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2002 Survey of Rhode Island Law: Legislation: Property: An Act Relating to Property - Homestead Exemption, An Act Relating to Drinking Water Quality Standards for Private Wells, An Act Relating to Industrial Property Remediation and Reuse

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Property. *An Act Relating to Property – Homestead Exemption.* This Act modifies the way in which a homestead estate is established. A homestead estate is now established automatically by operation of law. Effective June 20, 2002. 2002 R.I. Pub. Laws ch. 147.

SUMMARY

This legislation amends section 9-26-4.1 of the Rhode Island General Laws to make the establishment of a homestead estate automatic by operation of law.¹ The amendment provides that the estate of homestead provided hereunder shall be completed without any requirement or necessity for the filing of a declaration, a statement in a deed, or any other documentation.²

Joe H. Lawson II

1. 2002 R.I. Pub. Laws ch. 147 (codified as amended at R.I. GEN. LAWS § 9-26-4.1 (2002)).

2. R.I. GEN. LAWS § 9-26-4.1 (2002).

Property. *An Act Relating to Drinking Water Quality Standards for Private Wells.* The Act was expanded to include drinking water quality standards for private wells. The Act requires development of educational materials, promulgation of testing regulations, and disclosure of testing results. Effective June 25, 2002. 2002 R.I. Pub. Laws ch. 161.

SUMMARY

This Act expanded the duties of the office of private well water contamination to include development of educational materials and the promulgation of rules concerning drinking water quality standards for private wells.¹ The rules and regulations promulgated by the office of private well water contamination must: identify the contaminants to be tested and establish the acceptable level for each contaminant; require testing for coliform bacteria, fluoride, iron, lead, manganese, nitrate, nitrite, and turbidity of all new wells prior to use for drinking water and all current wells used for drinking water prior to the sale of the property; require disclosure of testing prior to the lease or sale of the property; establish minimum qualifications for testers; establish requirements for reporting to the director of health and municipal building officials; and maintain a database identifying areas that are a concern to public health.²

Prior to the sale of property containing a private well that is capable of use for drinking water, the seller must provide the prospective buyer with previous test results, notify the buyer of any known problems with the well,³ and allow the prospective buyer a ten-day period to conduct testing.⁴ Failure to do any of the aforementioned does not create a defect in title,⁵ but it does allow the purchaser to void the purchase and sale agreement prior to the transfer of the title at closing.⁶

A new building serviced by a private well will not be issued a certification of use and occupancy unless submitted documentation

1. 2002 R.I. Pub. Laws ch. 161 (codified as amended at R.I. GEN. LAWS § 23-1-5.3 (2002)).

2. R.I. GEN. LAWS § 23-1-5.3(6)-(7) (2002).

3. *Id.* § 5-20.8-2.

4. *Id.* § 5-20.8-12(a).

5. *Id.* § 5-20.8-12(b)-(c).

6. *Id.* § 5-20.8-12(d).

demonstrates compliance with the drinking water standard for coliform bacteria, fluoride, lead, nitrate, and nitrite established by the director of health.⁷

Existing buildings are also included under the Act.⁸ A request for a certificate of use and occupancy from an owner of an existing property serviced by a private well must include documentation that the well complies with drinking water quality standards.⁹ Failure to comply with the drinking water quality standards will deem the private well a danger to public safety and welfare, and will require corrective action within thirty days.¹⁰ An exemption is available to existing property owners who can show that no currently available water treatment system will treat the water to meet the potability requirement.¹¹

Amy Hughes

7. *Id.* § 23-27.3-120.1.

8. *Id.* § 23-27.3-120.3.

9. *Id.*

10. *Id.*

11. *Id.*

Property Law. *An Act Relating to Industrial Property Remediation and Reuse.* The Act creates a number of additional responsibilities for the Department of Environmental Management and the Rhode Island Economic Development Corporation in relation to sites that have, may be, or are currently contaminated with hazardous material. Effective June 25, 2002. 2002 R.I. Pub. Laws ch. 186.

SUMMARY

Section 1

The Industrial Property Remediation and Reuse Act was enacted to encourage the redevelopment of industrial properties, which are or may be contaminated with hazardous material.¹ The changes to section one of the Act provide that the Department of Environmental Management (DEM) must develop and implement a process by which a person, who resides or works in a community where a site which has or threatens to release hazardous materials is located, may request that a site assessment be conducted.² The DEM must also develop and implement a decision process to respond to such requests.³ The Act also requires that DEM maintain, and make available to the public, a record naming the sites, and locations, at which remedial actions have been taken in the previous year and which are planned to be addressed in the upcoming year.⁴ The report must state whether or not the site, upon completion of the remedial action, is suitable for unrestricted use, and if not, what those restrictions are.⁵

Any part of the state or local government, which acquires ownership or control of contaminated property involuntarily, is not liable for the release or threatened release of hazardous material at that site, provided that the government did not cause or contribute to the release.⁶ The Act also states that a person who owns real property that is adjacent, or otherwise similarly positioned, to real property owned by another, is not liable for contamination by re-

1. 2002 R.I. Pub. Laws ch. 186 (codified as amended at R.I. GEN. LAWS § 23-19.14-1 (2002)).

2. R.I. GEN. LAWS § 23-19.14-5(c) (2002).

3. *Id.*

4. *Id.* § 23-19.14-5(d).

5. *Id.*

6. *Id.* § 23-19.14-7(5).

lease or threatened release of hazardous material from such similarly situated real property, provided that the person proves certain requirements by a preponderance of the evidence.⁷ Generally, these requirements are that the person not cause the release,⁸ is not potentially liable or affiliated with any person potentially liable,⁹ takes reasonable steps to stop the release and limit any future release,¹⁰ fully cooperates and provides assistance to authorized responding parties,¹¹ complies with any land use restrictions connected to the response,¹² does not impede the methods employed in response,¹³ and provides all legally mandated notices with respect to the release.¹⁴

Finally, the Rhode Island Economic Development Corporation (RIEDC) is no longer authorized to make loans for remedial actions from the tire site remediation account.¹⁵

Section 2

Section two of the Act requires the RIEDC and the DEM to prepare and submit three joint reports to the general assembly by December 1, 2002.¹⁶ The first report must make recommendations on accessibility of comprehensive environmental insurance for Rhode Island Brownfield projects at a reasonable cost.¹⁷ Included in the report should be an assessment of insurance and indemnification strategies to help finance corrective actions, in addition to an appraisal of options for providing "cost-cap coverage" to certain projects.¹⁸ The second report must contain a cost and benefit analysis, including time projections, for creating a program for licensed

7. *Id.* § 23-19.14-7(6).

8. *Id.* § 23-19.14-7(6)(i).

9. *Id.* § 23-19.14-7(6)(ii)(A)-(B).

10. *Id.* § 23-19.14-7(6)(iii)(A)-(C).

11. *Id.* § 23-19.14-7(6)(iv).

12. *Id.* § 23-19.14-7(6)(v)(A).

13. *Id.* § 23-19.14-7(6)(v)(B).

14. *Id.* § 23-19.14-7(6)(vi).

15. *Id.* § 23-19.14-9.

16. *Id.* § 23-19.14-5.1(a).

17. *Id.* Rhode Island Brownfield projects include contaminated property that is going through the remediation process. *See id.*

18. *Id.*

environmental professionals.¹⁹ The third report must outline a program for compliance with section three of this Act.²⁰

Section 3

Section three of the Act requires that RIEDC create a marketing program for underutilized or abandoned sites and assist DEM in identifying and securing public and private funding sources for Brownfield redevelopment projects.²¹

Dana John Gravina

19. *Id.* § 23-19.14-5.1(b).

20. *Id.* § 23-19.14-5.1(c).

21. *Id.* § 42-64-29(a)-(d).