

**STATE
ENVIRONMENTAL LAWS AFFECTING
RHODE ISLAND AGRICULTURE**

*(See NASDA's website for Federal Environmental
Laws Affecting U.S. Agriculture)*

A Project of the

**National Association of State Departments
of Agriculture Research Foundation**

through the

**National Center for Agricultural Law
Research and Information**



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Table of Contents

This document has two components: the state and the federal guide. To complete this guide, please download the federal guide also found on NASDA’s website.

The Project Participants	RI-iv
Disclaimer	RI-v
Quick Reference Guide	RI-vi
Introduction	RI-1
A. Rhode Island Environmental Policy and Department of Environmental Management	RI-1
B. Rhode Island Environmental Compliance Incentive Act	RI-4
C. Rhode Island’s Environmental Protection Branch within the Department of Environmental Management	RI-6
1. Underground Storage Tanks	RI-8
D. Rhode Island Coastal Resources Management Branch within the Department of Environmental Management	RI-8
E. Rhode Island Coastal Resources Management Council	RI-9
F. Rhode Island Advisory Council on Environmental Affairs	RI-9
G. Rhode Island Statewide Environmental Plan	RI-10
H. Rhode Island Environmental Standards Notification	RI-10
I. Rhode Island Notice of Permit and License Records	RI-11
J. Rhode Island Natural Heritage Preservation Program	RI-11
K. Rhode Island Environmental Penalties	RI-11
L. Rhode Island Adjudication of Environmental Matters	RI-12
I. Water Quality	RI-13
A. Rhode Island Water Quality Laws	RI-13
1. Rhode Island Water Quality	RI-13
2. Rhode Island Pollutant Discharge Elimination System (RIPDES) Permit Program	RI-15
3. Rhode Island Oil Spill Pollution and Control Act	RI-18
4. Rhode Island Water Projects Revolving Loan Fund	RI-21
5. Rhode Island Water Pollution Enforcement	RI-21
6. Rhode Island Expenditures for Pollution Control	RI-21
7. Rhode Island Environmental Trust Fund	RI-22
8. Rhode Island Reports on Water near Solid Waste	RI-22
9. Rhode Island Environmental Injury Compensation Act	RI-23

II.	Groundwater	RI-23
A.	Rhode Island Groundwater Laws	RI-23
1.	Rhode Island Groundwater	RI-23
2.	Rhode Island Clean Water Finance Agency	RI-24
3.	Rhode Island Underground Storage Tank Replacement Fund	RI-25
4.	Rhode Island Underground Storage Tanks	RI-25
5.	Rhode Island Underground Storage Tank Tester Licensing	RI-26
6.	Rhode Island Underground Storage Tank Financial Responsibility Act	RI-26
7.	Rhode Island Drinking Water	RI-27
8.	Rhode Island Ground Water Protection Act	RI-28
9.	Rhode Island Groundwater Classification	RI-29
10.	Rhode Island Clean Drinking Water and Groundwater Standards Commission	RI-30
11.	Rhode Island Wellhead Protection	RI-30
12.	Rhode Island Well Drilling	RI-31
13.	Rhode Island Water Resources Board	RI-32
14.	Rhode Island's Interstate Water Pollution Control Commission	RI-33
15.	Rhode Island Coastal Zone Management Council	RI-33
III.	Air Quality	RI-34
A.	Rhode Island Air Quality Laws	RI-34
1.	Rhode Island Clean Air Act	RI-34
2.	Rhode Island Air Quality Enforcement	RI-36
3.	Rhode Island Clean Air Variances	RI-36
4.	Rhode Island Open Burning	RI-37
5.	Rhode Island Air Pollution Episode	RI-37
IV.	Solid Waste and Hazardous Waste	RI-38
A.	Rhode Island Solid Waste Laws	RI-39
1.	Rhode Island Battery Deposit and Control	RI-39
2.	Rhode Island Vehicle Tire Storage and Recycling	RI-40
B.	Rhode Island Hazardous Waste Laws	RI-41
1.	Rhode Island Hazardous Substances Act	RI-41
2.	Rhode Island Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration Act	RI-42
3.	Rhode Island Right to Knowledge of Hazardous Substances	RI-43
V.	Pesticides and Chemigation	RI-44
A.	Rhode Island Pesticide Laws	RI-44
1.	Rhode Island Pesticide Control Act	RI-44
2.	Rhode Island Pesticide Registration	RI-45
3.	Rhode Island Pesticide Review and Applicator Standards	RI-47
4.	Rhode Island General Levels of Prohibited Pesticide Activities	RI-47

5.	Rhode Island Commercial Pesticide Applicators	RI-48
6.	Rhode Island Pesticide Dealer Licenses	RI-48
7.	Rhode Island Pesticide Monitoring	RI-49
8.	Rhode Island Prohibited Acts Involving Pesticides	RI-49
9.	Rhode Island Pesticide Enforcement	RI-51
10.	Rhode Island Pesticide Record Keeping	RI-53
11.	Rhode Island Protective Clothing and Equipment Rules	RI-54
12.	Rhode Island Pesticide Penalties	RI-55
13.	Rhode Island Pesticide Relief Fund	RI-55
VI.	Protection of Wildlife	RI-57
A.	Rhode Island Wildlife Protection Laws	RI-57
1.	Rhode Island Wildlife Policy	RI-57
2.	Rhode Island Wildlife Collector Permits	RI-59
3.	Rhode Island General Wildlife Licensing	RI-60
4.	Rhode Island Fish and Wildlife Restoration Projects	RI-60
5.	Rhode Island Waterfowl and Trout	RI-61
6.	Rhode Island Wildlife Management Areas	RI-61
7.	Rhode Island Nongame Wildlife Fund	RI-61
8.	Rhode Island Game Bird and Animal Husbandry	RI-62
9.	Rhode Island Endangered Species	RI-63
B.	Rhode Island Aquaculture	RI-63
VII.	Other Rhode Island Statutes Affecting Agriculture	RI-65
A.	Rhode Island Right to Farm Act	RI-65
1.	Rhode Island Seed Act and Noxious Weeds	RI-67
2.	Rhode Island Ballast Water	RI-69
	Appendix A - Agencies	RI-70

The Project Participants

National Association of State Departments of Agriculture Research Foundation

The National Association of State Departments of Agriculture (NASDA) is a nonprofit, nonpartisan association of public officials comprised of the Commissioners, Secretaries, and Directors of the fifty State Departments of Agriculture in the fifty states and the territories of Puerto Rico, Guam, American Samoa, and the Virgin Islands. NASDA's mission is to represent the State Departments of Agriculture in the development, implementation, and communication of sound public policy and programs which support and promote the American agricultural industry while protecting consumers and the environment. The NASDA Research Foundation is a 501(c)(3) nonprofit, tax-exempt corporation for educational and scientific purposes.

National Center for Agricultural Law Research and Information

The National Center for Agricultural Law Research and Information (NCALRI) was created in 1987 under Public Law 100-202, 101 Stat. 1329-30 to address the complex legal issues that affect American agriculture. The NCALRI focuses its efforts on research, writing, publishing, development of library services, and the dissemination of information to the public. The NCALRI is located at the University of Arkansas School of Law in Fayetteville, Arkansas.

Natural Resources Conservation Service

The Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service (SCS), is a federal agency within the United States Department of Agriculture (USDA). NRCS conservationists work with private landowners and operators to help them protect their natural resources.

United States Environmental Protection Agency

The United States Environmental Protection Agency (U.S. EPA) is a federal agency with primary responsibility for implementation of most federal laws designed to protect, enhance, and conserve the nation's natural resources.

Disclaimer

This guide is designed for use by farmers, ranchers, landowners, and their consultants in understanding the effect environmental laws have on agricultural operations. It is not a substitute for individual legal advice. Agricultural producers should always confer with their own attorneys, consultants, or advisors as well as federal, state, and local authorities responsible for the applicable environmental laws.

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Although every effort has been made to ensure the accuracy of the information contained in this book, environmental statutes, regulations, and ordinances are constantly changing. In addition, the overwhelming complexity and extent of environmental law make it impossible for a single book to describe in complete detail and depth all of the environmental laws and regulations impacting agricultural operations. The following material is simply a basic primer on environmental law for agricultural producers. For these reasons, the utilization of these materials by any person constitutes an agreement to hold harmless the authors, the National Center for Agricultural Law Research and Information (NCALRI), the University of Arkansas, USDA, the NASDA Research Foundation, the NRCS, and the U.S. EPA for any liability, claims, damages, or expenses that may be incurred by any person or organization as a result of reference to, or reliance on, the information contained in this book.

The background research and final documents were completed in April 2003. Updates of the information contained in the guide will occur on an as needed basis and be available on the internet.

Anyone with comments concerning the guide should contact the NASDA Research Foundation at 1156 15th Street, N.W., Suite 1020, Washington, D.C. 20005, or phone (202) 296-9680.

Quick Reference Guide

Producer Note: The following chart is intended as a quick reference guide to permits which may be necessary for a particular operation. If a permit is necessary, refer to the page numbers listed referencing this document for further information and contact the agencies listed in the final column information on applications and procedures for securing a permit for an operation. A list of agencies and contact information is also provided in Appendix A.

Regulatory Area	Type of Activity	Permit Required	Agency
Water Quality <i>pp. 13 to 23</i>	Livestock and aquaculture operations, depending on size	National Pollutant Discharge Elimination System (NPDES) permit or Rhode Island Pollutant Discharge Elimination System (RIPDES) permit	U.S. Environmental Protection Agency (U.S. EPA) and Water Resources (WR) subdivision within Rhode Island Department of Environmental Management (DEM)
	Wetlands dredge and fill activity or dam or bridge building activities	Section 404 Clean Water Act (CWA) permit	U.S. Army Corps of Engineers with U.S. EPA and WR within DEM
	Construct or modification of facilities with potential to discharge into navigable waters of the state	Permit to construct (PTC) also required if the facility under construction or modification may exceed established water pollution standards	WR within DEM
	Water well construction and use	No permit but drillers and pump installers be registered plus surety, construction, design, installation, and maintenance standards must be followed	WR within DEM
Groundwater <i>pp.23 to 34</i>	Groundwater protection	No permit, but Best Management Practices (BMPs) must be followed	WR within DEM and DOH

Regulatory Area	Type of Activity	Permit Required	Agency
Air Quality <i>pp. 34 to 38</i>	Construct or modification of facilities with potential to release air emissions	Permit to construct may be required the facility being constructed or modified may exceed established air pollution standards	Air Resources (AR) subdivision within DEM
	General agricultural operations including odor, dust, or flies	No permit required, but may be subject to nuisance suits	U.S. EPA or AR within DEM
	Burning	Burning permit usually required	AR within DEM
Solid Waste and Hazardous Waste <i>pp. 38 to 44</i>	Storage, treatment, and disposal of solid waste	Permit usually required	Waste Management (WM) subdivision within DEM
	Underground storage tanks	Installers must have certification	Compliance and Inspection within DEM
	Storage, treatment, and disposal of hazardous waste	Permit required for disposal, treatment, or storage activities	WM within DEM
Pesticides and Chemigation <i>pp. 44 to 57</i>	Application and use of pesticides	No permit required, but a license may be required	U.S. EPA and Agriculture subdivision within DEM
	Use of pesticides around farm workers	No permit required, but training and notification is required	Agriculture subdivision within DEM
	Record keeping	No permit required, but all requirements must be met	Agriculture subdivision within DEM
Wildlife Protection <i>pp. 57 to 65</i>	Taking of wildlife	Permit required if endangered or threatened species may be affected	U.S. Fish and Wildlife Service and Fish and Wildlife (FW) subdivision within DEM

STATE ENVIRONMENTAL LAWS AFFECTING RHODE ISLAND AGRICULTURE

Producer Note: The information on environmental regulation provided in this guidebook is presented for the purpose of educating agricultural producers on the breadth and scope of environmental laws which may impact their daily production activities. Environmental regulation is a complex area with both federal and state and often local government involvement. Rapid changes in industrialization, computer-based technology, and market dynamics also affect agricultural producers in a number of ways and present many challenges. Staying informed is the producer's most useful tool for meeting these challenges.

INTRODUCTION

A. Rhode Island Environmental Policy and Department of Environmental Management

It is the overall environmental policy of Rhode Island to protect, develop, and utilize the natural resources of the state using planned management and control. Rhode Island's natural resources are varied and include its water, plants, trees, soil, clay, sand, gravel, rocks, minerals, air, mammals, birds, reptiles, amphibians, fish, shellfish, and other forms of aquatic, insect, and animal life.¹ Almost all responsibilities and duties related to Rhode Island's environmental policy are organized under one agency, the Department of Environmental Management (DEM). Before 1989, many of these duties were divided among four other state agencies including the Department of Agriculture and Conservation, Department of Natural Resources, Department of Public Works, and Department of Health. The present statutory organization of environmental duties and responsibilities is effective until July 1, 2002. The legislature must amend or enact new legislation. The DEM has several branches to carry out its many duties.² Functions of the DEM include the following:

- Cooperating with the Rhode Island Economic Development Corporation in planning and promotional functions related to agriculture, fisheries, and recreation;
- Advising, guiding, and cooperating with the Conservation Commissions of municipalities;

¹ R.I. GEN. LAWS § 42-17.1-2 (1993 & Supp. 2001).

² The DEM's primary branches include: (1) agriculture, (2) ports and harbors, (3) environmental protection and enforcement, (4) fish and wildlife, (5) forest environment, (6) parks and recreation, and (7) boating safety; *see* R.I. GEN. LAWS § 42-17.1-3 (1993).

- Cooperating with and providing administrative support and staff services to:
 - The water resources board for development of major water source transmission systems;
 - The solid waste management corporation for its operations;
- Maintaining public waterways and boating facilities by:
 - Establishing standards for upland beneficial use and disposal of dredged material as well as correspondent planning, implementing, managing, and monitoring plus cooperating with the coastal resources management council dredging programs;
 - Promulgating rules and regulations for water quality, groundwater protection, and fish and wildlife protection and correspondent enforcement;
- Establishing and enforcing standards or related orders or notices for sewage disposal systems and for underground storage facilities³ for location, design, construction, and maintenance;
- Enforcing air quality and water quality standards;
- Establishing minimum standards for beneficial environmental conditions, permissible types of wastes including industrial, oil, and septage;
- Administering all aspects of the Hazardous Waste Management Act (HWMA);
- Issuing and enforcing all rules, regulation, and orders necessary to carry out the lawful duties of the DEM including to conducting any investigations, hearings, and licensing programs that may be necessary to enforce the rules, regulations, and orders with the authority to enter, examine, or survey at reasonable times that which is necessary by any provision of law;

³ Facilities storing petroleum products or hazardous materials including ownership and subsequent transfers of ownership.

- Providing written notice⁴ to any alleged violator upon the determination that reasonable grounds support the allegation unless notice and hearing procedure is otherwise provided by law;
- Imposing administrative penalties in accordance with the provisions of the law;
- Establishing inspection fee schedules for water quality certifications under the CWA and underground storage tanks (USTs) under the Groundwater Protection Act (GPA) including appropriate amounts for financial responsibility for damages and any necessary corrective actions due to releases⁵ from USTs;
- Establishing, identifying, and inventorying designated areas as “scenic” for public information and public or private trust lands;⁶
- Promulgating and enforcing rules and regulations for orderly record keeping of property rights in lands, water, and open spaces including conservation easements or restrictions;⁷
- Studying the feasibility of regulation of ships and barges transporting oil in the Narragansett Bay including storm safety and emergency response; and

⁴ Notice may be by registered or certified mail or other legally authorized and lawfully recognized method; *see* R.I. GEN. LAWS § 42-17.1-2(u)(1) (1993 & Supp. 2001). Within ten (10) days following receipt of notice, the person may request a hearing where the director of the DEM may make findings of fact to modify, sustain, or withdraw the notice. Unless withdrawn, the notice becomes a compliance order, and the director may seek an injunction in superior court for enforcement of the compliance order. Any person aggrieved by the subsequent judgment of the superior court may file a petition for a writ of certiorari with the court within thirty (30) days of such judgment setting forth the errors claimed for the court’s review of the questions of law; *see* R.I. GEN. LAWS §§ 42-17.1-2(3), (6) (1993 & Supp. 2001). The term “person” includes any individual, group of individuals, firm, corporation, association, partnership, private entity, and any individual having active and general supervision of the properties of the corporation; *see* R.I. GEN. LAWS § 42-17.1-2(w)(2) (1993 & Supp. 2001).

⁵ The term “release” means any leaking, emitting, discharging, escaping, or leaching of petroleum from any UST or UST system into the environment; *see* R.I. GEN. LAWS § 46-12.9-3(8) (2001).

⁶ The term “public land trust” means any public instrumentality created by a Rhode Island municipality with public funds for public purposes; the term “private land trust” means any group of five (5) or more private citizens of Rhode Island who incorporate as a nonbusiness corporation or a national corporation. The purpose of both land trusts is the protection, acquisition, or control of land, water, wildlife, wildlife habitat, plants, or other natural features, areas, or open space to manage or maintain the land, water, agriculture, and other natural amenities in any undeveloped and relatively natural state in perpetuity. A private land trust must be granted exemption from federal income tax under 26 U.S.C. § 501(c)(3) (2000) within two (2) years of its incorporation; *see* R.I. GEN. LAWS § 42-17.1-20 (1993).

⁷R.I. GEN. LAWS §§ 42-17.1-2(a) - (ee) (1993 & Supp. 2001).

- Establishing user fees at state recreation areas and port facilities.⁸

B. Rhode Island Environmental Compliance Incentive Act

The purpose of Rhode Island's Environmental Compliance Incentive Act (ECIA)⁹ is to publically recognize that:

- Voluntary compliance with environmental laws and regulations is a principal component of effectively protecting the environment of the state and
- Voluntary compliance is most effectively achieved through the implementation of regular, systematic, and objective self-evaluative activities.¹⁰

To encourage voluntary self-evaluations and compliance, Rhode Island promotes confidentiality of communications relating to environmental self-valuations. The DEM must not assess penalties based on the gravity of the environmental violation, refer the entity to the attorney general or other government authority for prosecution, or use the entity's environmental audit report as a means for investigation or basis for initiating legal actions once an entity establishes that it has:

- Satisfied all of the conditions set forth regarding environmental laws; or
- Thoroughly and timely complied with any agreement or consent order entered into with the DEM to resolve disclosed violations.¹¹

The DEM has authority to waive or forgive an environmental violation penalty if an entity meets certain provisions and conditions and the penalty forgiveness represents an insignificant economic benefit to the violator.¹² To qualify for immunity-type incentives that prohibit legal action and gravity-based penalties, an entity must:

- Submit documentation on its due diligence effort to prevent, detect, and correct environmental violations; or

⁸ R.I. GEN. LAWS §§ 42-17.1-2.2, -9.1, -16, -16.1 (1993 & Supp. 2001).

⁹ R.I. GEN. LAWS §§ 42-17.8-1 to -8 (1993 & Supp. 2001).

¹⁰ Self-evaluative activities such as environmental audits and the implementation of an environmental management system designed to monitor and assure continuing compliance.

¹¹ R.I. GEN. LAWS § 42-17.8-3 (1993 & Supp. 2001).

¹² R.I. GEN. LAWS § 42-17.8-7(d) (1993 & Supp. 2001).

- Show its actions are voluntary and not mandated or required by environmental law, judicial order, administrative order, or consent agreement;¹³ and
- Disclose any specific violation in writing within fifteen (15) days or less from the time of its discovery identifying:
 - Each violation discovered;
 - How each violation was discovered;
 - All supporting reports, data, and information; and
 - All actions taken in response to the violation and all actions planned to bring the entity into compliance, mitigate any actual or threatened harm, and remediate any resulting damage;
- Disclose the violation prior to:
 - Commencement of an agency inspection or investigation including any agency information request;¹⁴
 - Notice of a citizen’s lawsuit filed against the entity for an environmental violation;
 - Any third-party report including a report by a government entity or an independent source to the DEM regarding an environmental violation with a documented date of discovery;¹⁵ and
- Correct the violation within sixty (60) days from the date the violation was reported to the DEM or provide the DEM with a written compliance schedule ;
- Certify in writing that the violations have been corrected;
- Take appropriate measures to remedy any environmental harm or threat to public health or safety as a result of the environment violation;

¹³ R.I. GEN. LAWS § 42-17.8-5 (1993 & Supp. 2001). Entity activities covered by these provisions do not include violations detected through a continuous monitor of air emissions established by an air permit where monitoring is required, NPDES or RIPDES violations detected through required sampling, or an environmental audit required by administrative order, court order, or settlement agreement.

¹⁴ The term “agency” means any federal, state, or local agency.

¹⁵ R.I. GEN. LAWS § 42-17.8-6 (1993 & Supp. 2001).

- Agree in writing to take steps to prevent a recurrence of the violation, for example, improvements to its environmental auditing or its due diligence efforts; and
- Comply with any request by the DEM to provide a publically available written agreement or consent order as a means of assuring its response measures are promptly performed in a professional manner.¹⁶

The DEM, however, is authorized and may assess penalties based on the gravity of the environmental violation, refer the entity to the attorney general or other government authority for prosecution, or use the entity's environmental audit report as a means for investigation or basis for initiating legal actions if an entity's conduct demonstrates:

- Willful or knowing or reckless disregard or a management pattern or practice that condones or conceals environmental violations;
- Gross negligence;
- Serious, actual harm;
- Imminent and substantial endangerment to human health, public safety, or the environment;
- Repeated violations; or
- Failure to fully cooperate with the DEM.¹⁷

C. Rhode Island's Environmental Protection Branch within the Department of Environmental Management

There are six (6) areas of responsibility and authority within the Environmental Protection Branch (EPB) of the DEM:

- Water pollution control;
- Freshwater wetlands;
- Groundwater
- Air pollution;
- Solid and hazardous waste; and

¹⁶ R.I. GEN. LAWS §§ 42-17.8-7(a) to (c) (1993 & Supp. 2001).

¹⁷ R.I. GEN. LAWS § 42-17.8-4 (1993 & Supp. 2001).

- Criminal investigation¹⁸ with authority to:
 - Issue summonses;
 - Execute warrants and search warrants for environmental violations;
 - Serve subpoenas for hearings or trials regarding environmental violations;
 - Arrest violators;
 - Carry firearms or weapons;
 - Carry out warrant duties and make and execute complaints without recognizance or surety for assault, assault with a deadly weapon, larceny, vandalism, and obstructing an officer in the execution of duty.¹⁹

The Environmental Protection Branch (EPB) enforces all laws, regulations, and departmental policies set forth by the DEM under the six (6) areas of responsibility and conducts necessary investigations and hearings related to the issuance, suspension, and revocation of environmental permits or licenses. The EPB has authority to enter, examine, or survey necessary places at any reasonable time in order to carry out its duties. The EPB must, however, provide written notice of any alleged violation by personal service or registered or certified mail to the person responsible unless another procedure is authorized by law.²⁰

Notice for an alleged violation must include the time in which the violation must be remedied. To obtain a hearing on the matter, the notice recipient must make a written request for the hearing, and it must be filed with the administrative adjudication branch of the DEM within ten (10) days after receipt or service of notice. If no request is made to obtain a hearing within the ten (10) days, the notice automatically becomes a compliance order which establishes a final administrative adjudication from which no appeal may be taken. If a hearing is requested, a minimum of five (5) days written notice prior to the hearing date is provided to the alleged violator. Following any such hearing, the hearing officer sets forth proposed findings of fact and conclusions of law that must sustain, modify, or withdraw the notice of violation. These findings of fact and conclusions of law are provided to the DEM for review and final decision. Unless the DEM withdraws the notice, the decision is considered a final administrative adjudication and compliance order. Once a compliance order becomes effective, injunction proceedings or temporary relief in the superior court of the state may be instituted if necessary for enforcement or compliance. Correctness of a compliance order is presumed. The burden of proving error lies

¹⁸ R.I. GEN. LAWS § 42-17.1-4 (1993).

¹⁹ R.I. GEN. LAWS § 42-17.1-4(f)(2) (1993).

²⁰ R.I. GEN. LAWS § 42-17.1-11 (1993).

with the person attacking an immediate compliance order.²¹ Any party aggrieved by a final judgment by the superior court may petition the supreme court for a writ of certiorari up to thirty (30) days following the date of entry of such judgment. A petition of writ for certiorari must set forth the errors claimed.²² The EPB can also impose administrative, i.e., agency penalties.

1. Underground Storage Tanks

To address the regulation of accidental releases from underground²³ storage tanks (USTs),²⁴ the EPB establishes minimum requirements for maintaining financial responsibility for potential corrective actions and damages to third-parties bodily injuries and property. Local enforcement officers, supported by local legislation pursuant to UST statutory provisions, may issue permits for the maintenance, installation, abandonment, and removal of USTs.²⁵ The EPB has authority to initiate civil action lawsuits and seek injunctive relief through any court of competent jurisdiction without required surety for payment of filing costs. Criminal prosecutions for UST environmental violations are initiated by the attorney general.²⁶

D. Rhode Island Coastal Resources Management Branch within the Department of Environmental Management

The Coastal Resources Management (CRM) branch within the DEM has several powers, functions, and duties including but not limited to:

- Issuing, modifying, or denying permits for:
 - Work in, above, or beneath the areas regulated by the CRM including aquaculture;
 - Dredging, filling, or any other physical alteration of coastal wetlands and directly related contiguous areas;

²¹ R.I. GEN. LAWS §§ 42-17.1-19(a) - (d) (1993).

²² R.I. GEN. LAWS § 42-17.1-19(f), (g) (1993).

²³ The term “underground” means that ten percent (10%) or more of the volume of the facility components, storage tanks, and piping is buried in the ground; *see* R.I. GEN. LAWS § 46-12.1-2(2) (1993 & Supp. 2001).

²⁴ The term “underground storage tank” means either: (a) on-site underground storage tanks used for storing heating and serving a one-, two-, or three-family dwelling including underground pipes connected thereto; or (b) farm or residential underground storage tanks holding less than one thousand one hundred (1,100) gallons and storing motor fuel or heating oil for noncommercial purposes including underground pipes connected thereto; *see* R.I. GEN. LAWS § 46-12.1-2(3) (1993 & Supp. 2001).

²⁵ R.I. GEN. LAWS § 46-12.1-3 (1993 & Supp. 2001).

²⁶ R.I. GEN. LAWS § 42-17.1-11 (1993).

- Granting licenses, permits, and easements for the use of coastal resources which are held in public trust by the state and imposing fees for the private use of these resources; and
- Performing any other duties and functions delegated by the Coastal Resources Management Council (CRMC).²⁷

E. Rhode Island Coastal Resources Management Council

The Coastal Resource Management Council (CRMC) consists of sixteen (16) members. Eight (8) members are appointed by the governor, six (6) members are appointed by the Speaker of the House, and two (2) members are appointed by the Lieutenant Governor. It is the duty of the Coastal Resource Management Council to: (a) preserve, protect, develop, and restore, where possible, the coastal resources of the state; (b) maintain a balance between conservation and development and between conflicting private and public interests in order to provide the greatest long term benefits; (c) protect and preserve valuable natural and cultural features; (d) protect and promote public access to the shore and provide high quality recreational opportunities; (e) provide suitable waterfront sites for industries and businesses; (f) direct new development away from sensitive areas; (g) establish and sustain a working partnership among all government agencies to insure efficient administration of the Coastal Management Program.

F. Rhode Island Advisory Council on Environmental Affairs

The Rhode Island Advisory Council on Environmental Affairs (ACEA) consists of eleven (11) members.²⁸ The ACEA meets a minimum of once every three (3) months and functions in an oversight capacity for the DEM providing direction and guidance. The ACEA:

- Advises the governor and the director of the DEM on matters involving environmental management, environmental protection, natural resources, policies, plans, and goals for the DEM;
- Identifies problems within the DEM;
- Assists the DEM director in exploration and development of new initiatives;
- Reviews DEM and the environmental quality study commission reports;

²⁷ R.I. GEN. LAWS § 42-17.1-12 (1993).

²⁸ One member from the Rhode Island Senate, one member from the Rhode Island House of Representatives, and nine (9) members from the general public; these nine (9) members must have an interest in natural resources, environmental management and protection, or public or environmental health. The nine (9) should represent a diverse group. They may be selected from residential or commercial builders or land developers, marine industries, agricultural industries, hunting and sport fishing groups, environmental advocacy groups, conservation groups, academicians, and engineering or consulting firms; *see* R.I. GEN. LAWS § 42-17.1-13(b) (1993).

- Explores and develops alternatives for the implementation of the goals, initiatives, and directives identified in reports provided to the ACEA.²⁹

G. Rhode Island Statewide Environmental Plan

A statewide environmental plan exists for the management and protection of the quality of the environment and the natural resources of the state to further implement and effect the stated legislative environmental policy. The plan is revised from time to time by the DEM. The plan establishes goals and objectives and describes strategies for achieving the goals and objectives. The first plan was submitted to the governor in 1992. Revisions to the plan are scheduled every five (5) years. The plan guides the state in preserving the environment. The Environmental Advisory Council (EAC) assists the DEM in preparing the plan. The plan addresses:

- Current and foreseeable trends in quality management and utilization of the environment and the effect of these trends on social, economic, and health requirements of the state;
- Adequacy of available natural resources of the state for fulfilling human and economic requirements under projected population pressures;
- State programs and activities and their effect on the environment and on the conservation, development, and utilization of natural resources;
- Suggested remedies for any deficiencies of existing programs and activities;
- Recommendations for legislation; and
- Achievements of the plan's goals and objectives through progress reports.³⁰

H. Rhode Island Environmental Standards Notification

Prior to any proposed changes to standards for air quality, water quality, groundwater quality, or individual sewage disposal systems, the DEM must notify the general assembly's Joint Committee on Water Resources and the Joint Committee on Environment and Energy, the Departments of Administration and Health, and the Advisory Council.³¹

²⁹ R.I. GEN. LAWS § 42-17.1-13(a) (1993).

³⁰ R.I. GEN. LAWS § 42-17.1-14 (1993).

³¹ R.I. GEN. LAWS § 42-17.1-31 (1993).

I. Rhode Island Notice of Permit and License Records

A notice of permit or license is eligible for recording in the land records of the municipality where the property subject to the permit or license is located. Subsequent transferees of the property are responsible for complying with the terms and conditions of the duly recorded permit or license.³²

J. Rhode Island Natural Heritage Preservation Program

In order to support and encourage land preservation, protect the scenic and natural heritage of Rhode Island, improve the quality of life, enhance tourism, the Rhode Island general assembly established a natural heritage revolving fund to provide zero interest loans to municipalities and conservation organizations for projects that preserve, protect, and make available important open space and natural land throughout the state.³³ The Natural Heritage Preservation Commission within the DEM oversees the revolving fund and its operation as well as:

- Develops policy and criteria for loan eligibility;
- Adopts rules regulating loan disbursement and repayment procedures; and
- Accepts and manages gifts, grants, property, and services given in support of natural heritage preservation.³⁴

The governor's Advisory Committee on Natural Heritage Preservation assists the Natural Heritage Preservation Commission in its determination of which projects are eligible for preservation loans, which projects receive loans, and other related natural heritage matters. The committee consists of seven (7) members appointed by the governor to represent Rhode Island municipalities and recognized conservation and natural preservation organizations.³⁵

K. Rhode Island Environmental Penalties

The director of the DEM may assess an administrative penalty on any person who violates any environmental law, rule, regulation, order, permit, or license under DEM authority

³² R.I. GEN. LAWS § 42-17.1-43 (1993).

³³ R.I. GEN. LAWS § 42-17.5-2 (1993).

³⁴ R.I. GEN. LAWS §§ 42-17.5-4, -5 (1993).

³⁵ R.I. GEN. LAWS § 42-17.5-6 (1993).

as an alternative to any other civil penalty prescribed by law.³⁶ The term “administrative penalty” means a monetary penalty that may not exceed one thousand dollars (\$1,000.00) when the civil penalty is not specified or that may not exceed any civil penalty specified by statute.³⁷ Notice of any administrative penalty must be provided and served by hand or certified return receipt. The notice must include the alleged violation, the amount of the penalty including payment methods, and a statement of the person’s right to an adjudicatory hearing.³⁸ Following notice of an administrative penalty, each day of continued non-payment or non-performance of the required steps to be taken in requesting an adjudicatory hearing constitutes a separate violation that is also subject to a separate administrative penalty when reasonable efforts to promptly come into compliance are not taken.³⁹

L. Rhode Island Adjudication of Environmental Matters

The director of the DEM has authority to informally resolve contested licensing and enforcement proceedings through a regulated but informal disposition. Additionally, the DEM has a division of administrative adjudication which is responsible for these adjudications. There are five full-time hearing officers who are each attorneys-at-law with a minimum of five years legal experience that are appointed by the governor with advice and consent of the senate.⁴⁰ Hearing officers have discretion to direct the parties of an adjudication to appear for a conference before the officer prior to a formal hearing to identify the evidence, witnesses as well as their testimony, and issues the parties intent to present. Following the formal hearing, the hearing officer enters an order reflecting the resulting determinations.⁴¹ All hearing and prehearing procedures are governed by DEM regulations.

³⁶ Factors that are considered in determining an administrative penalty include: (1) the actual and potential impact on the environment and public health, safety, and welfare; (2) actual and potential damages and costs suffered; (3) degree of compliance, mitigation, and prompt response; (4) prior compliance history; (5) the cost of noncompliance compared to compliance; (6) deterrence to noncompliance; (7) financial ability; (8) value or economic advantage of noncompliance; (9) mental state of violation conduct, i.e., error, without intent, intentional, willful, or knowing; (10) any statute specified penalty amount; (11) any other relevant factor; and (12) the public interest; *see* R.I. GEN. LAWS § 42-17.6-7 (1993).

³⁷ R.I. GEN. LAWS § 42-17.6-1 (1993).

³⁸ The right to an adjudicative hearing is deemed waived if a person does not respond within ten (10) days of the date of the notice of administrative penalty by filing a written statement with the DEM or the clerk of the administrative adjudication division denying the allegations or asserting that the dollar amount is excessive. When the hearing is waived, the administrative penalty becomes final; *see* R.I. GEN. LAWS § 42-17.6-4 (1993 & Supp. 2001). If an administrative penalty is assessed following an adjudicative hearing, the administrative penalty decision becomes final upon the expiration of thirty (30) days if no action for judicial review of the decision is commenced; *see* R.I. GEN. LAWS § 42-17.6-5 (1993 & Supp.).

³⁹ R.I. GEN. LAWS § 42-17.6-3 (1993 & Supp. 2001).

⁴⁰ R.I. GEN. LAWS § 42-17.7-3 (1993).

⁴¹ R.I. GEN. LAWS § 42-17.1-5 (1993).

Additionally, all hearing adjudications for license violations are held before a hearing officer. Following the hearing the hearing officer makes written findings of fact and proposed conclusions of law. This information is made public and provided to the director of the DEM. The director of the DEM may adopt, modify, or reject the hearing officer's findings or conclusions although any modification or rejection must be in writing explaining its rationale.⁴²

The director of the DEM must not have any communications with a hearing officer that relate to an issue of any matter pending before the hearing officer.⁴³ Hearing officers have authority to administer oaths, summon and examine witnesses, and compel the production of evidence necessary for the officer's determination. A refusal to comply with any subpoena may subject the person to contempt charges, fines, or imprisonment.⁴⁴

An administrative clerk, also appointed by the governor with advice and consent of the senate, has general charge of the division. The clerk is the keeper of all adjudication proceedings, documents, and notices and also has power to issue subpoenas and administer oaths.⁴⁵

I. WATER QUALITY

Producer Note: In order for agricultural producers to maintain compliance with water quality legislation, they must be aware of not only federal water quality standards and oil spill liability issues but also state water quality standards, state point source discharge permit requirements, state and local nonpoint source pollution programs, state environmental liability issues, and whether there are any waters requiring special protection in the producer's area. The states take active roles in ensuring that agricultural producers comply with environmental requirements.

A. Rhode Island Water Quality Laws

1. *Rhode Island Water Quality*

Most states including Rhode Island have enacted clean water legislation. While these state statutes usually contain provisions similar to those found in parallel federal legislation, there may be significant differences. In fact, state statutes may impose requirements that are even more restrictive than federal law. In all cases regarding water quality issues, however, the

⁴² R.I. GEN. LAWS § 42-17.7-6 (1993).

⁴³ R.I. GEN. LAWS § 42-17.7-7 (1993).

⁴⁴ R.I. GEN. LAWS § 42-17.7-8 (1993).

⁴⁵ R.I. GEN. LAWS § 42-17.7-4 (1993).

federal Clean Water Act (CWA)⁴⁶ requirements must be followed and enforced along with any state enacted statutes and state agency regulations.

In Rhode Island, the DEM uses the watershed approach to develop new strategies to abate point source and nonpoint source pollution in order to protect and improve water quality. This approach helps to organize DEM's work and collaborate with others. The Office of Water Resources (OWR) within the DEM implements a number of programs that protect and restore the state's surface waters,⁴⁷ groundwaters, and wetlands. The OWR oversees eleven (11) different programs including but not limited to:

- Individual sewage disposal systems and freshwater wetlands permitting;
- Groundwater and surface water quality certifications and underground injection control;
- Rhode Island Pollution Discharge Elimination System (RIPDES) and pretreatment;
- Wastewater treatment facilities and sludge management;
- Shellfishing area water quality monitoring;
- Groundwater protection;
- Water quality classifications and standards; and
- Water quality protection and restoration.

⁴⁶ 33 U.S.C. §§ 1251 to 1387 (1994).

⁴⁷ The term "waters" means all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond, or lake and wetlands as well as all groundwaters; *see* R.I. GEN. LAWS § 46-12-1(23) (1996 & Supp. 2001).

2. *Rhode Island Pollutant Discharge Elimination System (RIPDES) Permit Program*

Discharges⁴⁸ of waste from point sources⁴⁹ into navigable waters are regulated through a permit system known as the National Pollutant Discharge Elimination System (NPDES). Under the CWA, it is illegal to discharge any pollutant⁵⁰ from point sources into navigable waters without a permit or discharge waste in violation of the terms or conditions of any valid permit. The CWA provides that the United States Environmental Protection Agency (U.S. EPA) has authority either to issue the NPDES permits to approved applicants or delegate the NPDES permit program to an individual state after the U.S. EPA approves that state's version of the NPDES program. The U.S. EPA delegated the NPDES permit program to Rhode Island's DEM after the U.S. EPA approved Rhode Island's state version of the program which is called the Rhode Island Pollution Discharge Elimination System (RIPDES) program. Thus, the DEM, but more specifically, the Office of Water Resources within the DEM, administers the RIPDES program in the state that regulates pollutant discharges into navigable waters of the state. The CWA also requires each state to assess its waters and classify them according to their beneficial use category, for example, drinking water supply, fishing, industrial, recreational, or agricultural. The water quality of the water must match or exceed the water quality standard established for that beneficial use category.

To more precisely regulate and control any discharges into navigable waters, Total Maximum Daily Loads (TMDLs) are specified on the RIPDES permit. The control principle is that the TMDL represents the maximum amount of pollutant that could be discharged to the water on a daily basis that would not cause the water quality to drop below the applicable water quality standard that corresponds to the beneficial use category. Waters with a water quality that is below the water quality standard that corresponds to the water's beneficial use must eventually achieve the proper water quality standard for their classified use.

⁴⁸ The term "discharges" means the addition of any pollutant to the waters from any point source; *see* R.I. GEN. LAWS § 46-12-1(4) (1996 & Supp. 2001).

⁴⁹ The term "point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged; *see* R.I. GEN. LAWS § 46-12-1(14) (1996 & Supp. 2001).

⁵⁰ The term "pollutant" means any material or effluent which may alter the chemical, physical, biological, or radiological characteristics and/or integrity of water including, but not limited to, dredged spoil, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, cellar dirt or industrial, municipal, agricultural, or other waste petroleum products including, but not limited to, oil; *see* R.I. GEN. LAWS § 46-12-1(15) (1996 & Supp. 2001).

Regarding water quality, the DEM but more precisely the OWR is responsible for:

- Supervision, administration, and enforcement of water pollution statutes, regulations, provisions, and orders along with program development for the prevention, control, and abatement of water pollution;
- Studies, investigations, research, and demonstrations relating to water pollution along with the dissemination of the resulting information;
- Classification of the waters of the state and the establishment of corresponding water quality standards;
- Approval and issuance, renewal, modification, suspension, and denial of RIPDES permits consistent with the CWA;
- Oversight and enforcement of federal requirements for publicly owned treatment works;
- Consultation with the ACEA on water pollution control policies and plans;
- Oversight and enforcement of underground storage facilities used for storing petroleum products and hazardous materials in preventing releases into waters of the state;
- Oversight and enforcement of underground well regulations and subsurface disposal systems;
- Oversight and enforcement of federal and state requirements for dredging, transportation, and disposal of dredge materials as related to water quality including associated water quality certification;⁵¹ and
- Establishment of a pollution monitoring and fee system for point source discharges of conventional pollutants, hazardous pollutants, and sewage including impact assessment.⁵²

Other duties related to water quality that the OWR or DEM is authorized to perform includes issuing notices of hearings, holding hearings, subpoenaing necessary witnesses and evidence, administering oaths, and taking testimony.⁵³ In emergencies, such as when pollution

⁵¹ R.I. GEN. LAWS § 46-12-3 (1996).

⁵² R.I. GEN. LAWS § 46-12-4 (1996).

⁵³ R.I. GEN. LAWS § 46-12-3(9) (1996).

presents an imminent and substantial endangerment to human health or welfare or livelihood or to endangerment to the environment, the OWR or DEM may take any action deemed necessary to protect public health or safety or the environment without notice of violation or hearing including issuing an immediate compliance order⁵⁴ or obtaining injunctive relief or some other order from the superior court.⁵⁵

Generally, sewage discharge from boats into waters of the state are prohibited unless the discharge is via a marine toilet device-type I or II in proper working condition. However, in waters of the state, the rule is absolute against discharges into no discharge zones identified by the OWR or DEM and against boats without an approved and sealed marine toilet.⁵⁶ Violators of this provision are subject to a first time fine up to five hundred dollars (\$500.00), imprisonment up to one (1) year, or both. The fine for second offenses increases to one thousand dollars (\$1,000.00).⁵⁷ The DEM, harbormasters, assistant harbormasters, and police officers have authority to stop and board vessels when the purpose is related to sewage discharge.⁵⁸

The transportation of waste and dredge materials over state waterways is prohibited unless the activity is specifically covered by an authorizing state-issued permit from the DEM. Permits are issued only after a public hearing on the matter is held and time for comments has passed.⁵⁹ Violators are subject to fines up to one thousand dollars (\$1,000.00) for each violation, imprisonment up to one (1) year, or both.⁶⁰ State conservation officers enforce this provision.⁶¹

Owners, operators, or agents of tank vessels which transport petroleum products for commercial purposes must possess a valid certification of financial responsibility. Violations of this provision subject the responsible person to a fine up to one hundred thousand dollars (\$100,000.00) or twice the amount of the cost to rectify any environmental damage caused by the vessel, whichever is greater.⁶²

⁵⁴ An immediate compliance order issued without notice and prior hearing is effective up to forty-five days unless good cause is shown; if good cause is shown, it may extend the order up to forty-five additional days; *see* R.I. GEN. LAWS § 46-12(10)(1) (1996).

⁵⁵ R.I. GEN. LAWS § 46-12-10 (1996).

⁵⁶ R.I. GEN. LAWS § 46-12-39 (1996).

⁵⁷ R.I. GEN. LAWS § 46-12-40 (1996).

⁵⁸ R.I. GEN. LAWS § 46-12-41 (1996).

⁵⁹ R.I. GEN. LAWS § 46-17.1-1 (1996).

⁶⁰ R.I. GEN. LAWS § 46-17.1-1 (1996).

⁶¹ R.I. GEN. LAWS § 46-17.1-2 (1996).

⁶² R.I. GEN. LAWS § 46-12-41 (1996).

3. *Rhode Island Oil Spill Pollution and Control Act*

It is unlawful to discharge, cause to be discharged, or allow the discharge of oil into or upon the waters or land of the state except by a specific authorizing regulation or by special permit by the DEM.⁶³ Discharge of contaminated ballast water from a tank vessel is also prohibited unless it is necessary for the safety of the vessel and no alternative action is feasible to ensure the safety of the vessel.⁶⁴ If discharge occurs, the person in charge must report the discharge event to the DEM as soon as the person has knowledge of it. The report must include date, time, location, weather conditions, vessel operations, other facilities involved, type and amount of spill, estimated amount of spill recovered, various agencies receiving notice, known causes or contributing factors, maintenance or inspection deficiencies, measures taken and changes to procedures, policies, and vessel crew, technology, and organization made to prevent a recurrence.⁶⁵ A civil penalty up to twenty-five thousand dollars (\$25,000.00) per day of violation may be imposed for unauthorized discharges of oil.⁶⁶ A violator, however, is strictly liable to the state for:

- Costs and expenses for compensation for any adverse environmental effects caused by the violation;
- Costs for detection, investigation, and correction;
- Any economic advantage realized by the violator by committing the noncompliance; and
- Costs to restore the injured land or waters or replenish a damaged or degraded resource or environment.⁶⁷

Besides civil penalties, criminal penalties may also be imposed upon violators. Violators are subject to fines up to twenty-five thousand dollars (\$25,000.00) per day of violation, imprisoned for five years, or both.⁶⁸ Violators are charged with a misdemeanor and are subject to the same penalties for providing a false statement, representation, or certification in any

⁶³ R.I. GEN. LAWS § 46-12.1-3 (1996 & Supp. 2001).

⁶⁴ R.I. GEN. LAWS § 46-12.5-4 (1996 & Supp. 2001).

⁶⁵ R.I. GEN. LAWS § 46-12.5-5 (1996 & Supp. 2001).

⁶⁶ A person otherwise liable for administrative penalties is not liable if the discharge occurred as a result of an act of God, the act of a third party, a negligent or intentional act of the U.S., or an act of war; *see* R.I. GEN. LAWS § 46-12.5.6 (1996 & Supp. 2001).

⁶⁷ R.I. GEN. LAWS § 46-12.5-7 (1996 & Supp. 2001).

⁶⁸ R.I. GEN. LAWS § 46-12.5-10 (1996 & Supp. 2001).

application, record, report, plan, or other document filed or required to be maintained; tampering with any required monitoring device or knowingly rendering such a device inaccurate.⁶⁹ The DEM must provide notice of violations and compliance orders to the alleged violator. Unless an order states otherwise, the alleged violator must submit to the DEM within seventy-two hours of the receipt of the order a plan or a statement describing the system or means that the person intends to implement to discontinue or end the violation.⁷⁰

On January 1, 2001, the state of Rhode Island began prohibiting the transportation of oil or hazardous material over the waters of the state in a vessel without a double hull or the assistance of a tugboat. A person otherwise liable for administrative penalties is not liable if the discharge occurred as a result of an act of God, the act of a third party, a negligent or intentional act of the U.S., or an act of escort. However, this section does not apply to vessels with a capacity less than seven thousand five hundred (7,500) barrels or a self-propelled tank vessel or a “notched barge.”⁷¹

Because the release of oil or hazardous substances into the environment presents a real and substantial threat to the public health and welfare, to the environment, and to the economy of the state, the legislature determined it would be in the best interest of the state to establish a readily available fund for the payment of DEM expenses incurred in the protection of the environment from the release of oil. The fund is called the oil spill prevention, administration, and response fund, and it may also be used to develop safety committees, response teams, and other discreet units whose activities will directly benefit the state in the event of future oil spill events.⁷² Besides appropriated funds by the legislature, moneys received by private donors, federal or state sources specifically for the oil spills in marine or estuarine waters, and fines and penalties, the state of Rhode Island imposes a uniform oil spill response and prevention fee upon owners of petroleum products for each barrel of petroleum product that arrives at a Rhode Island marine terminal from outside the state. This fee is collected for the oil spill prevention, administration, and response fund until the total amount of the fund reaches ten million dollars (\$10,000.00) at which time the fee collection ceases until it is reimposed when funds are utilized.⁷³

⁶⁹ R.I. GEN. LAWS § 46-12.5-10 (1996 & Supp. 2001).

⁷⁰ R.I. GEN. LAWS § 46-12.5.1-12 (1996 & Supp. 2001).

⁷¹ The term “notched barge” means a tank barge and towing vessel attached to the tank barge by a notched grove located in the stern of the tank vessel; *see* R.I. GEN. LAWS § 46-12.5-24 (1996).

⁷² R.I. GEN. LAWS § 46-12.7-1 (1996).

⁷³ R.I. GEN. LAWS § 46-12.7-4.1 (1996 & Supp. 2001).

The oil spill prevention, administration, and response funds may be used to:

- Provide prompt funds for cost containment and cleanup;
- Site evaluation activities;
- Emergency loans for damages suffered by the state or other persons or entities;
- Damage claims when no responsible person exists and federal oil spill funds are not adequately available;
- Emergency loans to workers ineligible for unemployment insurance;
- Structural improvements to vulnerable coastal features;
- Habitat restoration;
- Response training and equipment;
- Large-scale personnel drills and exercises;⁷⁴
- Research and development in causes and effects and removal of pollution caused by oil, petroleum products, and their by-products on the marine environment; and
- Sensitive area data management and mapping, more effective removal and containment technologies associated with refined oil spills.⁷⁵

The DEM has a board of arbitration and an independent hearing examiner to informally hear and determine any disputed claims associated with oil spills. Appeal of these determinations are reviewable in the superior court for an abuse of discretion claim if filed within thirty (30) days of the determination.⁷⁶

The attorney general in consultation with the DEM is responsible for recovering all expenditures made from to the fund from any responsible party.⁷⁷

⁷⁴ R.I. GEN. LAWS § 46-12.7-5.1 (1996 & Supp. 2001).

⁷⁵ R.I. GEN. LAWS § 46-12.7-13 (1996).

⁷⁶ R.I. GEN. LAWS § 46-12.7-14 (1996).

⁷⁷ R.I. GEN. LAWS § 46-12.7-12 (1996).

4. *Rhode Island Water Projects Revolving Loan Fund*

Rhode Island recognizes its need to construct facilities and improve drinking water supplies as well as to acquire lands related to watershed protection. In order to provide continued safe drinking water throughout the state and to provide financial assistance for acquisition, design, planning, construction, enlargement, repair, protection, or improvement of public drinking water supplies or treatment facilities that may be required under the federal Safe Drinking Water Act,⁷⁸ Rhode Island provides a revolving loan fund program that provides a perpetual source of low cost financing for safe drinking water projects. The fund is under the control of the Rhode Island Clean Water Protection Finance Agency. The finance agency is independent in administering the fund but works in conjunction with the DEM, Water Resources Board, Department of Health (DOH), division of public utilities and carriers, and others responsible for the development or supervision of water supply facilities.⁷⁹

5. *Rhode Island Water Pollution Enforcement*

Violators of water pollution provisions are subject to a civil penalty up to twenty-five thousand dollars (\$25,000.00) for each day of violation. The violator is responsible for damages and costs caused by or incurred in the investigation, cleanup, and restoration associated with the violation. Criminal charges for each day of violation may be imposed if it is determined that the violator committed the act willfully or with criminal negligence including a fine of twenty-five thousand dollars (\$25,000.00), imprisonment up to five (5) years, or both. Persons who knowingly make false statements, representations, or certifications in any application, record, report, plan, or required document related to water pollution control provisions including the tampering of any monitoring device or method is subject to fines up to five thousand dollars (\$5,000.00), imprisonment up to thirty (30) days, or both.

At reasonable times in performance of their duties, representatives of the DEM or the attorney general's office have authority to enter any premises, buildings, plant, or equipment, or other places controlled by any person believed to be discharging to a publicly owned treatment works in order to inspect the premises, buildings, plant, or equipment or any monitoring equipment or monitoring method and to sample any discharges.⁸⁰

6. *Rhode Island Expenditures for Pollution Control*

In Rhode Island, the town or city council has authority to generate sufficient revenue to pay for the proper control of the pollution of waters in their respective areas. The town or city may issue interest bearing notes to carry out this task, however, the plans and specifications for

⁷⁸ R.I. GEN. LAWS § 46-12.8-1 (1996 & Supp. 2001).

⁷⁹ R.I. GEN. LAWS § 46-12.8-1 (1996 & Supp. 2001).

⁸⁰ R.I. GEN. LAWS § 46-12-22 (1996).

the control of water pollution must first receive DEM approval.⁸¹ The DEM may make loans or grants to municipalities and other governmental units for this same purpose when funds are available.⁸² The DEM also has authority to make loans and grants to nongovernmental units when funds are available.⁸³

7. *Rhode Island Environmental Trust Fund*

Rhode Island's legislature set forth its statutory findings that:

- Protecting the ground and surface water of the state from pollution is vital to the health and general welfare of the citizens of the state;
- Construction, rehabilitation, and maintenance of modern and efficient waste water treatment systems and facilities is essential to protecting and improving the state's water quality and to the state's development;
- Some areas of the state served by septic systems should be served by interceptors that carry pollutants to waste water treatment facilities; and
- Because federal funding may not be adequate to achieve the goal to improve the state's water quality, a fund should be established to provide sufficient continuing financial resources to the state's governmental units to do so.⁸⁴

Upon the above findings, the legislature created the Rhode Island Clean Water Act environmental trust. The trust is administered under the direction and supervision of the DEM.⁸⁵

8. *Rhode Island Reports on Water near Solid Waste*

If the disposal of solid waste is located within two hundred feet (200') of any water course, the owner of the site or the lessee, if the site is leased, must submit a written report to DEM every sixty (60) days, or more frequently if required by the DEM. The report must address the content of dissolved oxygen, the biological oxygen demand, chlorides, iron, and a coliform bacteria count from sites tested immediately upstream and downstream from the landfill.⁸⁶

⁸¹ R.I. GEN. LAWS § 46-12-23 (1996).

⁸² R.I. GEN. LAWS § 46-12-24 (1996).

⁸³ R.I. GEN. LAWS § 46-12-24.1 (1996).

⁸⁴ R.I. GEN. LAWS § 46-12-24.2(a) (1996).

⁸⁵ R.I. GEN. LAWS §§ 46-12-24.2(b), (d) (1996).

⁸⁶ R.I. GEN. LAWS § 46-12-25 (1996).

Failure to file the report as required subjects the violator to a fine of four hundred dollars (\$400.00) per day for each day that the report is not filed.⁸⁷ Falsification of a report subjects the violator to a separate fine up to four hundred dollars (\$400.00), imprisonment up to one year, or both.

9. *Rhode Island Environmental Injury Compensation Act*

A civil action may be instituted by the attorney general or by any person, corporation, partnership, or other business entity for damages sustained as a result of a violation regarding:

- Water pollution;
- Any violation of any permit, rule, regulation, or order issued pursuant thereto;
- The obligation of a vessel to have a licensed pilot on board in navigable waters of the state; or
- The result of the negligence of the owner, operator, or agent.⁸⁸

Damages may be claimed for injury or damage directly resulting from the violation, damage or injury to the environment or natural resources, injury to the person, property damage, economic loss to any individual, corporation, partnership, or other business entity.⁸⁹

II. GROUNDWATER

A. RHODE ISLAND GROUNDWATER LAWS

1. *Rhode Island Groundwater*

Groundwater is that water which is located below the earth's surface or below the bed of a stream, lake, reservoir, or other body of surface water. Along with surface water, groundwater is also considered to be waters of the state. The quality of groundwater is protected by the DEM against water pollution, and the following facilities and activities are regulated by the DEM:

⁸⁷ R.I. GEN. LAWS § 46-12-26 (1996).

⁸⁸ R.I. GEN. LAWS § 46-12.3-1 (1996 & Supp. 2001).

⁸⁹ R.I. GEN. LAWS §§ 46-12.3-2, -3 (1996).

- Discharge of pollutants onto or beneath the land surface where it is likely to enter groundwaters;
- Subsurface containment systems used to store wastewaters, petroleum products, hazardous materials, or other pollutants;
- Facilities which store bulk quantities of petroleum products, hazardous materials, or hazardous waste;
- Facilities which treat or provide or disposal of petroleum products, hazardous materials, hazardous waste, solid waste, or dredged material;
- Facilities and activities which have the potential to cause a release of pollutants to groundwater;
- Activities undertaken to remediate groundwater quality.⁹⁰

2. *Rhode Island Clean Water Finance Agency*

A separate agency called the Rhode Island Clean Water Finance Agency works with the DEM for proper administration of revolving loan funds⁹¹ including:

- Water pollution control revolving fund;
- Rhode Island water pollution control revolving fund;
- Local interest subsidy trust fund; and
- Any other such funds it holds.⁹²

This agency is not considered a department of state government but is a separate political body, a corporate and public instrumentality of the state. The finance agency consists of five members, three appointed by the governor, one appointed by the speaker of the house, and one appointed by the senate majority leader.⁹³ The primary purpose of the finance agency is to provide financial assistance to local governmental units to finance costs of approved projects such as facilities and projects for the abatement of pollution caused by wastewater and

⁹⁰ R.I. GEN. LAWS § 46-12-28 (1996).

⁹¹ R.I. GEN. LAWS § 46-12.2-1 (1996 & Supp. 2001).

⁹² R.I. GEN. LAWS § 46-12.2-6 (1996).

⁹³ R.I. GEN. LAWS § 46-12.2-3 (1996 & Supp. 2001).

traditionally funded under title II of the CWA in order to meet federal and state water quality goals.⁹⁴ An example of some of the qualifying projects that enhance the waters of the state include projects for:

- Dewatering dredged material;
- Beneficial use;
- Disposal of dredged material at sites above mean high water; and
- Confined aquatic disposal of dredged materials provided the project is approved by the CRMC and the DEM and supported either by project revenues or a fund established for such purposes.⁹⁵

3. Rhode Island Underground Storage Tank Replacement Fund

A separate program exists within the state's treasury called the Underground Storage Tank Replacement Revolving Loan Program.⁹⁶ This fund was established by the legislature in order to protect the health, safety, and welfare of the citizens of Rhode Island that may become jeopardized due to the failure of underground storage tanks to prevent leaks or releases of toxic substances into groundwater and the seepage of toxic fumes into the atmosphere and residences. The fund provides low interest loan monies to assist in the replacement of tanks that are leaking or are likely to leak.⁹⁷ These loans may be made in cooperation with other lenders.⁹⁸ The DEM implements this program by adopting appropriate rules and regulations with respect to loan eligibility, loan generation, disbursement, payback period, and mortgage covenants.

4. Rhode Island Underground Storage Tanks

In furtherance of its purposes to promote health, safety, or general welfare, Rhode Island allows cities and towns to adopt ordinances in accordance with state statutes establishing procedures for registration, testing, and removal of USTs. In particular, the purpose is to protect public health from contamination of public and private water supplies due to leakage from USTs,

⁹⁴ R.I. GEN. LAWS §§ 46-12.2-1, -4 (1996 & Supp. 2001).

⁹⁵ R.I. GEN. LAWS § 46-12.2-4.1 (1996 & Supp. 2001).

⁹⁶ R.I. GEN. LAWS § 46-12-30 (1996).

⁹⁷ R.I. GEN. LAWS § 46-12-30.1 (1996).

⁹⁸ R.I. GEN. LAWS § 46-12-30.3 (1996).

public safety from dangers of fire and explosion associated with such leakage, and general welfare by preserving limited water supplies for present and future use.⁹⁹

Under the city or town ordinances, the enforcing officer of the city or town has the responsibility for administering and enforcing these provisions. The enforcing officer has authority to:

- Issue permits for maintenance, installation, abandonment, and removal of USTs;
- Require the removal, at the owner's expense, all USTs and underground pipes deemed to pose a threat to the public health or the environment;
- Require testing, monitoring, record keeping, and reporting by the owner or operator as well as record keeping and reporting by suppliers;
- Inspect facilities where USTs are located; and
- Require closure of abandoned storage tanks consistent with the permanent closure DEM procedures for USTs used for petroleum products and hazardous materials.¹⁰⁰

5. Rhode Island Underground Storage Tank Tester Licensing

Underground storage tank testers must be licensed by the DEM, pay a license fee, and demonstrate satisfactory liability insurance for environmental harm, property damage, and bodily injury resulting from tank testing activities. The DEM has authority to also require tester certification and/or examination of tank testing knowledge.

6. Rhode Island Underground Storage Tank Financial Responsibility Act

In order to provide an effective clean-up fund to assist UST owners to comply with the financial responsibility requirement and to ensure that UST leaks which impact the environment and public health would be properly addressed in an effective and timely manner, Rhode Island enacted the Underground Storage Tank Financial Responsibility Act.¹⁰¹ The U.S. EPA requires that tank owners be able to demonstrate one million dollars (\$1,000,000.00) of liability coverage per incident and up to two million dollars (\$2,000,000.00) in the aggregate for damages. According to the Rhode Island economic development corporation, the existence of the state fund prevents an adverse economic impact of eighteen million dollars (\$18,000,000.00)

⁹⁹ R.I. GEN. LAWS § 46-12.1-1 (1996).

¹⁰⁰ R.I. GEN. LAWS § 46-12.1-3 (1996 & Supp. 2001).

¹⁰¹ R.I. GEN. LAWS §§ 46-12.9-1 to 12 (1996 & Supp. 2001).

annually.¹⁰² This fund facilitates the clean-up of leaking USTs or UST systems and provides reimbursement to responsible parties for eligible costs, expenses, and other necessary obligations after approval of the review board.¹⁰³

To be eligible for reimbursement, the responsible party must be subject to financial responsibility according to U.S. EPA regulations, comply with all DEM's technical requirements for USTs including registration, installation, spill containment, leak detection, corrosion protection, tightness testing, inventory control, closure, and spill reporting as well as be able to demonstrate that the party actually incurred a cost, expense, or necessary obligation related to clean-up or following third-party claims of a release.¹⁰⁴ The thirteen member review board in consultation with the general treasurer and the DEM establish the rules and regulations for submitting and processing claims.¹⁰⁵ An environmental protection regulatory fee of one cent (\$.01) per gallon of motor fuel is collected by distributors of motor fuel as necessary when the product is sold to owners and operators of underground storage tanks to maintain the UST fund at eight million dollars (\$8,000,000.00).¹⁰⁶

7. *Rhode Island Drinking Water*

Drinking water for humans is highly regulated in Rhode Island when its use is for public consumption. The term "public water supply system" means a piped water system that serves fifteen (15) or more services or that regularly serves an average of at least twenty-five (25) individuals daily for at least sixty (60) days out of the year.¹⁰⁷ Agricultural producers that supply drinking water to resident employees should be cautious and note that they may fall under the state's public drinking water regulations. All public drinking water systems must be approved by the Department of Health (DOH). Additionally, new sources of water for public drinking water must not be developed until a site plan has been approved by the DOH, and no public drinking water system may be constructed or altered until construction plans and specifications, prepared by a registered engineer, are approved by the DOH.¹⁰⁸

¹⁰² R.I. GEN. LAWS § 46-12.9-2 (1996 & Supp. 2001).

¹⁰³ R.I. GEN. LAWS § 46-12.9-5 (1996 & Supp. 2001).

¹⁰⁴ R.I. GEN. LAWS § 46-12.9-6 (1996 & Supp. 2001).

¹⁰⁵ R.I. GEN. LAWS §§ 46-12.9-7, -8 (1996 & Supp. 2001).

¹⁰⁶ R.I. GEN. LAWS § 46-12.9-11 (1996 & Supp. 2001).

¹⁰⁷ R.I. GEN. LAWS § 46-13-2 (1996 & Supp. 2001).

¹⁰⁸ R.I. GEN. LAWS § 46-13-4 (1996).

Rhode Island regulations for drinking water are consistent with the federal Safe Drinking Water Act.¹⁰⁹ A Public Drinking Water Supply Advisory Council exists that advises the DOH and public drinking water suppliers on matters regarding fees and regulation compliance.

A violation of safe drinking water provisions constitutes a public nuisance. Violators are liable for the costs of abatement of any pollution and the public nuisance.¹¹⁰ Failure to comply with an order issued to abate the nuisance or cover liability costs in a willful or negligent manner may be criminally charged as a misdemeanor and subject to a fine up to five hundred dollars (\$500.00), imprisonment up to one (1) year, or both. In addition to the criminal penalty, a civil penalty may be assessed by the DOH. The DOH provides notice of a civil penalty, and thirty (30) days is allowed for payment or appeal. A civil penalty up to five thousand dollars (\$5,000.00) may be imposed for each day of violation. However, anyone who endangers the health of persons by knowingly introducing any contaminant into a public water supply system may be fined up to fifty thousand dollars (\$50,000.00), imprisoned up to five (5) years, or both.¹¹¹

8. *Rhode Island Ground Water Protection Act*

Rhode Island recognizes that water is vital to life and comprises an invaluable natural resource which must not be abused. The policy of the state is to:

- Restore, enhance, and maintain the chemical, physical, and biological integrity of its waters;
- Protect public health;
- Safeguard fish and aquatic life and scenic and ecological values;
- Enhance the domestic, municipal, recreational, industrial, and other uses of water;¹¹²
- Restore and maintain groundwater quality consistent with its designated beneficial uses without treatment; and

¹⁰⁹ 42 U.S.C. §§ 300f to 300g-1 (1994).

¹¹⁰ R.I. GEN. LAWS § 46-13-15 (1996).

¹¹¹ R.I. GEN. LAWS § 46-13-16 (1996).

¹¹² R.I. GEN. LAWS § 46-13.1-2(1) (1996).

- Prevent the introduction of pollutants into the groundwaters in toxic, carcinogenic, mutagenic, or teratogenic concentrations and remove any of those pollutants where discharges have already occurred.¹¹³

Furthermore, the state recognizes that:

- Groundwaters are a critical renewable resource which must be protected;
- Purity of drinking water supplies for present and future needs is paramount and requires the protection of aquifers, recharge areas, and watersheds;¹¹⁴
- Groundwaters must be protected for use as agricultural, industrial, and potable water supplies and other reasonable uses and as a supplement to surface waters for these same uses as well as use by wildlife, fish, and other aquatic life;
- Discharges into groundwater, that subsequently emerges in surface waters, causes a decrease in water quality must not be allowed; and
- Degradation of groundwater must not be allowed unless it becomes a necessary state decision as a result of essential, desirable, and justifiable economic, commercial, industrial, or social development.¹¹⁵

9. Rhode Island Groundwater Classification

The DEM is responsible for designating the groundwater source classification to protect existing or potential drinking water supplies. The DEM determines the classifications after conducting a survey of all groundwater sources and related groundwater aquifers, watersheds, and deep flow recharge areas. The classifications are as follows:

- Groundwater sources suitable for public drinking water use without treatment are considered the GAA classification;
- Groundwater sources which may be suitable for public or private drinking water use without treatment are considered the GA classification;
- Groundwater sources which may not be suitable for public or private drinking water without treatment due to known or presumed degradation are considered the GB classification; and

¹¹³ R.I. GEN. LAWS § 46-13.1-2(5) (1996).

¹¹⁴ R.I. GEN. LAWS §§ 46-13.1-2(2), (3) (1996).

¹¹⁵ R.I. GEN. LAWS §§ 46-13.1-2(4) to (9) (1996).

- Groundwater sources which may be suitable for certain waste disposal practices because past or present land use or hydrogeologic conditions render the groundwaters more suitable for receiving permitted discharges than for development as public or private water supply are considered the GC classification.¹¹⁶

The DEM develops water quality standards for each classification which specifies maximum contaminant levels for each classification. Water quality standards must be used to promote restoration of groundwater to drinking water quality without treatment except in :

- A zone of permitted discharge;
- Waters classified as GB and no demonstrated need exists to upgrade to GA; and
- Water classified as GC.¹¹⁷

10. Rhode Island Clean Drinking Water and Groundwater Standards Commission

A Clean Drinking Water and Groundwater Standards Commission (CWSC) exists to review the entire field of groundwater and drinking water quality standards. The CWSC consists of fifteen (15) members; one from the Rhode Island Senate, one from the Rhode Island House of Representatives, the director or representative of the DEM and the DOH, the chairperson or designee of the WRB, seven academicians representing the fields of medicine, hydrogeology, toxicology, environmental engineering, plant and soil science economics, and epidemiology plus three members of the business community who are affected by the water quality standards.¹¹⁸

11. Rhode Island Wellhead Protection

The wellhead protection program in Rhode Island is administered by the DEM. The DEM is authorized to promulgate rules and regulations for the implementation of a program that has the U.S. EPA approval and that is pursuant to Section 1428 of the federal Safe Drinking Water Act.¹¹⁹ The program includes but is not limited to:

¹¹⁶ R.I. GEN. LAWS § 46-13.1-4(a) (1996).

¹¹⁷ R.I. GEN. LAWS § 46-13.1-4(b) (1996).

¹¹⁸ R.I. GEN. LAWS § 46-13.1-7 (1996 & Supp. 2001).

¹¹⁹ 42 U.S.C. §§ 300g-1 *et seq.* (1996).

- Delineation of wellhead protection areas;
- Identification of potential sources of contaminants within each wellhead protection area that might have an adverse effect on the public health and the environment;
- Management approaches to protect the groundwater and manage potential sources of contamination; and
- Contingency plans for contamination and an alternate emergency source of drinking water supply.¹²⁰

12. Rhode Island Well Drilling

The DEM promulgates regulations that set forth minimum standards for the design, construction, installation, and maintenance of wells. The DEM establishes these regulations in consultation with the Rhode Island Well Drilling Board (RWDB), the DOH, and the division of statewide planning with due regard for the preservation of public health; the preservation, allocation, and management of the groundwater of the state; the protection of the public; and maintenance of geological and other scientific data.¹²¹

Well driller contractors and pump installers must meet certain requirements, register annually, and pay a fee to obtain a certificate from the DEM. These requirements exist to ensure ability and proficiency of those involved in the business of well drilling. Ability and proficiency may be demonstrated to the DEM by experience or training. Adequate financial resources must be available, and drillers are required to possess and maintain adequate tools and machines for well drilling and its related activities.¹²²

Within thirty (30) days of the completion of a well, a well drilling contractor must provide the owner, the RWDB, the DOH, and the DEM with a record providing the following information:

- Well owner's name and address;
- Location of the well;
- Geologic materials and thickness of materials penetrated;

¹²⁰ R.I. GEN. LAWS § 46-13.1-9 (1996).

¹²¹ R.I. GEN. LAWS §§ 46-13.2-2, -3 (1996).

¹²² R.I. GEN. LAWS § 46-13.2-4 (1996).

- Amount of casing;
- Static water levels; and
- Other information which may be required.¹²³

An exception to required registration for the well driller exists if the driller is also the landowner drilling a well on the landowner's land for the landowner's consumption which by definition includes the landowner's family members, pets, and livestock, or use for farming purposes when the water is not intended for general public consumption or for any other residence. However, no exception exists for drilling records. All drilling records are required and all regulations and codes of construction must be followed.¹²⁴ A hardship exemption may be obtained from the DEM in certain circumstances.¹²⁵ If a well is abandoned after 1987 but is intended to be used again for the supply of groundwater, it must first conform to all new rules and regulations.¹²⁶ Violators of drinking water provisions are criminally charged with a misdemeanor and subject to a fine up to five hundred dollars (\$500.00) for each day of violation, imprisoned up to one (1) year, or both.¹²⁷

13. Rhode Island Water Resources Board

The Water Resources Board (WRB) is assigned the duty of regulating the proper development, protection, conservation, and use of the water resources of the state.¹²⁸ The proper development, protection, conservation, and use of water resources is essential to the health, safety, and welfare of the general public, and to the continued growth and economic development of the state. The state recognizes that:

- This process must be integrated into all statewide planning processes, and the allocation of water resources must be equitably decided and implemented under a process which emphasizes efficiency in an environmentally sound manner;
- In order to retain and encourage the expansion of industries and to attract new industries, and to promote the proper growth and desirable economic growth, the

¹²³ R.I. GEN. LAWS § 46-13.2-5 (1996).

¹²⁴ R.I. GEN. LAWS § 46-13.2-7 (1996).

¹²⁵ R.I. GEN. LAWS § 46-13.2-8 (1996).

¹²⁶ R.I. GEN. LAWS § 46-13.2-9 (1996).

¹²⁷ R.I. GEN. LAWS § 46-13.2-10 (1996).

¹²⁸ R.I. GEN. LAWS § 46-15-1 (1996).

state must play an active role in fostering and guiding the management of water resources; and

- There exists within the state, persons with the capabilities and experience needed in design, construction, operation, and financing of water supply and transmission facilities to approach the overall problem of water resources development in a coordinated manner to realize the proper development, conservation, apportionment, and use of water resources.¹²⁹

14. Rhode Island's Interstate Water Pollution Control Commission

Rhode Island participates in the New England Water Pollution Control Compact coordinated through the office of the attorney general. The compact includes the states of Connecticut, Maine, Massachusetts, New Hampshire, and Vermont. The compact was formed to address water pollution problems stemming from the growth of population and development in these New England states that also resulted in serious pollution of certain interstate streams, lakes, and tidal waters that consist of water flowing past the boundaries of two or more states.¹³⁰

15. Rhode Island Coastal Zone Management Council

The Rhode Island Coastal Zone Management Council (CRMC) was created to protect the fishing rights and shoreline privileges of the citizens of Rhode Island including swimming, gathering of seaweed, and shoreline passage. Rhode Island considers coastal resources as constituting a rich variety of natural, commercial, industrial, recreational, and aesthetic assets of great value to the present and future development of the state and in the best interests of the state to be efficiently developed and utilized through long range planning and management in order to obtain the most benefit for the public. Consistent with Section 1452 of the federal Coastal Zone Management Act (CZMA),¹³¹ the CRMC is responsible for managing the coastal resources and developing and managing the necessary programs to achieve these Rhode Island goals.¹³²

Responsibilities of the CRMC include but are not limited to:

- Establishing, implementing, and enforcing a coordinated dredging policy for natural silt removal from ports, port facilities, channels, harbors, public and private marinas plus boating facilities, recreational facilities, and habitat areas in tidal waters;

¹²⁹ R.I. GEN. LAWS § 46-15-1 (1996).

¹³⁰ R.I. GEN. LAWS § 46-16-1 (1996).

¹³¹ 16 U.S.C. §§ 1451 to 1465 (2000).

¹³² R.I. GEN. LAWS § 46-23-1 (1996 & Supp. 2001).

- Developing, implementing, and maintaining a comprehensive plan for dredge material management and the preservation of submerged lands by requiring legislative approval of:
 - Filling projects involving twenty-five (25) acres or more;
 - Lease of tidal lands; or
 - Any license issued to use those lands;¹³³ and
- Cooperating with the Departments of environmental management, transportation, administration, and health plus the economic development corporation in its duties.¹³⁴

III. AIR QUALITY

Producer Note: While most agricultural operations are not air pollution sources under the federal Clean Air Act (CAA), complaints concerning odor and dust resulting from agricultural operations may occur. These complaints may lead to legal actions filed under state law as against an agricultural producer as a nuisance claims.

A. Rhode Island Air Quality Laws

1. *Rhode Island Clean Air Act*

In Rhode Island, the DEM is responsible for ensuring the state's compliance with the federal Clean Air Act (CAA)¹³⁵ and Rhode Island's own Clean Air Act (RICAA).¹³⁶ The RICAA sets out the state's public policy on air quality as follows:

- To preserve, protect, and improve the state's air resources;
- To promote the public health, welfare, and safety;

¹³³ The CRMC is the sole and exclusive authority for the leasing of submerged and filled lands and for providing licenses for the use of such lands; *see* R.I. GEN. LAWS § 46-23-1. The term "filled lands" means portions of tidal lands which have been rendered by the acts of man to be no longer subject to tidal action or beneath tidal waters; *see* R.I. GEN. LAWS § 46-23-1(3)(i) (1996 & Supp. 2001).

¹³⁴ R.I. GEN. LAWS § 46-23-1(1), (2) (1996 & Supp. 2001).

¹³⁵ 42 U.S.C. §§ 7401 to 7515 (2001).

¹³⁶ R.I. GEN. LAWS §§ 23-23-1 to 28 (2001).

- To prevent injury or detriment to human, plant, and animal life, physical property, and other resources; and
- To foster the comfort and convenience of the state's inhabitants.¹³⁷

The DEM has extensive responsibilities and powers to carry out its duties including:

- Developing comprehensive programs for the prevention, control, and abatement of new or existing pollution based on air quality standards;
- Encouraging and conducting studies and research on air pollution and distributing the results;
- Promulgating air quality standards¹³⁸ as well as rules and regulations regarding air pollution control;
- Holding hearings, issuing subpoenas, administering oaths, and taking testimony as necessary;
- Entering public or private property¹³⁹ at reasonable times and inspecting any motor vehicle to investigate suspected air pollution violation;
- Issuing, modifying, amending, or revoking any orders prohibiting or abating air pollution;¹⁴⁰
- Requiring submission and approving plans, specifications, and other data related to the construction, installation, and modification of air pollution control systems, devices, or facilities capable of becoming a source of air pollution;
- Requiring approvals to operate any potential toxic air contaminant source as well as conducting related inspections, monitoring, compliance certification, and reporting;
- Requiring licenses or permits and correspondent fees to assist in controlling air pollution; and
- Collecting annual operating fees.¹⁴¹

¹³⁷ R.I. GEN. LAWS § 23-23-2 (2001).

¹³⁸ Separate air quality standards exists for ice arenas; *see* Chpt. 23.6.

¹³⁹ But not private residences; *see* R.I. GEN. LAWS § 23-23-5(7) (2001).

¹⁴⁰ Factors considered include among others population density, air pollution levels, and the character and degree of injury to health or physical property; *see* R.I. GEN. LAWS § 23-23-5(8).

¹⁴¹ R.I. GEN. LAWS § 23-23-5 (2001).

A ten (10) member operating permit advisory commission exists to review, advise, and evaluate the collection of operating fees for air emitting sources and the development and administration of the operating permit program.¹⁴²

2. *Rhode Island Air Quality Enforcement*

Investigations of alleged air pollution violations are available as public records. The DEM may enter an order directing any person to adopt, use or properly control a system, device, or means to prevent air pollution. Hearings are held to receive evidence and witnesses before any violation determination is made by the DEM.¹⁴³ Witnesses are expected to cooperate, and in situations where a witness refuses to obey, upon an affidavit of the director of the DEM, the superior court has jurisdiction to issue an order for contempt.

A RICAA violation committed while possessing knowledge of the prohibited activity is criminally punished.¹⁴⁴ Criminal violators are subject to fines up to ten thousand dollars (\$10,000.00) per day of violation, imprisonment up to one (1) year, or both. In addition to any criminally imposed penalties, a civil penalty may also be imposed. A civil violation penalty may range up to ten thousand dollars (\$10,000.00) for each day of violation. Persons providing false statements, representations, and certifications made for any application, record, report, plan, permit, or document filed, maintained, and used for air pollution control are subject to felony criminal charges, fines up to ten thousand dollars (\$10,000.00) per day of violation, imprisonment up to one year, or both fines and imprisonment.

3. *Rhode Island Clean Air Variances*

The director of the DEM has authority to allow a hardship variance in the air pollution control statutes if the person shows that:

- Compliance would constitute undue hardship on the person;
- No correspondent benefit or advantage would be obtained by its enforcement; and
- Variance is consistent with the federal CAA.¹⁴⁵

¹⁴² R.I. GEN. LAWS § 23-23-5.3 (2001).

¹⁴³ R.I. GEN. LAWS § 23-23-6 (2001).

¹⁴⁴ R.I. GEN. LAWS § 23-23-11 (2001).

¹⁴⁵ R.I. GEN. LAWS § 23-23-15 (2001).

The DEM has authority to issue emergency stop orders if there is immediate danger or potential danger to public health or safety. Stop orders must be accompanied by notice and an opportunity for a hearing. The hearing must follow within twenty-four (24) hours of the issuance of the stop order.¹⁴⁶

4. *Rhode Island Open Burning*

The DEM has authority to govern the burning of any material in an open fire that is for the purpose of refuse disposal or salvage, industrial, commercial, or institutional operations, although cities and town may also adopt provisions and ordinances to address open fires. It is the policy of the state to eliminate open burning to the maximum extent possible.¹⁴⁷

In addition to DEM enforcement authority, cities and towns may appoint an air pollution auxiliary monitor. Auxiliary monitors are empowered to investigate complaints of air pollution within the town or city after training by the DEM to recognize, analyze, and describe air pollution.¹⁴⁸

5. *Rhode Island Air Pollution Episode*

To guide an emergency response to possible air pollution episodes that could affect the public's health, safety, and welfare as well as the resources of the state, the Rhode Island legislature enacted the Air Pollution Episode Control Act (APECA).¹⁴⁹ The purpose of the APECA is to prevent or minimize disaster of unforeseen proportions.¹⁵⁰ Generally, the APECA assigns the responsibility to establish standby plans for emission sources of air contaminants to the DEM.

Under the APECA, once the DEM determines that air pollution in any place or area constitutes an unreasonable, emergency risk to anyone, after written communication to the governor and the governor's proclamation of such risk, the governor or the governor's delegate has the power to prohibit, restrict, or condition:

- Motor vehicle travel; retail commercial, manufacturing, industrial, or similar activities; incinerator operations; the burning of any materials in open fires in the area; and

¹⁴⁶ R.I. GEN. LAWS § 23-23-16 (2001).

¹⁴⁷ R.I. GEN. LAWS § 23-23-18 (2001).

¹⁴⁸ R.I. GEN. LAWS § 23-23-28 (2001).

¹⁴⁹ R.I. GEN. LAWS §§ 23-23.1-1 to -11 (2001).

¹⁵⁰ R.I. GEN. LAWS § 23-23.2-2 (2001).

- All other activity in the area which contributes or may contribute to the air pollution emergency.¹⁵¹

Should an air pollution episode occur, maximum publicity of the necessary episode response must occur throughout the state.¹⁵² Enforcement is provided by the DEM, the state council of defense, and the state and local police and air pollution enforcement forces. Reasonable force may be used by authorized enforcement personnel. Reasonable steps may also be taken to assure compliance with enforcement orders including entry to any property or establishment¹⁵³ believed to be violating the order. Enforcement forces may then:

- Stop, detour, reroute, and prohibit motor vehicle travel and traffic;
- Disconnect incinerator or other combustion facilities;
- Terminate all burning activities; and
- Close down or restrict businesses and establishments.¹⁵⁴

Under the APECA, violations for noncompliance with emergency orders or directions during an air pollution episode may be punished by fines up to five hundred (\$500.00), imprisonment up to ninety (90) days, or both for each day of violation. Persons aggrieved by any emergency order or direction may request a public hearing before the DEM to appeal the order or direction if the order or direction is in whole or part unreasonable in view of the prevailing conditions regarding air pollution episode and the likely contribution of any particular activity.¹⁵⁵

IV. SOLID WASTE AND HAZARDOUS WASTE

Producer Note: There are several laws which control the use, disposal, and cleanup of both solid wastes and hazardous wastes. Agricultural producers who use hazardous chemicals, petroleum, or other products stored in storage tanks should be aware of requirements governing their actions.

¹⁵¹ R.I. GEN. LAWS § 23-23.1-5 (2001).

¹⁵² R.I. GEN. LAWS § 23-23.2-6 (2001).

¹⁵³ Except family residences unless accompanied by a judicially issued search warrant.

¹⁵⁴ R.I. GEN. LAWS § 23-23.1-8 (2001).

¹⁵⁵ R.I. GEN. LAWS § 23-23.1-10 (2001).

A. Rhode Island Solid Waste Laws

1. Rhode Island Battery Deposit and Control

The Rhode Island general assembly declares that vehicle batteries are potentially harmful if improperly disposed and, thus, statutes control such battery disposal and encourage statewide recycling of vehicle batteries via a comprehensive plan utilizing battery dealers, distributors, and manufacturers. It is unlawful to dispose vehicle batteries in Rhode Island except through:

- Rhode Island Resource Recovery Corporation (RRC);
- Vehicle battery dealers, distributors, or manufacturers; or
- Privately operated recycling facility licensed by the DEM.¹⁵⁶

The DEM provides a uniform notice sign (8.5 x 11 inches) to all retailers to display to their customers concerning the disposal of vehicle batteries which states that:

- Disposal of vehicle batteries in landfills and incinerators is illegal;
- Vehicle batteries should be recycled; and
- Retailers must accept used vehicle batteries in trade.¹⁵⁷

It is unlawful for dealers to refuse to accept a used vehicle battery from any consumer in exchange for the purchase of a new vehicle battery. The dealer may add a core charge to the purchase price of the battery but must return the core charge when the consumer delivers a used vehicle battery to the dealer within seven (7) days of the purchase date of the new vehicle battery.¹⁵⁸ Furthermore, distributors or manufacturers of vehicle batteries cannot refuse to accept used vehicle batteries from dealers that are of the kind, size, and brand sold by the distributor or manufacturer.¹⁵⁹

Certain types of batteries called dry cell batteries contain toxic heavy metals that are harmful if disposed in municipal solid waste. Batteries containing cadmium mercury, and lead are especially harmful.¹⁶⁰ It is unlawful to dispose nickel-cadmium, mercuric-oxide, or lead-acid

¹⁵⁶ R.I. GEN LAWS § 23-60-6(a) (1997 & Supp. 2001).

¹⁵⁷ R.I. GEN. LAWS § 23-60-6(c) (1997 & Supp. 2001).

¹⁵⁸ R.I. GEN. LAWS § 23-60-3 (1997 & Supp. 2001).

¹⁵⁹ R.I. GEN. LAWS § 23-60-5 (1997 & Supp. 2001).

¹⁶⁰ R.I. GEN. LAWS § 23-60.1-1 (1997 & Supp. 2001).

dry cell batteries in municipal or commercial solid waste facilities. The DEM has a dry cell battery recycling program and collects such batteries.¹⁶¹

A violator of any battery disposal provision is subject to fines up to one thousand dollars (\$1,000.00) for each day of violation.¹⁶²

2. *Rhode Island Vehicle Tire Storage and Recycling*

The Rhode Island general assembly declares that unacceptable risks to the public health and safety occur with:

- Accumulations of stored used vehicle tires;
- Disposals of used vehicle tires by land filling;
- Stockpiling of whole tires; and
- Haphazard dumping of tires.

For this reason, it is necessary to control tire disposal and promote safe recycling or recovery of tires. Used vehicle tires represent a form of recyclable waste and the states encourages recycling.¹⁶³ To encourage tire recycling, a five dollar (\$5.00) deposit is charged for every new tire purchased. The deposit charge is refunded if the new tire purchaser delivers a used tire to the retailer within fourteen (14) days of the new tire purchase date.¹⁶⁴ Lawful methods of disposal include delivery to a facility operated by the Rhode Island RRC or a private recycling or recovery facility licensed by the DEM. An annual licensing fee is charged to these facilities. The fees are deposited into a tire site remediation account. Approximately ninety percent (90%) of the funds is used for tire site remediation, and approximately ten percent (10%) is used to assist cities and town with the collection and disposal of waste tires.¹⁶⁵ The burning of used tires is prohibited, and the storage of more than four hundred (400) used vehicle tires at any

¹⁶¹ R.I. GEN. LAWS § 23-60.1-10 (1997).

¹⁶² R.I. GEN. LAWS § 23-60-8 (1997).

¹⁶³ R.I. GEN. LAWS § 23-63-1 (1997).

¹⁶⁴ R.I. GEN. LAWS § 23-63-4.9 (1997).

¹⁶⁵ R.I. GEN. LAWS § 23-63-4.2 (1997).

one location is prohibited.¹⁶⁶ A violation of waste tire provisions results in fines up to one thousand dollars (\$1,000.00) per day of violation.¹⁶⁷

B. Rhode Island Hazardous Waste Laws

1. Rhode Island Hazardous Substances Act

The Hazardous Substances Act (HSA)¹⁶⁸ was enacted to protect Rhode Island citizens from hazardous materials, particularly those being transported across the U.S.¹⁶⁹ State and local laws regarding hazardous materials are pre-empted by the federal Hazardous Materials Transportation Act (HMTA).¹⁷⁰

The following activities are prohibited by Rhode Island's HSA:

- Introduction, delivery, or acceptance of any misbranded hazardous substances or banned hazardous substance into intrastate commerce;
- Alteration, modification, or destruction of any hazardous substance label that results in misbranding the substance; and
- False guarantees about hazardous substances.¹⁷¹

Upon probable cause, the consumer protection division of the attorney general's office may tag or affix a marking to provide notice that the article is suspected of being misbranded or banned or a hazard is being detained or embargoed.¹⁷² It is unlawful to remove or dispose any such tag or affixed marking without express permission from the attorney general's office. Libel actions are brought following misbranding determinations by the DEM. Any articles which are detained or embargoed and subsequently determined to be misbranded are destroyed.

A violator of hazardous substance provisions is subject to misdemeanor criminal charges as well as fines up to five hundred dollars (\$500.00), imprisonment up to ninety days (90), or

¹⁶⁶ R.I. GEN. LAWS § 23-63-2 (1997).

¹⁶⁷ R.I. GEN. LAWS § 23-63-5 (1997).

¹⁶⁸ R.I. GEN. LAWS §§ 23-24-1 to -15 (2001).

¹⁶⁹ The HSA does not apply to pesticides. Pesticides are addressed by separate statutory provisions.

¹⁷⁰ 49 U.S.C. § 1801 *et seq.* (1994).

¹⁷¹ R.I. GEN. LAWS § 23-24-4 (2001).

¹⁷² R.I. GEN. LAWS § 23-24-5 (2001).

both for each day of violation. For offenders possessing the intent to defraud or mislead or for second time and subsequent offenders, the penalty increases to three thousand dollars (\$3,000.00) per day of violation, imprisonment up to one year, or both.¹⁷³

2. *Rhode Island Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration Act*

In Rhode Island, the Hazardous Waste Reduction, Recycling, and Treatment Research and Demonstration Act (HWRRT) also addresses hazardous waste issues.¹⁷⁴ The HWRRT sets forth the state's policy on hazardous waste:

- The generation of hazardous waste should be reduced or eliminated whenever possible;
- Waste should be recycled, treated, or disposed in a manner that minimizes threats to human health and the environment; and
- The state encourages the research, development, and demonstration of technologies that have the potential to reduce, recycle, and treat hazardous waste.¹⁷⁵

The DEM administers a hazardous waste technology, research, development, and demonstration program which encompasses contracting with and providing grants to universities, governmental agencies, and private organizations for reduction, recycling, and treatment technologies and providing grants to cities, towns, and private organizations for commercial demonstration of reduction, recycling, or treatment technologies.¹⁷⁶ Funds from these grants may be used for personnel, equipment, and administrative costs.¹⁷⁷

The DEM reports the results of such projects to interested parties and a least annually to the governor and the general assembly on the status, funding, and results of all demonstration and research projects. The DEM also recommends any needed legislation including economic and financial incentives which maximize the research, development, and demonstration of hazardous waste reduction, recycling, and treatment technologies.¹⁷⁸

¹⁷³ R.I. GEN. LAWS § 23-24-5 (2001).

¹⁷⁴ R.I. GEN. LAWS §§ 23-19.10-1 to -11 (2001).

¹⁷⁵ R.I. GEN. LAWS § 23-19.10-2 (2001).

¹⁷⁶ R.I. GEN. LAWS § 23-19.10-6 (2001).

¹⁷⁷ R.I. GEN. LAWS § 23-19.10-10 (2001).

¹⁷⁸ R.I. GEN. LAWS § 23-19.10-11 (2001).

3. *Rhode Island Right to Knowledge of Hazardous Substances*

Finding that the health and safety of the people of the state are threatened by the proliferation of hazardous substances and upon the belief that knowledge of what hazardous substances are being produced, used, stored, emitted, discharged, or transported within the state can lead to control of exposure to these substances and remediation of the effects of that exposure, the Rhode Island general assembly enacted the Hazardous Substances Community Right to Know Act (HSCRKA).¹⁷⁹

It is the state's policy that residents of the state have access to all employers' lists of hazardous substances and material safety data sheets. Additionally, the Department of Labor and Training (DLT) makes available information on hazardous discharges or emissions within the state.¹⁸⁰ To access this information, any resident need only make a reasonable request to the DLT for copies of lists of designated hazardous substances and material safety data sheets. These requests may be made in person during normal business hours or by mail. In turn, the DLT obtains the requested material and provides the information within five (5) working days. The director of DLT has the right to refuse unreasonable requests. The DLT is authorized to charge a fee up to ten dollars (\$10.00) for each request together with any copy charges from the information source.¹⁸¹ Any resident who makes a reasonable request for hazardous substance information and does not receive that material within ninety (90) days of the date of the request has the right to take civil action against the employer or employers in question as well as the DLT in order to receive that material including the recovery of any relevant compensatory damages.¹⁸²

Upon written request by the DLT, all employers in the state must provide duplicate copies of lists of designated hazardous substances as well as material safety data sheets within thirty (30) working days of receipt of the request. An employer is not required, however, to submit information to the DLT if that information has been exempted under the trade secret exemption.¹⁸³ One copy is provided to the resident originating the request and the other copy is placed on file with the DLT.¹⁸⁴ When copies of requested hazardous substance lists and material safety data sheets are not received by the DLT within forty (40) days of the request date, the

¹⁷⁹ R.I. GEN. LAWS §§ 23-24.4-1 to 9 (2001).

¹⁸⁰ R.I. GEN. LAWS § 23-24.4-2 (2001).

¹⁸¹ R.I. GEN. LAWS § 23-24.4-4 (2001)

¹⁸² R.I. GEN. LAWS § 23-24.4-8 (2001).

¹⁸³ R.I. GEN. LAWS § 23-24.4-6 (2001).

¹⁸⁴ R.I. GEN. LAWS § 23-24.4-5 (2001).

DLT may use all its enforcement powers available to obtain them.¹⁸⁵ Employers may be reimbursed by DLT for costs incurred in photocopying, however, the employer must submit an billing statement.¹⁸⁶

Any employer who willfully, knowingly, and intentionally violates the provisions of the HSCRKA is subject to fines imposed by the DLT up to one hundred dollars (\$100) for every day of violation. The DLT may impose these fines and enforce the collection if necessary through civil action against the employer and the employer's responsible officers or agents.¹⁸⁷

V. PESTICIDES AND CHEMIGATION

Producer Note: Use of pesticides and other farm chemicals is regulated by federal and state statutes, and most states have some form of licensing or certification requirements controlling those who use pesticides. In addition, most states including Rhode Island have laws that address safety concerns about pesticide use by agricultural employees or around agricultural employees.

A. Rhode Island Pesticide Laws

1. *Rhode Island Pesticide Control Act*

Rhode Island's pesticide legislation is called the Pesticide Control Act (PCA).¹⁸⁸ The purpose of the PCA is to regulate pesticides with respect to the public's best interest. Labeling, distribution, sale, storage, transportation, use, application, and disposal are all addressed by the PCA. Provisions of the PCA are administered by the DEM.

Rhode Island recognizes that pesticides are valuable to the state's agricultural production to protect humans and the environment from insects, rodents, weeds, and other pests. Nonetheless, it is essential to public health and welfare that pesticides be regulated to prevent adverse effects. Improper use of pesticides can cause poisoning as well as plant, crop, or aquatic life damage, and regulation of pesticides is, therefore, necessary.¹⁸⁹

¹⁸⁵ R.I. GEN. LAWS § 23-24.4-6 (2001).

¹⁸⁶ R.I. GEN. LAWS § 23-24.4-5 (2001).

¹⁸⁷ R.I. GEN. LAWS § 23-24.4-7 (2001).

¹⁸⁸ R.I. GEN. LAWS §§ 23-25-1 to - 38 (2001).

¹⁸⁹ R.I. GEN. LAWS § 23-25-3 (2001).

2. *Rhode Island Pesticide Registration*

All pesticides distributed in the state of Rhode Island must be registered annually with the DEM and categorized as to the pesticide's recommended use. Pesticide categories are:

- Consumer protection and health benefits products; or
- Agricultural and other pesticides.

Registration is not required for intracompany shipments of pesticides or for pesticides that have been permitted under the experimental use provision. Registration requires payment of a small fee to fund a pesticide relief fund,¹⁹⁰ and required registration information includes:

- Name and address of applicant and of the person whose name appears on the label;
- Pesticide name;
- Pesticide claims of efficacy;
- Directions for use;
- FIFRA¹⁹¹ use classification; and
- Any other DEM required information.¹⁹²

The DEM makes registration and renewal determinations as well as whether the pesticide:

- Composition warrants the proposed claims;
- Labeling information complies with Rhode Island PCA requirements; and
- Performs its intended function when used in accordance with commonly recognized practices without unreasonable adverse effects on the environment.¹⁹³

¹⁹⁰ After the pesticide relief fund exceeds one million dollars (\$1,000,000.00), the annual fee may be reduced to twenty-five dollars (\$25.00) and deposited in the state's general treasury.

¹⁹¹ Federal Insecticide, Fungicide, and Rodenticide Act; *see* 7 U.S.C. §§136 to 136y (2000).

¹⁹² R.I. GEN. LAWS § 23-25-6 (2001).

¹⁹³ R.I. GEN. LAWS § 23-25-6 (2001).

The DEM has authority to cancel or suspend the registration of any pesticide if the DEM determines that a pesticide or its labeling does not comply with statutory provisions or if it causes unreasonable adverse effects on the environment or an imminent hazard. Any parties aggrieved by DEM determinations may seek judicial review by filing a petition to set aside the decision in superior court within sixty (60) days after entry of the DEM order. DEM findings are upheld when supported by substantial evidence on the record as a whole. The court may remand the matter to the DEM to take further testimony if reasonable grounds exist for failure to adduce certain evidence in the prior hearing. The DEM may subsequently modify its findings and its order filed with the clerk of the court.¹⁹⁴ The DEM also has authority¹⁹⁵ to issue experimental use permits to any person making such application if the DEM determines the applicant needs the permit in order to accumulate information necessary to register a pesticide. Other powers the DEM may exercise in its implementation of the PCA include:

- The determination of whether registered pesticides are highly toxic to humans;
- The promulgation of rules and regulations necessary for the enforcement and administration of the PCA including:
 - Collecting, examining, and subsequent reporting on pesticide and pesticide device sampling;
 - Safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers;
 - Labeling requirements for pesticides required to be registered;
 - Specifying classes of pesticide devices;
 - Prescribing methods of pesticide applications such as time, place, manner, materials, amounts, concentrations, and restricted areas and periods of time in order to prevent damage or injury by drift or misapplication to land, wildlife, humans, animals, beneficial insects, or aquatic life;
 - Providing prior public notification of pesticide applications; and
 - Prescribing regulations for pesticide packaging that addresses local needs and regulations for the coloration of a clear pesticides for safety and protection of health and the environment; and

¹⁹⁴ R.I. GEN. LAWS § 23-25-8 (2001).

¹⁹⁵ Provided the state of Rhode Island is authorized by the U.S. EPA to do so; *see* R.I. GEN. LAWS § 23-25-7 (2001).

- The determination of which pesticides and what quantities are injurious to the environment; and
- The determination of pesticides as to a state limited-use pesticide category, restricted-use category, and a required-certified applicator category.¹⁹⁶

Separate pesticide subcategories may also be established by the DEM to better administer and enforce the PCA according to the application method such as ground, aerial, or manual or according to the type of pesticide such as to control insects, plant diseases, rodents, or weeds. The DEM has authority after due notice and an opportunity for a hearing to declare and list as a pest any form of plant or animal life¹⁹⁷ which is injurious to health or the environment.

3. Rhode Island Pesticide Review and Applicator Standards

The DEM sets forth standards of competency relating to use and handling for the certification of pesticide applicators consistent with those established by U.S. EPA. In establishing applicator standards, the DEM considers each pesticide for the acute dermal and inhalation toxicity; the persistence, mobility, and susceptibility to biological concentration; application or use history which may reflect an inherent misuse or unexpected good safety record which does not always follow laboratory toxicological information; the relative hazards of patterns of use such as granular soil applications, ultra low volume of dust aerial applications, or air blast sprayer applications; and the extent of its intended use.¹⁹⁸

4. Rhode Island General Levels of Prohibited Pesticide Activities

In Rhode Island, it is unlawful to use or supervise the use of a restricted-use pesticide without first complying with certification requirements as well as any other requirements determined to be necessary by the DEM to prevent unreasonable adverse effects on the environment including injury to the applicator or other persons. Nonetheless, a competent person may make an application under the direct supervision of a certified applicator.

In order to lawfully purchase, acquire, possess, apply, or supervise the application of pesticides classified for use only by a certified applicator, one must first be certified or be under the direct supervision of a certified applicator.¹⁹⁹

¹⁹⁶ The required-certified applicator qualification may also be satisfied by supervision by a certified applicator; *see* R.I. GEN. LAWS § 23-25-9 (2001).

¹⁹⁷ Other than humans and other bacteria, viruses, and micro-organisms on or in living humans or animals; *see* R.I. GEN. LAWS § 23-25-9 (2001).

¹⁹⁸ R.I. GEN. LAWS § 23-25-10 (2001).

¹⁹⁹ R.I. GEN. LAWS § 23-25-14 (2001).

It is also unlawful to use a state limited-use pesticide without first complying with the requirement to possess a valid certification for application. A competent person may perform pesticide application under the direct supervision of a certified applicator.

Pesticides must not be used on land without first becoming a licensed commercial applicator unless the applicator is under the direct supervision of a licensed commercial applicator or a certified commercial applicator.²⁰⁰

5. *Rhode Island Commercial Pesticide Applicators*

All commercial pesticide applications must be performed by certified applicators. Without being certified, a commercial applicator may only make pesticide applications of general-use pesticides on land owned or rented by the commercial applicator or the applicator's employer.²⁰¹

The DEM is responsible for adopting rules and regulations regarding the licensing and the certification of pesticide applicators to:

- Establish procedures for filing pesticide license applications;
- Establish pesticide license: (1) qualifications; (2) classifications; (3) standards; and (4) examinations;
- Establish pesticide license fees, terms, and renewal;
- Establish pesticide applicators' limits of liability; and
- Require the display of a decal reflecting that the applicant meets all pesticide application provisions.²⁰²

6. *Rhode Island Pesticide Dealer Licenses*

A person may not lawfully act as a pesticide dealer or advertise, assume, or act as a pesticide dealer without first being licensed by the DEM to do so. A dealer's license is required for each location or outlet in the state. This requirement does not apply to out-of-state manufacturers, registrants, or distributors who only distribute through a licensed pesticide dealer

²⁰⁰ R.I. GEN. LAWS § 23-25-11 (2001).

²⁰¹ R.I. GEN. LAWS § 23-25-12(a)(2001).

²⁰² R.I. GEN. LAWS § 23-25-12(b), -13 (2001).

or one who is not required to obtain a license.²⁰³ Application for a dealer's license requires the applicant to provide:

- Names and addresses of a legal agent in the state, business principals, officers of all distributor firms, partnerships, associations, corporations, groups, or individuals.²⁰⁴

Credentials verifying the dealer's license must be plainly exhibited at each location for restricted-use and state limited-use pesticides. The DEM has authority to require dealer permits to ship restricted-use or state limited-use pesticides within the state, dealer license examinations regarding the knowledge of pesticides and their use, and fees for dealer licenses and renewals.

7. *Rhode Island Pesticide Monitoring*

The DEM conducts a monitoring program of pesticide levels in the environment including fresh and salt waters, soils, crops intended for human or animal consumption, places where food is served commercially or in institutions where food for human or animal consumption is handled, stored, transported, prepared, or processed, and wildlife. Monitored pesticide levels must be reviewed at least annually by the Pesticide Relief Advisory Board.²⁰⁵

8. *Rhode Island Prohibited Acts Involving Pesticides*

The following pesticide related actions and activities are prohibited, and the DEM has authority to suspend, revoke, or modify any pesticide license, permit, or certificate of a violator for:

- False or fraudulent claims of pesticide effects or pesticide methods;
- Pesticide recommendations or pesticide use inconsistent with lawful labeling requirements;
- Application of known ineffective or improper pesticides;
- Operation of faulty or unsafe pesticide equipment;
- Negligent noncompliance, including noncompliance after notice, of PCA provisions and related rules and regulations or any lawful DEM order;

²⁰³ However, direct distribution to certified applicators is not excluded from the dealer license requirement; *see* R.I. GEN. LAWS § 23-25-15 (2001).

²⁰⁴ R.I. GEN. LAWS § 23-25-15 (2001).

²⁰⁵ R.I. GEN. LAWS § 23-25-16 (2001).

- Failure to keep and maintain required pesticide records;
- False or fraudulent pesticide records, invoices, or reports;
- Improper application or use of pesticides that require certified applicators or direct supervision by certified applicators;
- Fraud or misrepresentation in an application or renewal of a pesticide license, permit, or certification;
- Noncompliance with any limitations or restrictions on a duly issued pesticide license, permit, or certification;
- Allowing one's pesticide license, permit, or certification to be used by another person or aiding or abetting an unlicensed or non-certified person to efforts to evade PCA provisions and related rules and regulations;
- False or misleading statements concerning infestation or infection of pests found during or following a pest inspection;
- Impersonation of any federal, state, county, or city inspector or official; or
- Activities which subjected the person to civil or criminal penalties under FIFRA.²⁰⁶

Regarding the distribution of pesticides in the state, it is unlawful²⁰⁷ to distribute:

- Any unregistered or improperly registered pesticide;
- Pesticides with or exhibiting claims of composition different than that represented on its registration;
- Any pesticide not contained in the manufacturer's unbroken immediate container and properly labeled;

²⁰⁶ R.I. GEN. LAWS § 23-25-18(a)(2001).

²⁰⁷ However, the following persons are excluded from the penalties set forth for violations of these provisions: (1) any carrier while lawfully engaged in transporting a pesticide within the state if the carrier allows the DEM to copy all records showing the transactions and movement of the pesticide or devices; (2) federal or state government employees engaged in the performance of their official duties administering state or federal pesticide laws or regulations; (3) the manufacturer, shipper, or distributor engaged in conduct involving an experimental-use only pesticide that is authorized by a valid experimental-use permit; and (4) any person who ships substances tested for pesticide value and toxicity who does not expect benefit in pest control from its use; *see* R.I. GEN. LAWS § 23-25-18(d)(2001).

- Any adulterated or misbranded pesticide or pesticide device;
- Damaged pesticide containers; and
- Any discolored or uncolored pesticide or pesticide not in accordance with PCA or FIFRA provisions.²⁰⁸

Other prohibited activities involving pesticides include:

- Distributing of restricted-use or state limited-use pesticides to uncertified persons or persons without a proper and valid permit;²⁰⁹
- Defacing or altering pesticide labeling or contaminating or altering a pesticide's composition such that it defeats or alters its efficacy or intended result;
- Improperly using or using to one's own advantage any pesticide information when needed to respond to a subpoena, prepare antidotes, or protect trade secrets or other commercial or financial information marked as privileged or confidential by a pesticide registrant;
- Endangering humans and the environment as well as food, feed, or other proximate products by mishandling, transporting, storing, displaying, or distributing pesticides;
- Disposing, discarding, or storing pesticide containers in a manner that would potentially cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects or pollute any water supply, waterway, or water body;²¹⁰ and
- Failing to comply with PCA provisions and related rules and regulations or any lawful DEM order.²¹¹

9. Rhode Island Pesticide Enforcement

DEM representatives have the authority after presenting proper identification to enter any distributor's premises including vehicles of transportation at reasonable times in order to have access to pesticides or pesticide devices packaged and labeled for distribution and to obtain

²⁰⁸ R.I. GEN. LAWS § 23-25-18(b)(2001).

²⁰⁹ Unless that person is an agent of a certified or properly permitted person.

²¹⁰ R.I. GEN. LAWS §§ 23-25-18(c)(5), -19 (2001).

²¹¹ R.I. GEN. LAWS § 23-25-18(c) (2001).

samples of any pesticides or pesticide devices provided a receipt describing the samples obtained is provided to the owner or person in charge and, if requested, also an equal portion of each pesticide sample obtained.

Should subsequent testing of the pesticide samples obtained reveal noncompliance with PCA provisions or related rules and regulations, the DEM provides notice of the violation and any intent to institute criminal proceedings. The person notified is given an opportunity within a reasonable time to present orally or in writing evidence to show the person's compliance or to provide a supporting position to the DEM. Once the DEM determines a violation has occurred, the information is provided to the prosecuting attorney in the county where the alleged violation occurred for prosecution.²¹²

DEM agents or representatives also have the authority to enter upon any public or private premises at reasonable times to:

- Have access to inspect and observe equipment used or being used in pesticide applications;
- Inspect and take samples of pesticides and lands exposed or reported to be exposed to pesticides;
- Inspect storage or disposal areas;
- Investigate complaints of injury to humans or land; and
- Take an affidavit from any person after administering an oath or affirmation of truth that are admissible as evidence in an administrative proceeding or may be used in any prosecution or proceeding for PCA enforcement.²¹³

If the DEM representative is denied access or entry, the DEM representative may apply to any court of competent jurisdiction for a search warrant authorizing access or entry for PCA purposes. The DEM also has authority to bring an action to enjoin a violation or threatened violation in a court of competent jurisdiction in the county where the violation occurred or is about to occur.²¹⁴

When the DEM director has reasonable cause to believe a pesticide or pesticide device is distributed, stored, transported, or used in violation of PCA provisions, the director may issue

²¹² The attorney general may bring an action against a violator should the county or district prosecuting attorney fail to do so; *see* R.I. GEN. LAWS § 23-15-20(d) (2001).

²¹³ R.I. GEN. LAWS § 23-25-20(b) (2001).

²¹⁴ R.I. GEN. LAWS § 23-25-20(e) (2001).

and serve a written stop sale, stop use, or removal order including attachment of the order to the pesticide product or pesticide device with notice to the owner or custodian and the legal registrant. The pesticide or pesticide device so attached may not be sold, used, or removed until compliance of PCA provisions occurs and is released in writing by the DEM director or representative or ordered disposed by a court of competent jurisdiction.²¹⁵

After a stop sale, stop use, or removal order is served, a legal action may be filed for adjudication in a superior court in the county where the alleged violation occurred. The court may issue temporary or permanent injunctions as it deems necessary. The court may also order condemnation of any pesticide or pesticide device that does not meet PCA requirements. A condemned pesticide or pesticide device may be disposed by destruction or sale²¹⁶ with any proceeds deposited to the general treasury, or the court may direct that the pesticide or pesticide device be delivered to the owner for relabeling, reprocessing, removal from the state, or otherwise brought into compliance with the PCA. Upon a decree of condemnation, the claimant of the condemned property must pay court costs, fees, storage, and other proper expenses.²¹⁷

10. Rhode Island Pesticide Record Keeping

Licensed dealers are required to keep accurate records on:

- Delivery, movement, or storage of any restricted-use or state limited-use pesticide including the quantity;
- Date of shipments and receipts;
- Consignor's name and consignee's name and certification number; and
- Other information as the DEM may designate.²¹⁸

A licensed dealer must allow DEM representatives access to pesticide records at any reasonable time in order to copy the records for PCA enforcement. DEM representatives must treat the records as confidential information.²¹⁹

Certified applicators must maintain application records for restricted-use pesticides and state limited-use pesticides for two (2) years from the date of application and may be required by

²¹⁵ R.I. GEN. LAWS § 23-25-21 (2001).

²¹⁶ The pesticide or pesticide device may not be sold contrary to the PCA.

²¹⁷ R.I. GEN. LAWS § 23-25-22 (2001).

²¹⁸ R.I. GEN. LAWS § 23-25-23(a) (2001).

²¹⁹ R.I. GEN. LAWS § 23-25-23(b) (2001).

the DEM to keep records on all pesticides. The certified applicator, upon request by the DEM, must immediately furnish the DEM with a copy of the pesticide application records.²²⁰

Licensed commercial applicators may be required by the DEM to maintain records for two (2) years following the date of application of all pesticides. The DEM is authorized to specify in its regulations what particular information is required. The licensed commercial applicator, upon request by the DEM, must immediately furnish the DEM with a copy of the pesticide application records.²²¹

The DEM has authority to regulate certified and licensed pesticide applicators and to develop and administer plans for training and certification of pesticide applicators consistent with federal standards.²²²

The DEM may cooperate with land grant universities or other educational institutions by publishing information and conducting short courses covering the knowledge of pesticides required by the PCA. The DEM may publish results of any pesticide analysis based upon its official samples taken compared with manufacturer information although individual information must not be made public.²²³

The DEM has authority to require reporting of significant pesticide accidents or incidents.²²⁴ The DEM may issue subpoenas to compel attendance of witnesses and the production of books, document, and records for any hearing affecting a license, registration, certification, or permit issued under the PCA.²²⁵

11. Rhode Island Protective Clothing and Equipment Rules

The director of the DEM may promulgate rules and regulations requiring the use of protective clothing and equipment by any person operating equipment for the application of any pesticide, insecticide, fungicide, herbicide, and rodenticide.²²⁶

²²⁰ R.I. GEN. LAWS § 23-25-23(c) (2001).

²²¹ R.I. GEN. LAWS § 23-25-23(d) (2001).

²²² R.I. GEN. LAWS § 23-25-24 (2001).

²²³ R.I. GEN. LAWS § 23-25-25 (2001).

²²⁴ R.I. GEN. LAWS § 23-25-26 (2001).

²²⁵ R.I. GEN. LAWS § 23-25-27 (2001).

²²⁶ R.I. GEN. LAWS § 23-25-36 (2001).

12. Rhode Island Pesticide Penalties

Civil penalties for violations of the PCA may be assessed up to ten thousand dollars (\$10,000.00) for each offense. The DEM may also, in addition to any civil penalty, ban businesses or commercial applicators from providing pest control services up to five (5) years for violations of the PCA or related rules and regulations regarding the mixing or application of pesticides. Any person charged with an alleged violation must first be notified and given an opportunity for a hearing on the matter before a penalty is assessed. The size of the business, the ability of the person to continue the business, and the gravity of the violation are factors that are considered before the penalty is assessed.

A person who knowingly violates the PCA is guilty of a misdemeanor and may be fined up to twenty-five thousand dollars (\$25,000.00), imprisoned up to sixty (60) days, or both.

Persons with an intent to defraud or who use or reveal information relating to pesticide formulas may be fined up to ten thousand dollars (\$10,000.00), imprisoned up to three (3) years, or both.²²⁷

13. Rhode Island Pesticide Relief Fund

To prevent public health, safety, and welfare from being jeopardized through possible contamination of drinking water by pesticides, the state of Rhode Island established a pesticide relief fund²²⁸ after taking the position that such a remedy might be beyond the financial resources of the persons affected. Monies in the pesticide relief fund originate from pesticide registration fees and appropriations from the state legislature as well as grants, gifts, bequests, donations, or other public and private sources. The specific purposes of the pesticide relief fund are:

- To provide both emergency relief for pesticide contamination; and
- To provide financial support for pest control methods that reduce or eliminate reliance upon chemical pesticides.

In particular, the pesticide relief fund provides emergency response activities related to the contamination of land, water, and buildings. This includes testing and monitoring²²⁹ plus services and supplies including carbon filters, bottled water, and alternate water supplies or other

²²⁷ R.I. GEN. LAWS § 23-25-28 (2001).

²²⁸ Thirty-five percent (35%) of funds is reserved for grants with no one grant to municipalities for the direct costs of expanding a public water system or no one grant for IPM research and educational projects to exceed one-fourth (1/4) of the amount available as the thirty-five (35%) percent portion and no award of relief to any one household for emergency response activities related to contaminated land, water, and buildings to exceed ten thousand dollars (\$10,000.00); *see* R.I. GEN. LAWS § 23-25.25(c) (2001).

²²⁹ Soils, water, crops, livestock, and wildlife may be monitored and analyzed.

suitable measures; grants to municipalities to replace existing contaminated domestic water supplies; Integrated Pest Management (IPM) research and educational projects including control of mosquitos, gypsy moths, urban pests located in public buildings, private commercial buildings, and on farms; and necessary ancillary services, personnel, and equipment.²³⁰

The Pesticide Relief Advisory Board consists of eleven (11) members, one (1) legislative member, the chairperson of the Joint Committee on the Environment or designee and ten (10) appointed public members as follows: one member appointed by the lieutenant governor, one, by the speaker of the house, and one, by the president of the senate; one member engaged in full time vocation as an agricultural farmer appointed by the lieutenant governor; and a faculty member in the Department of Plant Pathology and Entomology at the University of Rhode Island, a professional toxicologist or physician with sufficient experience in public health relating to pesticides or toxicology, a faculty member in environmental studies at a Rhode Island college or university, a representative of the urban pest control industry or the chemical or pesticide industry, and two members of the community at large all appointed by the governor.²³¹

The Pesticide Relief Advisory Board makes recommendations to the DEM regarding the fund and provides advice on pesticides and public health dangers associated with pesticide use.²³² The pesticide relief advisory board makes recommendations to the DEM concerning proper responses to pesticide contamination and grants for IPM projects, and the board also advises the DEM concerning:

- Policies, plans, and goals of DEM administration of the PCA including its related rules and regulations;
- Pesticide monitoring program;
- Health hazards and potential health hazards of pesticides in use;
- Methods involving the least hazardous means of controlling pests;
- New pesticide applications;
- Which pesticides and chemicals should be tested in public water supply samples;
- Which pesticides and chemicals require greater control than required by the federal label;

²³⁰ R.I. GEN. LAWS § 23-25.2-5 (2001).

²³¹ R.I. GEN. LAWS § 23-25.2-3 (2001).

²³² R.I. GEN. LAWS § 23-25.2-1 (2001).

- Application setback distances from domestic water wells; and
- Other advisory functions as assigned by the DEM director.²³³

VI. PROTECTION OF WILDLIFE

Producer Note: Agricultural producers have responsibilities concerning wildlife and migratory birds which may have habitat on the producer's property. Federal and state laws contain measures designed to protect or enhance wildlife and wildlife habitat.

A. Rhode Island Wildlife Protection Laws

Producer Note: Many states have laws and regulations that either enhance the protections under federal laws or address issues peculiar to wildlife found within the state. States also may address frequent problems caused by wildlife. Rhode Island has laws protecting wildlife.

1. *Rhode Island Wildlife Policy*

The Rhode Island general assembly declares that animal life inhabiting the lands of the state, its lakes, ponds, streams, and rivers, and the marine waters within its territorial jurisdiction, are a precious renewable, natural resource of the state which should be managed by enlightened techniques in order to develop, preserve, and maintain the beauty and mystery that wild animals can bring to the environment.

Because management practices and conservation practices affect fish and wildlife populations, the state establishes hunting and fishing seasons and imposes limits regarding size and the number that may be taken.²³⁴

Together with the Marine Fisheries Council,²³⁵ the DEM has management authority and responsibility over the fish, wildlife, lobsters, shellfish, and other biological resources of marine

²³³ R.I. GEN. LAWS § 23-25.2-4 (2001).

²³⁴ R.I. GEN. LAWS § 20-1-1 (1998).

²³⁵ The Marine Fisheries Council consists of the director of the DEM and eight (8) private citizens appointed by the governor with the advice and consent of the senate for their skill, knowledge, and experience in the commercial and sport fishing industry as well as the conservation and management of fisheries resources. The chairperson of the Coastal Resources Management Council and the division chiefs of enforcement and fish and wildlife within the DEM serve in an advisory capacity to the Marine Fisheries Council; *see* R.I. GEN. LAWS § 20-3-1 (1998 & Supp 2001).

waters of the state.²³⁶ The director of the DEM appoints conservation officers to detect and prosecute violations of wildlife provisions. Deputy wardens may also be appointed. Deputy wardens do not, however, carry pistols or revolvers.²³⁷

The DEM representatives and conservation officers have authority over most public and private lands and water bodies within the state to enforce all laws, rules, and regulations of the state pertaining to:

- Fish and wildlife including vertebrate and invertebrate animals and plants;
- Solid and hazardous wastes;
- Boating and water safety;
- Firearms;
- Littering;
- Protection of forests from fire, hazards, and trespass;
- Agriculture;
- Farmland; and
- Pest control.²³⁸

In order to enforce fish and wildlife provisions and related rules and regulations, DEM representatives and conservation officers also have authority to:

- Issue summons;
- Execute warrants and search warrants;
- Issue and serve subpoenas for trial;
- Make arrests;

²³⁶ R.I. GEN. LAWS § 20-1-2 (1998 & Supp 2001).

²³⁷ R.I. GEN. LAWS § 20-1-7 (1998).

²³⁸ R.I. GEN. LAWS § 20-1-8 (1998).

- Seize any hunting paraphernalia fish or wildlife unlawfully taken, possessed, or controlled as well hunting paraphernalia. The DEM representative and conservation officers may also bring charges against persons for the following criminal offenses:
- Assault;
- Assault with a dangerous weapon;
- Larceny;
- Vandalism;
- Obstructing an officer's execution of duty;

A violation of an officer's oral command or order in the performance of official duty is punishable by a fine up to five hundred dollars (\$500.00), imprisonment up to thirty (30) days, or both.²³⁹ Any equipment, implements, appliances, or hunting paraphernalia used in a knowing and willful violation of any law, rule, or regulation relating to fish or wildlife is subject to forfeiture to the state by the attorney general's office.²⁴⁰ Property confiscated may be retained by the DEM or sold. Any proceeds remaining after proper expenses of the proceedings for forfeiture and sale are paid into to the general treasury.

Penalties for violations include misdemeanor charges plus fines up to five hundred dollars (\$500.00) imprisonment up to ninety (90) days, or both.²⁴¹

2. *Rhode Island Wildlife Collector Permits*

The DEM is authorized to issue special permits for the taking, handling, and/or possession of any species of wild animal of any size, age, and number as may be appropriate to persons for the purpose of carrying out scientific experiments or cultivation projects for which the director has responsibility. Regarding permits, failure to abide by the provisions of any permit or failure to report any required information is cause for suspension or revocation of the permit.²⁴²

²³⁹ R.I. GEN. LAWS § 20-1-8 (1998).

²⁴⁰ R.I. GEN. LAWS § 20-1-8.1 (1998).

²⁴¹ R.I. GEN. LAWS § 20-1-16 (1998).

²⁴² R.I. GEN. LAWS § 20-1-18 (1998).

3. *Rhode Island General Wildlife Licensing*

The DEM is authorized to issue licenses for hunting, fishing, and the taking of fish, game, birds, shellfish, lobsters, or other wild animals within the state and its territorial waters. The DEM may also appoint bonded operators of sporting goods stores to act as agents with authority to issue licenses.²⁴³

All monies derived from freshwater fishing, hunting, and combination licenses and permits²⁴⁴ are appropriated to the DEM for the protection and propagation of fish and game including:

- Leasing and purchase of land and rights-of-way to streams and ponds to be stocked with fish for public fishing;
- Stream improvements;
- Enforcement of fish and game laws; and
- Lease and purchase of land conservation easements for creating wildlife reservations and protecting wildlife habitats.²⁴⁵

4. *Rhode Island Fish and Wildlife Restoration Projects*

Regarding fish and wildlife restoration, Rhode Island has state legislation that parallels federal restoration legislation²⁴⁶ The DEM is authorized, empowered, and directed to perform those acts that may be necessary to establish cooperative wildlife restoration, fish restoration, and fish management projects under the U.S. Secretary of the Interior and to use funds from hunter license fees or interest from license fee accounts to in administering the Division of Fish and Wildlife (DFW) within DEM.²⁴⁷

²⁴³ R.I. GEN. LAWS § 20-2-1 (1998).

²⁴⁴ However, two dollars from the sale of each license goes to a special fund for the purpose of acquiring and developing fish and wildlife lands.

²⁴⁵ R.I. GEN. LAWS § 20-2-7 (1998).

²⁴⁶ An Act to Provide that the United States Shall Aid the States in Wildlife Restoration Projects, and for Other Purposes and An Act to Provide that the United States Shall Aid the States in Fish Restoration and Management Projects, and for Other Purposes; *see* 16 U.S.C. §§ 669 to 669j (2000) and §§ 777 to 777i (2000).

²⁴⁷ R.I. GEN. LAWS §§ 20-9-1, -3 (1998).

5. *Rhode Island Waterfowl and Trout*

Rhode Island deposits all waterfowl stamp receipts and all receipts from the sale of waterfowl stamp by-products in a special waterfowl fund. The funds are expended for waterfowl habitat, acquisition, improvement, and research projects.²⁴⁸

Rhode Island deposits all trout stamp receipts and all receipts from the sale of trout stamp by-products in a special trout conservation fund. The funds are expended for operations and trout habitat, acquisition, improvement research, and culture projects.²⁴⁹

6. *Rhode Island Wildlife Management Areas*

The DEM has authority to acquire land within the state by gift, lease, purchase, or easement for the purpose of protecting, conserving, cultivating, or propagating any species of wildlife, plant, or animal. With any landowner's permission, the DEM may also control any land with suitable character for those purposes. The DEM conspicuously designates these areas as a state park or a state management area. No hunting, trapping, pursuing, taking, killing or attempts of killing, molesting, or destroying is allowed of any wild birds, their nests or eggs, or wild animals within the exterior boundaries of a state management area, park, or land held in trust for public use except for situations where the DEM authorizes in writing a deputy or the landowner or occupant of such land to hunt, pursue, take, or kill any wild bird or animal which is not protected by law and then only in a manner that is consistent with the laws relating to seasons, bag limit, and size limit and is not detrimental to its species or other species, to agriculture or other plant life, or to humans.²⁵⁰ Park police and conservation officers also enforce these provisions.

7. *Rhode Island Nongame Wildlife Fund*

A Nongame Wildlife Fund exists which is capitalized by monies collected from state taxpayers through a voluntary check-off tax refund program²⁵¹ that is used for research, management, protection, inventory, and establishment of a body of ecological information pertaining to nongame wildlife species. It is the view of the Rhode Island general assembly that:

²⁴⁸ R.I. GEN. LAWS § 20-2-38 (1998).

²⁴⁹ R.I. GEN. LAWS § 20-2-43 (1998).

²⁵⁰ R.I. GEN. LAWS §§ 20-18-1 to -3 (1998).

²⁵¹ Other sources of money such as grants, gifts, and donations may also be used.

- A diversified, stable, clean, and aesthetically satisfying natural environment is essential to the health, safety, and welfare of the people of Rhode Island;
- Such an environment contributes significantly to economic and social development and progress of the state and provides considerable value for educational, scientific, recreational, and other purposes;
- Diverse and numerous species in native floral and fauna populations is a key to maintaining a health, stable, and productive natural environment;
- Rhode Island has a distinctive natural community of living things worthy of protection;
- The existence of many individual species of animals and plants within Rhode Island are threatened by the intentional and unintentional activities of humans in the course of their daily affairs; and
- The means by which nongame wildlife research and management may be financed through a voluntary check off program should be provided.²⁵²

Funds may be expended for uses that include such things as habitat acquisition, educational programs, personnel needs, enforcement of nongame wildlife laws, planning, writing, and implementation of management programs, utilization of funds from other sources, and cooperation with other programs with similar or parallel objectives. The nongame monies are not used for animal control programs nor activities related directly to game or domestic animals.²⁵³

8. *Rhode Island Game Bird and Animal Husbandry*

Rhode Island allows the artificial propagation or husbandry of game birds and animals if the activity is accompanied by a game propagation permit. The birds or animals so produced must be tagged for identification with tags or seals supplied to the permittee by the DEM. Birds and animals properly tagged may be possessed, transported, bought, and sold during any season of the year.²⁵⁴ However, the commercial selling and raising of birds and animals requires a

²⁵² R.I. GEN. LAWS § 20-18.1-1 (1998).

²⁵³ R.I. GEN. LAWS § 20-18.1-3 (1998).

²⁵⁴ R.I. GEN. LAWS § 20-17-1 (1998). Game birds and animals sold by a meat dealer to a hotel, restaurant, boarding house, or club for their patrons or customers for actual consumption without a license being required for the sale; *see* R.I. GEN. LAWS § 20-17-6 (1998).

commercial game propagation permit²⁵⁵ and the keeping of proper sales records.²⁵⁶ Records must be available for DEM inspection.

The DEM may prohibit or otherwise regulate the importation of any live fish, birds, or animals from any other state or foreign country if the fish and game are not already regulated by the DOH.

9. Rhode Island Endangered Species

Rhode Island's policy on endangered species of animals and plants is to maintain a high quality environment within the state for the benefit of the safety, health, and welfare of its citizens by forbidding the importation, sale, offering for sale, transportation, storage, traffic, ownership or other possession or use of any dead or live animal or plant or part of its skin or body²⁵⁷, of any species of animal or plant listed under the federal Endangered Species Act (ESA).²⁵⁸ An exception may be made only by the DEM for purposes of scientific research or educational display which must be performed with formal supervision of a legitimate college or university and a special permit for each individual excepted species. Permits are not issued for any commercial endeavors.²⁵⁹ The director and enforcement personnel within the DEM, state police, and city and town law enforcement authorities have power to enforce this provision. They may also search for and seize any goods, merchandise, or animals sold, used, or possessed or any property used in connection with a violation. Upon conviction, a violator may be fined up to five thousand dollars (\$5,000.00), imprisoned up to one (1) year, or both.²⁶⁰

B. Rhode Island Aquaculture

The state's constitution guarantees the right to enjoy and freely exercise all rights of fishery, and it imposes the responsibility for the general assembly to provide for the conservation of water, plant, and animal resources of the state. It is the general public policy of the state to preserve the waters for free and common fishery and to restrict aquaculture. This policy is maintained for the health, welfare, environment, and general well being of the people of the state. Furthermore, because it is in the best interest of the people and the state, the process of

²⁵⁵ R.I. GEN. LAWS § 20-17-2 (1998).

²⁵⁶ R.I. GEN. LAWS § 20-17-3 (1998).

²⁵⁷ Whether raw, manufactured, processed, or preserved.

²⁵⁸ 16 U.S.C. §§ 1531 *et seq.* (2000).

²⁵⁹ R.I. GEN. LAWS § 20-37-3 (1998).

²⁶⁰ R.I. GEN. LAWS § 20-37-5 (1998).

aquaculture should be consistent with free and common fishery and navigation as well as compatible with the environment of the waters of the state.²⁶¹

The Coastal Resources Management Council (CRMC) promulgates and administers aquaculture rules and regulations. The CRMC also grants coastal water and land based aquaculture permits. The permits are for ten (10) year periods and are renewable for successive ten (10) year periods. Applications for permits must include:

- Name and address of applicant;
- Description of location and amount of submerged land and water column to be subject to the permit;
- Description of the aquaculture activities to be conducted, e.g., experimental or commercial, species managed or cultivated, method or manner of aquaculture activity;
- Assessment of current capability of applicant to carry out those activities; and
- Any other information deemed necessary by the CRMC.²⁶²

In considering approval for an aquaculture permit, the CRMC obtains recommendations by the DEM and the Marine Fisheries Council (MFC) and also determines whether the proposed activities are:

- Not likely to cause an adverse effect on marine life;
- Not likely to have an adverse effect on the vitality of indigenous fisheries of the state; and
- Consistent with competing uses engaged in marine fishing.²⁶³

Any plant or animal species cultivated under an aquaculture permit within the designated, permitted area become the personal property of the permittee,²⁶⁴ however, if the DEM has cause to believe the aquaculture activity is causing or is likely to cause an immediate danger to marine life or the environment of the coastal waster, the CRMC may order all permittees to temporarily

²⁶¹ R.I. GEN. LAWS § 20-10-1(1998).

²⁶² R.I. GEN. LAWS § 20-10-4 (1998).

²⁶³ Permits are also subject to any public hearings; *see* R.I. GEN. LAWS § 20-10-5 (1998).

²⁶⁴ R.I. GEN. LAWS § 20-10-12 (1998 & Supp. 2001).

or permanently terminate their aquaculture activities and remove any paraphernalia from the waters and seize any plant and animal species.²⁶⁵

Permits must also be obtained for the animal or plant species utilized in aquaculture. Permits for bivalve species for human consumption must have written approval by the director of health.²⁶⁶

Penalties are imposed for persons who conduct aquaculture activities in excess of their permit include criminal misdemeanor charges as well as the forfeiture of any works, improvements, and fish, animal or plant life and fined up to five hundred dollars (\$500.00), imprisonment up to one (1) year, or both.²⁶⁷ Similar penalties may be imposed upon anyone who interferes with an aquaculture permitted area or operation.

VII. OTHER RHODE ISLAND STATUTES AFFECTING AGRICULTURE

Producer Note: Many other state statutes have the potential of impacting agricultural operations and their relationship to the environment. The following is a brief discussion of some of these state laws in Rhode Island.

A. Rhode Island Right to Farm Act

Rhode Island has a right to farm law. Rhode Island's Right to Farm Act (RTFA)²⁶⁸ was enacted in 1982. The general assembly based the RTFA upon its findings that:

- Agricultural operations²⁶⁹ are valuable to the state's economy and the general welfare of the state's people;
- Agricultural operations are adversely affected by the random encroachment of urban land uses throughout rural areas of the state;
- From random encroachments, conflicts have arisen between traditional agricultural land uses and urban land uses; and

²⁶⁵ R.I. GEN. LAWS § 20-10-14 (1998).

²⁶⁶ R.I. GEN. LAWS § 20-10-12 (1998 & Supp. 2001).

²⁶⁷ R.I. GEN. LAWS § 20-10-16 (1998).

²⁶⁸ R.I. GEN. LAWS §§ 2-23-1 to -7 (1998 & Supp. 2001).

²⁶⁹ The term "agricultural operations" means any commercial enterprise which has as its primary purpose horticulture, viticulture, viniculture, floriculture, forestry stabling of horses, dairy farming, or aquaculture, or the raising of livestock furbearing animals, poultry, or bees; *see* R.I. GEN. LAWS § 2-23-4 (1998).

- Conflicts between agricultural and urban land uses threaten forced abandonment of agricultural operations and conversion to non-agricultural land uses and leads to permanent loss of these agricultural resources from the state's economy as well as losses of human and physical environments of the state.²⁷⁰

The RTFA primarily provides agricultural operations in the state with some protection from nuisance law suits arising out of conflicts between agricultural operations and urban land uses caused by:

- Odor from livestock, manure, fertilizer, or feed occurring on an agricultural operation that implements generally accepted farming procedures and practices;
- Noise from livestock or farm equipment when it results from normal and generally accepted farming procedures;
- Dust created during plowing or cultivation operations; or
- Use of pesticides, rodenticides, insecticides, herbicides, or fungicides.²⁷¹

The RTFA also represents a statement of policy that farming activities and activities incidental to farming ought not to be arbitrarily prohibited based on the objectionability of that activity or that it may be considered a nuisance by surrounding landowners or the municipality.²⁷² Furthermore, the general assembly prohibits any city or town directional sign or display ordinance from being enforced against any agricultural operation that otherwise complies with lawful placement of signs or displays when those signs or displays relate to the agricultural operation's seasonal agricultural needs.

The RTFA, however, does not protect agricultural operations conducted in a malicious or negligent manner or to operations that violate federal or state pesticide laws that includes rodenticides, insecticides, herbicides, or fungicides.²⁷³

²⁷⁰ R.I. GEN. LAWS § 2-23-2 (1998).

²⁷¹ R.I. GEN. LAWS § 2-23-5 (1998).

²⁷² R.I. GEN. LAWS § 2-23-5 (1998 & Supp. 2001).

²⁷³ R.I. GEN. LAWS § 2-23-6 (1998).

1. Rhode Island Seed Act and Noxious Weeds

Rhode Island does not have a noxious weed law but, the state does regulate noxious weed seeds²⁷⁴ through import restrictions and seed labeling requirements and the Rhode Island Seed Act (SA).^{275, 276} The SA governs all agricultural and vegetable seeds in the state. Under the SA, the percentage of all weed seeds must be shown on the label of any agricultural or vegetable seed package as well as the name and rate of occurrence per pound of each kind of restricted noxious weed seed²⁷⁷ present.²⁷⁸

For each person whose name appears on an agricultural or vegetable seed label must keep complete records for a period of two (2) years on each lot of agricultural or vegetable seed handled and maintain on file for one (1) year a sample of each lot of seed after final disposition of the lot. All records and samples pertaining to shipments must be accessible for inspection by the DEM during customary business hours.²⁷⁹

Exemptions exist for:

- Seed or grain not intended for sowing purposes;
- Seed stored in or being transported or consigned to a cleaning or processing establishment for cleaning or processing when the invoice or labeling accompanying any shipment of the seed bears the statement "seed for processing" and any labeling or other representation made with respect to the uncleaned or unprocessed seed; and
- Any carrier in the ordinary course of its business with respect to any seed transported or delivered for transportation provided the carrier is not engaged in producing, processing, or marketing agricultural or vegetable seeds subject to other noxious seed provisions; and

No person may be penalized for having sold or offered or exposed for sale agricultural or vegetable seeds which were incorrectly labeled or represented as to kind, variety, type, or origin

²⁷⁴ The term "weed seeds" means the seeds of all plants generally recognized as weeds within this state and includes noxious weed seeds; *see* R.I. GEN. LAWS § 2-6-2(22) (1998). The term "prohibited noxious weed seeds" means the seeds of perennial weeds that not only reproduce by seed but also spread by underground roots, stems and other reproductive parts, and which, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice; *see* R.I. GEN. LAWS § 2-6-2(12) (1998).

²⁷⁵ R.I. GEN. LAWS §§ 2-6-1 to 10 (1998).

²⁷⁶ R.I. GEN. LAWS §§ 2-6-3, -4 (1998).

²⁷⁷ The term "restricted noxious weed seed" means the seed from weeds that are objectionable in fields, lawns, and gardens of this state but can be controlled by good cultural practices. R.I. GEN. LAWS § 2-6-2(15) (1998).

²⁷⁸ R.I. GEN. LAWS § 2-6-3(3)(v) (1998).

²⁷⁹ R.I. GEN. LAWS § 2-6-5 (1998).

(if required) where seeds cannot be identified by examination unless the person did not obtain an invoice, a genuine grower's declaration, or other labeling information and take any other reasonable precautions to insure the identity of that seed be stated.²⁸⁰

To enforce the Rhode Island Seed Act (SA), the DEM has the authority to:

- Set forth the adopt rules and regulations governing the methods and procedures used to determine SA violations after providing public notice and a public hearing on these matters;
- Sample, inspect, analyze, and test agricultural and vegetable seeds for sowing purposes that are transported, sold, or offered for sale at any time and place and to any extent necessary to determine whether the seeds comply with the SA and upon the determination of a violation, to promptly notify any person acting in violation of the SA;
- Establish the list of restricted noxious weed list and a prohibited noxious weed list;
- Set reasonable standards of germination for vegetable seeds;²⁸¹
- Enter private and public premises during regular business hours or any truck or other conveyance at any time to access seeds and associated records to determine compliance with the SA;
- Issue and enforce stop sale orders to an owner or custodian of any lot of seed which is found in violation of the SA to prevent further sale, processing, and movement of the seed until the stop order is released by the DEM;²⁸²
- Establish and maintain or provide for seed testing facilities for SA compliance enforcement purposes;
- Provide for purity and germination tests of seeds for farmers and dealers upon their request and establish rules and regulations governing this testing as well as charges for the test; and
- Cooperate with the USDA and all other agencies in seed law enforcement.²⁸³

Any lot of agricultural or vegetable seed not in compliance with the SA is subject to seizure upon the complaint of the director of the DEM to a court of competent jurisdiction where

²⁸⁰ R.I. GEN. LAWS § 2-6-6 (1998).

²⁸¹ R.I. GEN. LAWS § 2-6-7(a) (1998).

²⁸² However, the owner or custodian of the seed has a right to appeal from the stop order to a court of competent jurisdiction in the locality where the seeds are found.

²⁸³ R.I. GEN. LAWS § 2-6-7(b) (1998).

the seed is located. If a violation is found, the court may order the seed condemned in which case, it is denatured, processed, destroyed, relabeled, or otherwise disposed but only after the owner or controller of the seed has an opportunity to apply to the court for the release of the seed or permission to process or relabel it in compliance with the SA.²⁸⁴

Violations of the SA are deemed misdemeanors and punishable by fines up to one hundred dollars (\$100.00) for the first offense and up to two hundred fifty dollars (\$250.00) for subsequent offenses. Alleged offenders are not prosecuted without first having an opportunity to appear before the DEM to introduce evidence at a private hearing. If after the hearing or after the time set for a hearing where the alleged offender fails to appear, the director determines the evidence warrants prosecution, the director files a view of prosecution with the attorney general who then institutes the prosecution upon the attorney general's consensus. Judgments established against a violator are published by the DEM for public information.²⁸⁵

2. *Rhode Island Ballast Water*

Regarding the concern of contaminated ballast water of shipping vessels and Rhode Island's policy toward this problem including invasive species, the general assembly has determined that:

- The waters of the state are a precious, irreplaceable resource that is essential to the environment, commerce, and recreation of citizens and tourists of the state;
- Non-indigenous aquatic species introduced into waters of the United States from ballast water have caused tremendous environmental and ecological damage, displacing native species, degrading water quality, and interfering with commerce, including the zebra mussel brought into the Great Lakes and the upper Susquehanna River;
- Ballast water practices of commercial shipping vessels may cause irreversible damage to waters of the state; and
- Protective measures against the introduction of non-indigenous aquatic species from ballast water are necessary to minimize exposure of the waters of the state to unwanted contamination and damage caused by these species.²⁸⁶

The general assembly places the responsibility upon the DEM to develop and maintain a ballast water management program that includes policies related to invasive species.²⁸⁷

²⁸⁴ R.I. GEN. LAWS § 2-6-8 (1998).

²⁸⁵ R.I. GEN. LAWS § 2-6-10 (1998).

²⁸⁶ R.I. GEN. LAWS § 46-17.3-1(1996 & Supp. 2001).

²⁸⁷ R.I. GEN. LAWS § 46-17.3-2 (1996 & Supp. 2001).

Appendix A - Agencies

Producer Note: State and federal agencies are available to answer questions regarding environmental matters and a producer's compliance with environmental laws and regulations. The following is a list of agencies which should be able to answer questions or provide materials for a producer.

Federal Agencies: (see federal section)

Located in Rhode Island

Natural Resource Conservation Service:

60 Quaker Lane, Suite 46
Warwick, RI 02886-0111
(401) 828-1300
(401) 828-0433 fax

State Agencies:

Coastal Resources Management Council

4808 Tower Hill Road
Wakefield, RI 02879
(401) 783-3370
(401) 783-3767 fax

Department of Environmental Management (DEM)

235 Promenade Street
Providence, RI 02908-5767
(401) 222-6800
(401) 222-3810 fax

3 Bureaus within DEM

1. Bureau of Policy & Administration
(401) 222-2774

5 Subdivisions within Bureau P & A

i. Human Resources

(401) 222-2774

ii. Information Management

(401) 222-4700

iii. Planning & Development

(401) 222-2776

iv. Strategic Planning & Policy

(401) 222-3434

v. Sustainable Watersheds

(401) 222-3434

2. Bureau of Environmental Protection (BEP)

5 Subdivisions within BEP

i. Air Resources

(401) 222-4700

ii. Compliance & Inspection

(401) 222-1360

iii. Technical & Customer Assistance

(401) 222-6822

iv. Waste Management

(401) 222-2797

v. Water Resources

(401) 222-4700

3. Bureau of Natural Resources (BNR)

6 Subdivisions within BNR

i. Division of Agriculture

(401) 222-2781

ii. Coastal Resources

Port of Galilee

301 Great Island Road

Narragansett, RI 02882

(401) 783-5551

(401) 783-7285 fax

iii. Fish and Wildlife

Stedman Government Center

4808 Tower Hill Road

Wakefield, RI 02879

(401) 789-3094

(401) 783-4460 fax

iv. Forest Environment

1037 Hartford Pike

North Scituate, RI 02857

(401) 647-1439 or 647-3367

(401) 647-3590 fax

v. Law Enforcement

(401) 222-2284

vi. Parks & Recreation

2321 Hartford Avenue

Johnston, RI 02919-1719

(401) 222-2632 or 253-7482

(401) 934-0610 fax

Department of Health

3 Capitol Hill

Providence, RI 02908

(401) 222-2231

(401) 222-6548 fax

<http://www.health.state.ri.us>

Water Resources Board

100 North Main Street, 5th Floor

Providence, RI 02903

(401) 222-2217

(401) 222-4707 fax