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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2005**

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A N A C T

RELATING TO MERCURY REDUCTION AND EDUCATION

Introduced By: Senators Sosnowski, Ruggerio, J Montalbano, Walaska, and Tassoni

Date Introduced: June 09, 2005

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 23-24.9-7, 23-24.9-8, 23-24.9-9 and 23-24.9-10 of the General  
2   Laws in Chapter 23-24.9 entitled "Mercury Reduction and Education Act" are hereby amended to  
3   read as follows:

4           **23-24.9-7. Phase-out and exemptions.** -- (a) No mercury-added product shall be offered  
5   for final sale or use or distributed for promotional purposes in Rhode Island if the mercury  
6   content of the product exceeds:

7           (1) One gram (1000 milligrams) for mercury-added fabricated products or two hundred  
8   fifty (250) parts per million (ppm) for mercury-added formulated products, effective ~~July~~ January  
9   1, ~~2005~~ 2006;

10          (2) One hundred (100) milligrams for mercury-added fabricated products or fifty (50)  
11   parts per million (ppm) for mercury-added formulated products, effective July 1, 2007; and

12          (3) Ten (10) milligrams for mercury-added fabricated products or ten (10) parts per  
13   million (ppm) for mercury-added formulated products, effective July 1, 2009.

14          (b) For a product that contains one or more mercury-added products as a component, this  
15   section is applicable to each component part or parts and not to the entire product. For example, if  
16   an iron has a mercury switch, the phase-out applies to the switch and not the entire iron.

17          (c) For a product that contains more than one mercury-added product as a component,  
18   the phase-out limits specified in subsection (a) of this section apply to each component and not  
19   the sum of the mercury in all of the components. For example, for a car that contains mercury-

1 added switches and lighting, the phase-out limits would apply to each component separately, and  
2 not the combined total of mercury in all of the components.

3 (d) (1) Fluorescent lamps and high intensity discharge (HID) lamps, including metal  
4 halide, high pressure sodium, and mercury vapor types, shall be exempt from the requirements of  
5 subsection (a) of this section. As of January 1, 2010, the mercury content of fluorescent bulbs  
6 shall either not exceed ten (10) milligrams or the manufacturer shall comply with the exemption  
7 requirements pursuant to subsection (f) of this section.

8 (2) Specialized lighting used in the entertainment industry, such as metal halide lights,  
9 shall be exempted from the requirements of section 23-24.9-7(a).

10 (e) A mercury-added product shall be exempt from the limits on total mercury content  
11 set forth in subsection (f) of this section if the level of mercury or mercury compounds contained  
12 in the product are required in order to comply with federal or state health or safety requirements.  
13 In order to claim exemption under this section, the manufacturer must notify the department, in  
14 writing, and provide the legal justification for the claim of exemption. In addition, laboratory  
15 chemical standards shall be exempted from the requirements of subsection (a) of this section.

16 (f) Manufacturers of a mercury-added product may apply to the director for an  
17 exemption for no more than ~~two (2)~~ five (5) years from the limits on total mercury content set  
18 forth in subsection (a) of this section for a product or category of products. Applications for  
19 exemptions must: (1) document the basis for the requested exemption or renewal of exemption;  
20 (2) describe how the manufacturer will ensure that a system exists for the proper collection,  
21 transportation and processing of the product(s) at the end of their useful life; and (3) document  
22 the readiness of all necessary parties to perform as intended in the planned system.

23 (g) The director may grant, with modifications or conditions, an exemption for a product  
24 or category of products if he or she finds: (i) a system exists for the proper collection,  
25 transportation and processing of the mercury-added product, including direct return of a waste  
26 product to the manufacturer, an industry or trade group supported collection and recycling  
27 system, or other similar private or public sector efforts; and (ii) he or she finds ~~each of~~ the  
28 following criteria are met:

29 (1) Use of the product is beneficial to the environment or protective of public health or  
30 protective of public safety; and or

31 (2) There is no technically feasible alternative to the use of mercury in the product; and

32 (3) There is no comparable non-mercury-added product available at reasonable cost.

33 Prior to issuing an exemption, the director shall consult with neighboring states and  
34 provinces and regional organizations to promote consistency. The state shall avoid, to the extent

1 feasible, inconsistencies in the implementation of this section. Upon reapplication by the  
2 manufacturer and findings by the director of continued eligibility under the criteria of this  
3 subsection and of compliance by the manufacturer with the conditions of the director's original  
4 approval, an exemption may be renewed one or more times and each renewal may be for a period  
5 of no longer than ~~two (2)~~ five (5) years.

6 **23-24.9-8. Labeling required for certain products.** -- (a) Mercury-added products. - (1)  
7 Effective ~~July~~ January 1, ~~2005~~ 2006, a manufacturer may not sell at retail in this state or to a  
8 retailer in this state, and a retailer may not knowingly sell, a mercury-added product unless the  
9 item is labeled pursuant to this subsection. The label must clearly inform the purchaser or  
10 consumer that mercury is present in the item and that the item may not be disposed of or placed in  
11 waste stream destined for disposal until the mercury is removed or reused, recycled or otherwise  
12 managed to ensure that it does not become part of solid waste or wastewater. Manufacturers shall  
13 affix to mercury-added products labels that conform to the requirements of this subsection.

14 (2) The department shall adopt rules to establish standards for affixing labels to the  
15 product and product package. The rules ~~must strive for consistency~~ shall be consistent with  
16 labeling programs in other states and provide for approval of alternative compliance plans by the  
17 department. The manufacturer of a mercury-added product is in compliance with the  
18 requirements of this subsection if the manufacturer is in compliance with the labeling  
19 requirements of another state. This subsection does not apply to ~~mercury-added lamps~~, mercury-  
20 added button cell batteries and products whose only mercury component is a mercury button cell  
21 battery or a mercury added lamp.

22 (b) Mercury-added lamps: large use applications. - (1) A person who sells mercury-  
23 added lamps to the owner or manager of an industrial, commercial or office building or to any  
24 person who replaces or removes from service outdoor lamps that contain mercury shall clearly  
25 inform the purchaser in writing on the invoice for the lamps or in a separate document that the  
26 lamps contain mercury, a hazardous substance that is regulated by federal and state law, and that  
27 they may not be placed in solid waste destined for disposal. Retail establishments that  
28 incidentally sell mercury-added lamps to the specified purchasers are exempt from the  
29 requirements of this subsection.

30 (2) A person who contracts with the owner or manager of an industrial, commercial or  
31 office building or with a person responsible for outdoor lighting to remove from service mercury-  
32 added lamps shall clearly inform in writing the person for whom the work is being done that the  
33 lamps being removed from service contain mercury and what the contractor's arrangements are  
34 for the management of the mercury in the removed lamps.

1           **23-24.9-9. Disposal ban.** -- (a) ~~After~~ Except as otherwise provided for in this chapter  
2 after, July 1, ~~2005~~ 2006, no person shall dispose of mercury-added products in a manner other  
3 than by recycling or disposal as hazardous waste. Mercury from mercury-added products may not  
4 be discharged to water, wastewater treatment, and wastewater disposal systems except when it is  
5 done in compliance with local, state, and federal applicable requirements.

6           (b) If a formulated mercury-added product is a cosmetic or pharmaceutical product  
7 subject to the regulatory requirements relating to mercury of the federal food and drug  
8 administration, then the product is exempt from the requirements of this section.

9           (c) This section shall not apply to: (1) anyone who disposes of a mercury-added button  
10 cell battery; (2) mercury-added components as contained in motor vehicles; and (3) households  
11 disposing of lamps and products containing lamps.

12           (d) The restrictions on the disposal of mercury-added components in motor vehicles shall  
13 be as set forth in subsection (a) of this section effective January 1, 2006, and shall be  
14 implemented as provided for in subsection (c)(2) of this section and subsection 23-24.9-10(b)(2).

15           **23-24.9-10. Collection of mercury-added products.** -- (a) ~~After~~ After July ~~January~~ 1,  
16 ~~2005~~ 2006, no mercury-added product shall be offered for final sale or use or distribution for  
17 promotional purposes in Rhode Island unless the manufacturer, either on its own or in concert  
18 with other persons, has ~~submitted~~ implemented a ~~plan~~ system, ~~after review and approval of the~~  
19 director, for ~~a~~ the convenient and accessible collection ~~system for~~ of such products when the  
20 consumer is finished with them ~~and the plan has received approval of the director~~. Where a  
21 mercury-added product is a component of another product, the collection system must provide for  
22 removal and collection of the mercury-added component or collection of both the mercury-added  
23 component and the product containing it. Mercury-added components in motor vehicles shall be  
24 collected and recycled as provided for in subsection (b)(2) of this section.

25           ~~(b)~~(b) (1) This section shall not apply to the collection of mercury-added button cell  
26 batteries or mercury-added lamps or products where the only mercury contained in the product  
27 comes from a mercury-added button cell battery or a mercury-added lamp; and

28           (2) This section shall not apply to motor vehicles.

29           SECTION 2. Chapter 23-24.9 of the General Laws entitled "Mercury Reduction and  
30 Education Act" is hereby amended by adding thereto the following section:

31           **23-24.9-10.1. Resource recovery corporation option.** -- The department and the Rhode  
32 Island Resource Recovery Corporation shall establish a statewide network for the collection of  
33 mercury-added products when the household consumer is finished with them. Manufacturers of  
34 mercury-added products, except motor vehicle manufacturers subject to the provisions of

1 subsection 23-24.9(10)(b)(2), may satisfy their obligations, as set forth in subsection 23-24.9-  
2 10(a), by entering into a written agreement with those agencies to support the statewide program  
3 including, but not limited to, advertisement, education and/or funding through a system  
4 established in regulation.

5 **23-24.9-20.1. Effective dates for implementation.** -- Notwithstanding the effective date  
6 of this act of January 1, 2006, set forth in subsections 23-24.9-7(a)(1), 23-24.9-8(a), and 23-24.9-  
7 10(a), the initial deadline for complying with the requirements of these subsections shall be  
8 January 1, 2006, or ninety (90) days after the effective date of regulations adopted by the  
9 department in order to effectuate the purposes of the subsections, whichever date is the later.

10 SECTION 3. Section 42-17.1-2 of the General Laws in Chapter 42-17.1 entitled  
11 "Department of Environmental Management" is hereby amended to read as follows:

12 **42-17.1-2. Powers and duties.** -- The director of environmental management shall have  
13 the following powers and duties:

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

18 (b) To exercise all functions, powers, and duties heretofore vested in the department of  
19 agriculture and conservation, and in each of the divisions of the department, such as the  
20 promotion of agriculture and animal husbandry in their several branches, including the inspection  
21 and suppression of contagious diseases among animals, the regulation of the marketing of farm  
22 products, the inspection of orchards and nurseries, the protection of trees and shrubs from  
23 injurious insects and diseases, protection from forest fires, the inspection of apiaries and the  
24 suppression of contagious diseases among bees, prevention of the sale of adulterated or  
25 misbranded agricultural seeds, promotion and encouragement of the work of farm bureaus in  
26 cooperation with the University of Rhode Island, farmers' institutes and the various organizations  
27 established for the purpose of developing an interest in agriculture, together with such other  
28 agencies and activities as the governor and the general assembly may from time to time place  
29 under the control of the department, and as heretofore vested by such of the following chapters  
30 and sections of the general laws as are presently applicable to the department of environmental  
31 management and which were previously applicable to the department of natural resources and the  
32 department of agriculture and conservation or to any of its divisions: chapters 1 through 22,  
33 inclusive, as amended, in title 2 entitled "Agriculture and Forestry;" chapters 1 through 17,  
34 inclusive, as amended, in title 4 entitled "Animals and Animal Husbandry;" chapters 1 through

1 19, inclusive, as amended, in title 20 entitled "Fish and Wildlife;" chapters 1 through 32,  
2 inclusive, as amended, in title 21 entitled "Food and Drugs;" chapter 7 of title 23 as amended,  
3 entitled "Mosquito Abatement;" and by any other general or public law relating to the department  
4 of agriculture and conservation or to any of its divisions or bureaus;

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

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

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

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

26 (g) To cooperate with, advise, and guide conservation commissions of cities and towns  
27 created under chapter 35 of title 45 entitled "Conservation Commissions", as enacted by chapter  
28 203 of the Public Laws, 1960;

29 (h) To assign or reassign, with the approval of the governor, any functions, duties, or  
30 powers established by this chapter to any agency within the department, except as hereinafter  
31 limited;

32 (i) To cooperate with the water resources board and to provide to the board facilities,  
33 administrative support, staff services, and such other services as the board shall reasonably  
34 require for its operation and, in cooperation with the board and the statewide planning program to

1 formulate and maintain a long range guide plan and implementing program for development of  
2 major water sources transmissions systems needed to furnish water to regional and local  
3 distribution systems;

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

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

19 (l) To establish minimum standards, subject to the approval of the environmental  
20 standards board, relating to the location, design, construction and maintenance of all sewage  
21 disposal systems;

22 (m) To enforce, by such means as provided by law, the standards for the quality of air,  
23 and water, and the design, construction and operation of all sewage disposal systems; any order or  
24 notice issued by the director relating to the location, design, construction or maintenance of a  
25 sewage disposal system shall be eligible for recordation under chapter 13 of title 34. The director  
26 shall forward the order or notice to the city or town wherein the subject property is located and  
27 the order or notice shall be recorded in the general index by the appropriate municipal official in  
28 the land evidence records in the city or town wherein the subject property is located. Any  
29 subsequent transferee of that property shall be responsible for complying with the requirements of  
30 the order or notice. Upon satisfactory completion of the requirements of the order or notice, the  
31 director shall provide written notice of the same, which notice shall be similarly eligible for  
32 recordation. The original written notice shall be forwarded to the city or town wherein the subject  
33 property is located and the notice of satisfactory completion shall be recorded in the general index  
34 by the appropriate municipal official in the land evidence records in the city or town wherein the

1 subject property is located. A copy of the written notice shall be forwarded to the owner of the  
2 subject property within five (5) days of a request for it, and, in any event, shall be forwarded to  
3 the owner of the subject property within thirty (30) days after correction;

4 (n) To establish minimum standards for the establishment and maintenance of salutary  
5 environmental conditions;

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

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

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

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

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

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

28 (t) To enter, examine or survey at any reasonable time such places as the director deems  
29 necessary to carry out his or her responsibilities under any provision of law subject to the  
30 following provisions:

31 (1) For criminal investigations, the director shall, pursuant to chapter 5 of title 12, seek a  
32 search warrant from an official of a court authorized to issue warrants, unless a search without a  
33 warrant is otherwise allowed or provided by law;

34 (2) (A) All administrative inspections shall be conducted pursuant to administrative

1 guidelines promulgated by the department in accordance with chapter 35 of title 42.

2 (B) A warrant shall not be required for administrative inspections if conducted under the  
3 following circumstances, in accordance with the applicable constitutional standards:

4 (i) For closely regulated industries;

5 (ii) In situations involving open fields or conditions that are in plain view;

6 (iii) In emergency situations;

7 (iv) In situations presenting an imminent threat to the environment or public health,  
8 safety or welfare;

9 (v) If the owner, operator, or agent in charge of the facility, property, site or location  
10 consents; or

11 (vi) In other situations in which a warrant is not constitutionally required.

12 (C) Whenever it shall be constitutionally or otherwise required by law, or whenever the  
13 director in his or her discretion deems it advisable, an administrative search warrant, or its  
14 functional equivalent, may be obtained by the director from a neutral magistrate for the purpose  
15 of conducting an administrative inspection. The warrant shall be issued in accordance with the  
16 applicable constitutional standards for the issuance of administrative search warrants. The  
17 administrative standard of probable cause, not the criminal standard of probable cause, shall  
18 apply to applications for administrative search warrants.

19 (i) The need for, or reliance upon, an administrative warrant shall not be construed as  
20 requiring the department to forfeit the element of surprise in its inspection efforts.

21 (ii) An administrative warrant issued pursuant to this subsection must be executed and  
22 returned within ten (10) days of its issuance date unless, upon a showing of need for additional  
23 time, the court orders otherwise.

24 (iii) An administrative warrant may authorize the review and copying of documents that  
25 are relevant to the purpose of the inspection. If documents must be seized for the purpose of  
26 copying, and the warrant authorizes such seizure, the person executing the warrant shall prepare  
27 an inventory of the documents taken. The time, place and manner regarding the making of the  
28 inventory shall be set forth in the terms of the warrant itself, as dictated by the court. A copy of  
29 the inventory shall be delivered to the person from whose possession or facility the documents  
30 were taken. The seized documents shall be copied as soon as feasible under circumstances  
31 preserving their authenticity, then returned to the person from whose possession or facility the  
32 documents were taken.

33 (iv) An administrative warrant may authorize the taking of samples of air, water or soil  
34 or of materials generated, stored or treated at the facility, property, site or location. Upon request,

1 the department shall make split samples available to the person whose facility, property, site or  
2 location is being inspected.

3 (v) Service of an administrative warrant may be required only to the extent provided for  
4 in the terms of the warrant itself, by the issuing court.

5 (D) Penalties. - Any willful and unjustified refusal of right of entry and inspection to  
6 department personnel pursuant to an administrative warrant shall constitute a contempt of court  
7 and shall subject the refusing party to sanctions, which in the courts discretion may result in up to  
8 six (6) months imprisonment and/or a monetary fine of up to ten thousand dollars (\$10,000) per  
9 refusal.

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

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

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

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

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

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

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

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

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

30 (w) The following definitions shall apply in the interpretation of the provisions of this  
31 chapter:

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

34 (2) Person: The term person shall include any individual, group of individuals, firm,

1 corporation, association, partnership or private or public entity, including a district, county, city,  
2 town, or other governmental unit or agent thereof, and in the case of a corporation, any individual  
3 having active and general supervision of the properties of such corporation.

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

7 (b) For purposes of calculating the time within which a claim for a hearing is made  
8 pursuant to section 42-17.1-2(u)(1) heretofore, service shall be deemed to be the date of receipt of  
9 such notice or three (3) days from the date of mailing of said notice, whichever shall first occur.

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

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

19 (y) (1) To apply for and accept grants and bequests of funds with the approval of the  
20 director of administration from other states, interstate agencies and independent authorities, and  
21 private firms, individuals and foundations, for the purpose of carrying out his or her lawful  
22 responsibilities. The funds shall be deposited with the general treasurer in a restricted receipt  
23 account created in the Natural Resources Program for funds made available for that program's  
24 purposes or in a restricted receipt account created in the Environmental Protection Program for  
25 funds made available for that program's purposes. All expenditures from the accounts shall be  
26 subject to appropriation by the general assembly, and shall be expended in accordance with the  
27 provisions of the grant or bequest. In the event that a donation or bequest is unspecified or in the  
28 event that the trust account balance shows a surplus after the project as provided for in the grant  
29 or bequest has been completed, the director may utilize said appropriated unspecified or  
30 appropriated surplus funds for enhanced management of the department's forest and outdoor  
31 public recreation areas, or other projects or programs that promote the accessibility of recreational  
32 opportunities for Rhode Island residents and visitors.

33 (2) The director shall submit to the House Fiscal Advisor and the Senate Fiscal Advisor,  
34 by October 1 of each year, a detailed report on the amount of funds received and the uses made of

1 such funds.

2 (z) To establish fee schedules by regulation with the approval of the governor for the  
3 processing of applications and the performing of related activities in connection with the  
4 department's responsibilities pursuant to subdivision (1) of this section, chapter 19.1 of title 23 as  
5 it relates to inspections performed by the department to determine compliance with chapter 19.1  
6 and rules and regulations promulgated in accordance therewith, chapter 18.9 of title 23 as it  
7 relates to inspections performed by the department to determine compliance with chapter 18.9  
8 and the rules and regulations promulgated in accordance therewith, chapters 19.5 and 23 of title  
9 23; chapter 12 of title 46 insofar as it relates to water quality certifications and related reviews  
10 performed pursuant to provisions of the federal Clean Water Act, the regulation and  
11 administration of underground storage tanks and all other programs administered under chapter  
12 12 of title 46 and section 2-1-18 et seq., and chapter 13.1 of title 46 and chapter 13.2 of title 46  
13 insofar as they relate to any reviews and related activities performed under the provisions of the  
14 Groundwater Protection Act, [chapter 23-24.9 as it relates to the regulation and administration of](#)  
15 [mercury-added products](#), and chapter 17.7 of this title insofar as it relates to administrative  
16 appeals of all enforcement, permitting and licensing matters to the administrative adjudication  
17 division for environmental matters. Two fee ranges shall be required: for "Appeal of enforcement  
18 actions", a range of fifty dollars (\$50) to one hundred dollars (\$100), and for "Appeal of  
19 application decisions", a range of five hundred dollars (\$500) to ten thousand dollars (\$10,000).  
20 The monies from the administrative adjudication fees will be deposited as general revenues and  
21 the amounts appropriated shall be used for the costs associated with operating the administrative  
22 adjudication division.

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

34 (aa) To establish and maintain a list or inventory of areas within the state worthy of

1 special designation as "scenic" to include but not be limited to certain state roads or highways,  
2 scenic vistas and scenic areas, and to make the list available to the public.

3 (bb) To establish and maintain an inventory of all interests in land held by public and  
4 private land trust and to exercise all powers vested herein to insure the preservation of all  
5 identified lands.

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

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

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

33 (B) All land trusts, public and private, will record in the public records of the appropriate  
34 towns and cities in Rhode Island all deeds, conservation easements or restrictions or other

1 interests and rights acquired in land and will also file copies of all such documents and current  
2 copies of their articles of association, their by-laws, and annual reports with the secretary of state,  
3 and with the director of the Rhode Island department of environmental management. The director  
4 is hereby directed to establish and maintain permanently a system for keeping records of all  
5 private and public land trust land holdings in Rhode Island.

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

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

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

29 (ee) To enforce, by such means as provided by law, the standards for the quality of air,  
30 and water, and the location, design, construction and operation of all underground storage  
31 facilities used for storing petroleum products or hazardous materials; any order or notice issued  
32 by the director relating to the location, design construction, operation or maintenance of an  
33 underground storage facility used for storing petroleum products or hazardous materials shall be  
34 eligible for recordation under chapter 13 of title 34. The director shall forward the order or notice

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

1 SECTION 4. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO MERCURY REDUCTION AND EDUCATION

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1           This act would extend the implementation dates for several provisions of the Mercury  
2 Reduction and Education Act. In addition, it would clarify the definitions of certain products  
3 regulated by the act.

4           This act would take effect upon passage.

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LC03471  
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