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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO HEALTH AND SAFETY -- REFUSE DISPOSAL

Introduced By: Representatives Tobon, Barros, Maldonado, Diaz, and Cunha

Date Introduced: February 28, 2018

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 23-18.9-8 and 23-18.9-9 of the General Laws in Chapter 23-18.9  
2 entitled "Refuse Disposal" are hereby amended to read as follows:

3           **23-18.9-8. Licenses.**

4           (a) (1) No person shall operate any solid waste management facility or construction and  
5 demolition (C&D) debris processing facility or expand an existing facility unless a license is  
6 obtained from the director except as authorized by § 23-18.9-8. The director shall have full power  
7 to make all rules and regulations establishing standards to be met for the issuance of the licenses  
8 [with those standards affording great weight to the detrimental impact that the placement of such a](#)  
9 [facility shall have on its surrounding communities.](#)

10           (2) The director shall promulgate rules and regulations governing the uses and content of  
11 materials accepted and generated by a construction and demolition debris processing facility. Any  
12 costs associated with testing these materials by the facility or by the department to verify the  
13 results of the facility's tests shall be borne by the facility. Each facility shall be required to  
14 establish a fund with the department to cover the cost of these tests.

15           (b) Any person who desires to construct a solid waste management facility or install any  
16 equipment in a solid waste management facility must first submit to the director for approval  
17 plans and specifications and other related data required by the director.

18           (c) No construction and demolition debris processing facility shall be issued a license or  
19 be able to operate unless it has:

1 (1) Received a letter of compliance from the host municipality that all applicable zoning  
2 requirements and local ordinances of the host municipality have been complied with.

3 (2) Submitted a fire protection plan that has been approved by the local fire chief, or his  
4 or her designee in which the facility is located; and

5 (3) For the purposes of this subsection, the letter of compliance from the host  
6 municipality shall issue from either:

7 (i) The town or city manager with town or city council approval in a municipality with a  
8 managerial form of government; or

9 (ii) The elected mayor with town or city council approval in a municipality with a non-  
10 managerial form of government.

11 (4) If, after thirty (30) days of receipt of a written request to the city or town by the  
12 applicant for a license requesting a letter of compliance, the letter of compliance is not issued  
13 because the host municipality finds that the requirements of the applicable zoning requirements or  
14 other ordinances have not been met, a letter of non-compliance must be issued setting forth the  
15 particular requirements that have not been met. If after a license is issued, the host community  
16 finds that all applicable zoning or other applicable ordinances are no longer complied with they  
17 are authorized to issue a non-compliance letter.

18 (5) Upon issuance of a letter of non-compliance, the applicant for a license shall have all  
19 rights of appeal under the provisions of chapter 24 of title 45 as to zoning issues and any other  
20 rights to appeal that may be applicable as to the determination of non-compliance with other  
21 ordinances.

22 (i) In the case of an application or renewal of an existing license for an increase in the  
23 acceptance and processing of the amount of (C&D) debris per day, the letter of non-compliance  
24 shall stay the issuance of the license allowing said increase until the appeal process provided for  
25 herein is final.

26 (ii) In the case of an application or renewal of an existing license that does not request an  
27 increase in the acceptance and/or processing of the amount of (C&D) debris per day where the  
28 applicant for renewal has timely filed an appeal as contained herein, the letter of non-compliance  
29 shall not be used as grounds for denial of the approval of the renewable license; however, if, upon  
30 final determination by a zoning board or court of competent jurisdiction upon appeal, it is found  
31 that the facility is in non-compliance, the license shall be revoked by the director.

32 (d) The local fire chief, or his or her designee, is authorized to conduct random,  
33 unannounced inspections of facilities licensed under this section to ensure continued compliance  
34 with the approved fire protection plan. If any facility at the time of inspection is found not to be in

1 compliance with the approved plan, that facility shall immediately cease operation until the time  
2 that it corrects any deficiency and the local fire chief or his or her designee finds the facility is in  
3 compliance with the approved fire protection plan.

4 (e) Any facility that is found to be in violation of the fire protection plan under this  
5 section on three (3) separate inspections, within any three-year (3) time period, shall have its  
6 license to operate under this section revoked.

7 (f) A municipality that desires to evaluate available technologies, equipment, or  
8 methodologies for managing solid waste may request approval from the director to perform a  
9 limited demonstration pilot project prior to submission of an application for a license.  
10 Demonstration projects shall not exceed fifty (50) tons per day maximum capacity. The  
11 municipality must first submit to the director, for approval, plans and specifications, including  
12 fire protection plans and other related data as required by the director. The municipality shall also  
13 give public notice of the request and allow a thirty-day (30) period for the director to receive  
14 public comment on the proposed project. After the close of the public comment period, the  
15 director is authorized to approve or deny the request. Approval for a demonstration pilot project  
16 shall be granted for a period not exceeding six (6) months.

17 (g) Any facility that is licensed or registered by the department under this chapter as of  
18 July 1, 2006, that accepts greater than three (3) cubic yards of tree waste as defined by § 23-18.9-  
19 7(14) shall be considered an existing tree waste management facility. Existing tree waste  
20 management facilities shall notify the department and the local fire chief of the existence and  
21 scope of their tree waste management activities in writing no later than August 30, 2006, and  
22 shall incorporate tree waste management activities in a revised operating plan as part of the next  
23 renewal of their license or registration.

24 (h) Any construction and demolition (C&D) debris processing facility under this section  
25 that is within a one thousand feet (1000') radius of a residential zone district shall conduct all  
26 operations covered under the license inside the confines of an enclosed, permanent building.

27 (i) Granting of a license, license renewal, or permission for an equipment addition under  
28 this section shall in no way affect the applicant's responsibility to comply with all zoning and  
29 other local ordinances, nor the applicant's responsibility to obtain any local permits, except as  
30 specifically provided by Rhode Island General Law. When multiple uses are in place on a site  
31 with a licensed solid waste facility, the terms and conditions of the license are only applicable to  
32 the activities and operations subject to the license and not the other uses of the property.

33 **23-18.9-9. Application, approval and fees for licenses.**

34 (a) (1) Any person who desires to construct and/or operate a solid waste management

1 facility or expand an existing facility shall apply to the director for all licenses and/or permits to  
2 do so; provided, however, that the application shall state all licenses and/or permits for which  
3 application is made. Any person who desires to construct and/or operate a private solid waste  
4 disposal facility shall submit to the director simultaneously with the application a certificate of  
5 final determination from the municipality in which it is proposed to site the facility that the site  
6 conforms with all applicable local land use and control ordinances or on appeal a final judgment  
7 of a court that the proposed site for the facility conforms with all applicable land use and control  
8 ordinances of the municipality. The applicant shall also submit simultaneously with the  
9 application a certificate of approval of the proposed site issued by the state planning council,  
10 except for statutorily mandated facilities. The council shall only approve a site after great weight  
11 has been afforded to the detrimental impact that the placement of such a facility shall have on its  
12 surrounding communities and only after evaluation of alternative sites and assessment of  
13 comparative environmental impact at the sites in accordance with law and state planning council  
14 rules, and in the absence of these, the council shall promulgate rules for the evaluation and/or  
15 assessment, and distribution of location of sites for waste facilities among the regions of this  
16 state. The council shall not issue its certificate prior to the publication of public notice and the  
17 expiration of the public comment period regarding the proposed site. The director shall review  
18 and decide all applications.

19 (2) (i) Notwithstanding the provisions of § 42-35-14 to the contrary, the director shall  
20 immediately review the application and shall give public notice of the intention to issue a draft  
21 license or the intention to deny the application.

22 (ii) The draft license and/or tentative denial, including all supporting documentation,  
23 shall be made available for public comment.

24 (3) Within fifteen (15) days of the date of the public notice to issue the draft license, the  
25 director shall hold an informational workshop. The purpose of the informational workshop shall  
26 be to discuss the type of facility or activity which is the subject of the draft license; the type and  
27 quantity of wastes, which are proposed to be managed, processed and/or disposed; a brief  
28 summary for the basis for the draft license; conditions, including references to applicable  
29 statutory or regulatory provisions; reasons why any requested variances or alternatives to required  
30 standards do or do not appear justified; a description of the procedures for reaching a final  
31 decision on the draft license, which shall include the beginning and ending dates for the comment  
32 period hereafter, the address where comments will be received, procedures for requesting a  
33 hearing and the nature of that hearing, any other procedures by which the public may participate  
34 in the final decision; and the name and telephone number of a person to contact for further

1 information.

2 (4) No earlier than sixty (60) days nor later than seventy-five (75) days following the  
3 initial public notice of the issuance of the draft license or tentative denial, a hearing shall be held  
4 for public comment. Comments from the applicant and/or any interested persons shall be  
5 recorded at the public hearing. Written comments, which shall be considered part of the record,  
6 may be submitted for thirty (30) days following the close of the public comment hearing.

7 (5) Within ninety (90) days of the close of the public comment period, the director shall  
8 issue the license or the final denial. The license or the final denial shall be in writing and shall  
9 include a response to each substantive public comment. In the event that the director shall fail to  
10 issue the license or final denial within the ninety (90) day period, then the applicant may petition  
11 the superior court to issue its writ of mandamus ordering the director or some suitable person to  
12 immediately issue the license or denial. Any person refusing to obey the writ of mandamus shall  
13 be subject to penalties for contempt of court. The writ of mandamus shall be the exclusive  
14 remedy for failure of the director to comply under this section.

15 (6) The applicant and/or any person who provided substantive comment at any time  
16 during the public comment period may appeal the decision of the director; provided, however,  
17 any person who shall demonstrate good cause for failure to so participate and demonstrate that his  
18 or her interests shall be substantially impacted if prohibited from appearance in the appeal, may in  
19 the discretion of the hearing officer be permitted to participate in the appeal process.

20 (7) The appeal shall be limited to those issues raised by the parties; provided, however,  
21 that upon good cause shown, the director shall allow additional issues to be raised.

22 (8) All appeals shall be pursuant to the rules and regulations established by the director  
23 and the rules and regulations established by the administrative adjudication division of the  
24 department of environmental management; provided, however, that all appeals shall contain  
25 precise statements of the issues presented on appeal and the specific part or parts of the decision  
26 of the director that are challenged.

27 (9) All appeals shall be heard before administrative adjudication hearing officers. All  
28 hearings shall be evidentiary hearings. All witnesses shall testify under oath and shall be subject  
29 to cross-examination.

30 (10) The hearing officer shall determine and apportion to the applicant the actual costs of  
31 the appeal process, exclusive of attorneys' fees. These costs shall not be considered administrative  
32 penalties.

33 (b) The director shall publish a schedule of fees to be paid to file an application for a  
34 license. These fees shall be reasonable and shall account for the size and complexity of the

1 proposed project and any other criteria as the director may determine; provided, however, that no  
2 application fee shall exceed one hundred thousand dollars (\$100,000).

3 (c) Licenses shall expire three (3) years from the date of issuance unless sooner  
4 suspended or revoked. The provisions in this section for issuance of a license shall not apply to  
5 the renewal of a license and any facility shall be relicensed if it meets the criteria in effect when  
6 the facility was licensed; provided, however, that any renewal application which substantially  
7 deviates from the use or purpose of the license shall be subject to the provisions of this chapter  
8 and further provided that any facility shall be relicensed if it meets the criteria in effect when the  
9 facility was licensed. The director is authorized to promulgate by regulation procedures for  
10 license renewals. The director shall publish a schedule of fees to be paid to renew a license. These  
11 fees shall be reasonable and shall account for the size and complexity of the project, and costs  
12 incurred to monitor the project, and any other criteria that the director may determine; provided,  
13 however, that no renewal license fees shall exceed one hundred thousand dollars (\$100,000). All  
14 licensed solid waste disposal facilities shall be deemed to comply with all local ordinances.

15 (d) All application fees and license fees shall be directed to the department of  
16 environmental management and shall be held in a separate account and appropriated for review of  
17 applications, renewals of, and compliance with, licenses.

18 (e) Notwithstanding the provisions of this section or any other provision of law to the  
19 contrary, cities and towns which own and operate landfills shall be exempt from any application  
20 fees relative to applications it files to expand its existing landfill.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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1           This act would include a facility's potential detrimental impact on the community as a  
2 factor to be considered when approving the construction or operation of a solid waste  
3 management facility.

4           This act would take effect upon passage.

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