

# HOUSE . . . . . No. 5790

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, March 20, 1979.

The committee on Natural Resources and Agriculture, to whom were referred the petition (accompanied by bill, House, No. 3330) of Richard J. Dwinell for legislation to further clarify the powers and duties of the Hazardous Waste Board, the petition (accompanied by bill, House, No. 3336) of Roger R. Goyette for legislation to establish an emergency response team within the Division of Water Pollution Control and the petition (accompanied by bill, House, No. 4032) of Roger R. Goyette and Thomas K. Lynch relative to oil spills in waters of the Commonwealth, reports recommending that the accompanying bill (House, No. 5790) ought to pass.

For the committee,

RICHARD J. DWINELL

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

### AN ACT RELATING TO EMERGENCY SITUATIONS CAUSED BY SPILLS AND DISCHARGES OF OIL AND HAZARDOUS MATERIALS.

1     *Whereas*, The deferred operation of this act would tend to defeat  
2 its purpose, which is to provide forthwith an immediate capability  
3 for responding to emergency situations caused by spills and dis-  
4 charges of oil and hazardous materials, therefore it is hereby  
5 declared to be an emergency law, necessary for the immediate  
6 preservation of public health, safety and the environment.

*Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, as follows:*

1     SECTION 1. Section twenty-six A of chapter twenty-one of the  
2 General Laws, as most recently amended by section two of chapter  
3 five hundred forty-six of the acts of nineteen hundred seventy-  
4 three, is hereby amended by adding the following four  
5 definitions:—

6     “Discharge” includes, but is not limited to, any spilling, leaking,  
7 pumping, pouring, emitting, emptying, seeping, draining or  
8 dumping.

9     “Facility” includes, but is not limited to, any vessel, tank, drum,  
10 pipe, hose or other container.

11     “Hazardous material” includes, but is not limited to, any mate-  
12 rial, including any discarded or waste material, in whatever form  
13 which, because of its quantity, concentration, chemical, corrosive,  
14 flammable, reactive, toxic, infectious or radioactive characteris-  
15 tics, either separately or in combination with any other substance  
16 or substances, constitutes a potential hazard to human health,  
17 safety or welfare, or to the environment, when improperly treated,  
18 stored, transported, disposed of, or otherwise managed.

19     “Oil” means any insoluble or partially soluble oil of any kind or

20 origin and in any form, including, but not limited to, petroleum,  
21 crude or fuel oils, lube oil, sludge, asphalt, insoluble or partially  
22 insoluble derivatives of mineral, animal or vegetable oils, oil  
23 refuse, and oil mixed with wastes other than dredged spoil.

1 SECTION 2. Clause (14) of section twenty-seven of chapter  
2 twenty-one of the General Laws, as most recently amended by  
3 section nine of chapter five hundred forty-six of the acts of nineteen  
4 hundred seventy-three, is hereby repealed.

1 SECTION 3. Said chapter twenty-one is hereby further  
2 amended by inserting the following section after section forty-  
3 eight:—

4 *Section 49A Emergencies.* Whenever any oil or hazardous  
5 material is discharged or whenever there is a threat of such dis-  
6 charge into or upon waters of the commonwealth or adjoining  
7 shorelines, or whenever the division determines that there is an  
8 emergency situation arising out of a discharge or resulting from the  
9 improper storage, transport, treatment, processing or disposal of  
10 such oil or hazardous material which is causing or is likely to cause  
11 a threat to the public health, safety or the environment, the division  
12 shall undertake to cause said oil or hazardous material to be  
13 contained, removed, treated and disposed of by whatever means it  
14 considers best, and shall take whatever further action it deems  
15 necessary to relieve and eliminate such emergency situation. The  
16 owner, operator or lessee of the facility in which said oil or  
17 hazardous material is or was contained, the owner of said oil or  
18 hazardous material, and any other person whose actions or activi-  
19 ties cause or contribute or threaten to cause or contribute to the  
20 discharge or emergency situation shall be persons responsible for  
21 the discharge or emergency situation and shall be jointly and  
22 severally and strictly liable for undertaking the immediate contain-  
23 ment, removal and disposal of the oil or hazardous material, for  
24 eliminating the threat to the public health, safety or the environ-  
25 ment, and for taking such further action to relieve and eliminate  
26 such emergency situation by whatever means and methods the  
27 division considers best.

28 In the event either that the division cannot ascertain the persons  
29 responsible for the discharge or emergency situation or that such  
30 persons cannot or will not effect a proper removal and disposal of  
31 the oil or material, the division is authorized to arrange for the  
32 containment, removal, treatment and disposal of said oil and  
33 material. In addition to the sanctions prescribed in section forty-  
34 two of this chapter, persons responsible for such discharge or  
35 emergency situation shall be jointly, severally and strictly liable to  
36 the commonwealth in a civil action for damages suffered by the  
37 commonwealth, including costs and expenses of investigating,  
38 containing, removing, testing, treating, and disposing of such oil  
39 and hazardous material, of relieving or eliminating any emergency  
40 situation, and of restoring damaged areas. Said persons also shall  
41 be liable for costs and expenses incurred by the commonwealth in  
42 any legal action arising out of said discharge or emergency  
43 situation.

44 Claims asserted by the commonwealth shall have priority over  
45 claims asserted by all other persons. Amounts recovered by the  
46 commonwealth under this section, including sanctions imposed  
47 under section forty-two, shall be credited to the account used by the  
48 division to arrange for the containment, removal, treatment and  
49 disposal of such oil or materials; provided that amounts recovered  
50 by the commonwealth for restoration of damaged areas shall be  
51 used for such restoration.

52 Any person responsible for such a discharge or for such an  
53 emergency situation, or any agent or employee of any such person  
54 responsible, having knowledge of any such discharge or emergency  
55 situation shall, as soon as he has knowledge of such discharge or  
56 emergency situation, immediately notify the division thereof. Any  
57 such person who fails so to notify the division shall be subject to the  
58 actions prescribed by section forty-two of this chapter.

59 In carrying out its responsibilities under this section, the division  
60 may enter upon any property, public or private, and may take  
61 whatever action it deems necessary to investigate, test, sample,  
62 contain, remove, treat and dispose of such oil or hazardous  
63 material.

64 Chemicals shall not be used in the clean-up of spills of oil or  
65 hazardous materials unless their use has been authorized by the  
66 division, and if shellfish beds or a public water supply may be  
67 affected by the department of environmental quality engineering.

1 SECTION 4. Section five of chapter seven hundred forty-seven  
2 of the acts of nineteen hundred seventy, as most recently amended  
3 by chapter four hundred sixty-six of the acts of nineteen hundred  
4 seventy-eight, is hereby further amended by striking the first sen-  
5 tence of said section five and by substituting in place thereof the  
6 following two sentences: —

7 From funds made available by bonds issued pursuant to this act,  
8 the director of the division of water pollution control is authorized  
9 to expend a sum not to exceed three hundred thousand dollars in  
10 any one fiscal year to meet the expenditures necessary to carry out  
11 the provisions of section forty-nine A of chapter twenty-one of the  
12 General Laws; provided that balances left unexpended in any one  
13 fiscal year and funds recovered by the commonwealth under said  
14 section forty-nine A and clause (14) of section twenty-seven of said  
15 chapter twenty-one as civil penalties, fines, damages and reimbur-  
16 sements shall be carried over from year to year and may also be  
17 expended by the director for such purposes in subsequent fiscal  
18 years. From funds made available by bonds issued pursuant to this  
19 act, the director is authorized to expend a sum not to exceed one  
20 million dollars in any fiscal year to carry out the provisions of  
21 section thirty-eight of said chapter twenty-one.

1 SECTION 5. This act shall take effect on June thirtieth, nine-  
2 teen hundred seventy-nine.

The first part of the paper is devoted to a discussion of the general theory of the subject. It is shown that the theory is based on the assumption that the system is in a state of equilibrium. This assumption is justified by the fact that the system is assumed to be in a state of equilibrium for a long time before the experiment is performed.

The second part of the paper is devoted to a discussion of the experimental results. It is shown that the experimental results are in good agreement with the theoretical predictions. This agreement is particularly striking in the case of the first experiment, where the theoretical prediction is that the system should be in a state of equilibrium.

The third part of the paper is devoted to a discussion of the implications of the results. It is shown that the results have important implications for the theory of the subject. In particular, it is shown that the results support the theory that the system is in a state of equilibrium.

The fourth part of the paper is devoted to a discussion of the conclusions. It is concluded that the theory is correct and that the system is in a state of equilibrium. This conclusion is based on the fact that the experimental results are in good agreement with the theoretical predictions.



