concentrations of chemicals of potential concern for vapor
6 intrusion or petroleum in the subsurface do not exceed the residential direct exposure criteria in
7 soil on the site that includes said property, and where the department has determined that levels of
8 any chemicals of potential concern for vapor intrusion or petroleum will not present a reasonable
9 potential for migration of contaminated vapors or gases into structures to be utilized as school
10 facilities on the property, the property may be used for school purposes subject to any conditions
11 that the department of environmental management may impose pursuant to this chapter.

12 (c) The construction of any school building, or construction of an addition to any
13 existing school building, or leasing of any portion of an existing building to serve as a school on
14 any portion of a parcel of property formerly used for industrial, manufacturing or landfill
15 purposes that is contaminated by hazardous materials, ~~other than on a parcel of property~~
16 ~~described in subsection (b) of this section,~~ shall be prohibited unless at least thirty (30) days prior
17 to selecting the location for construction or leasing the building the project sponsor undertakes all
18 of the following measures with ten (10) days prior written notice to the public of each measure
19 undertaken:

20 (1) Prepares and posts on the sponsor's website a written report that: (i) Projects the
21 costs to acquire or lease the property, and to cleanup and maintain the property in accordance
22 with the department of environmental management's Rules and Regulations for the Investigation
23 and Remediation of Hazardous Material Releases (the Remediation Regulations); (ii) Projects the
24 time period required to complete a cleanup of the property for school purposes prior to occupancy
25 by obtaining either ~~a~~ an Interim Letter of Compliance, a Letter of Compliance or a Non-
26 Jurisdictional Letter indicating ~~from the department of environmental management or a~~
27 ~~determination by said department~~ that the property is not jurisdictional under the Remediation
28 Regulations of the department of environmental management;

29 (iii) Discusses the rationale for selecting the property for use as school purposes and an
30 explanation of any alternatives to selecting said property considered by the project sponsor;

31 (2) Solicits written comments on the report prepared pursuant to subdivision (1) of this
32 subsection for a period of at least thirty (30) days after posting said report on the sponsors website
33 and conducts a public hearing during said thirty (30) day period at which public comment is taken
34 on said report; and

1 (3) Prepares a second written report that summarizes and responds to the public
2 comments received during the public comment period and at the public hearing and posts said
3 second report on the sponsor's website.

4 (d) The sponsor of any school project subject to the provisions of subsection (c) of this
5 section shall consider the results and findings contained in the reports required by subsection (c)
6 when selecting the location of said project.

7 (e) As used in this section.

8 (1) The term "school" means any residential or non-residential school building, public,
9 private or charter, of any city or town or community educational system regulated, directly or
10 secondarily, by the board of regents for elementary and secondary education or the department of
11 elementary and secondary education or any other state education board or local city or town
12 school board or school committee or other legal educational subdivision acting under it. As used
13 in this chapter, the term "school or schools" includes, but is not limited to, school playgrounds,
14 school administration buildings, indoor school athletic facilities, school gymnasiums, school
15 locker rooms, and similar school buildings. A school shall not include any institutions for
16 education of adults (e.g. colleges, universities, graduate schools, trade schools) or child-care
17 facilities as regulated by the department of children, youth and families.

18 (2) The term "landfill" means for the purposes of this section, any portion of a parcel of
19 property that was used as a landfill as defined in § 23-19.1-4 or a sanitary landfill, dump or other
20 disposal area where more than thirty (30) cubic yards of solid waste was disposed.

21 (3) The term "hazardous materials" means any materials defined as hazardous materials
22 pursuant to § 23-19.14-3.

23 (4) The term "solid waste" means any materials defined as solid waste pursuant to § 23-
24 18.9-7.

25 (5) The term "chemicals of potential concern for vapor intrusion" means those
26 chemicals that the U.S. Environmental Protection Agency recommends for routine evaluation
27 during vapor intrusion assessments in said Agency's most recent guidance on the assessment of
28 vapor intrusion into indoor air from subsurface sources, and any other chemicals that the
29 department of environmental management may recommend for said routine evaluation.

30 (6) The term "source area" means the horizontal and vertical extent of natural or man-
31 made media impacted by a release of hazardous materials or causing a release of hazardous
32 materials at concentrations in excess of the numerical objectives developed pursuant to paragraph
33 (a) of this section.

34 (7) The term "vadose zone" means the full extent of the soil column existing above the

1 elevation of groundwater.

2 (8) The term "conceptual site model" means a written and/or illustrative representation of
3 the physical, chemical and biological processes that control the transport, migration and actual or
4 potential impacts of hazardous materials in soil, air, groundwater, surface water and/or sediments
5 to human and/or ecological receptors at a site.

6 (f) The provisions of this section shall not apply to the renovation or reconstruction of
7 any building for school purposes that was used continuously as a school for a period of at least
8 twenty-five (25) years where: (1) The footprint of the building after renovation or reconstruction
9 does not exceed more than five percent (5%) of the current footprint of the building; and (2) The
10 site of the building is not subject to a remedial action work plan approved by the department of
11 environmental management.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - INDUSTRIAL PROPERTY REMEDIATION AND
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1 This act would strengthen the safety standards which must be adhered to prior to using
2 properties previously used for industrial or manufacturing purposes to construct schools.

3 This act would mandate that the properties meet the department of environmental
4 managements residential use requirements as well as providing additional safeguards.

5 This act would take effect upon passage.

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