

By Mr. Wetmore, a petition (accompanied by bill, Senate, No. 1160) of Robert D. Wetmore, the Associated Industries of Massachusetts, by Richard E. Mastrangelo, vice-president and general counsel, and the Massachusetts Bankers Association, by David E. Florine, vice-president, for legislation to provide for certain protections for innocent landowners relative to hazardous waste. Natural Resources and Agriculture.

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**The Commonwealth of Massachusetts**

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

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AN ACT PROVIDING FOR CERTAIN PROTECTIONS FOR INNOCENT LAND-OWNERS RELATIVE TO HAZARDOUS WASTE.

*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 2 of Chapter 21E of the General Laws  
2 is hereby amended by inserting the following definition: —  
3 “Financial institution”, any savings banks, co-operative banks,  
4 trust company, national banking association, federal savings and  
5 loan association, federal savings bank, or federal credit union  
6 doing business in the commonwealth, or any other individual,  
7 partnership, association, or corporation incorporated or doing a  
8 business similar to any business referred to in section one of  
9 chapter one hundred and sixty-seven.

1 SECTION 2. Section 2 of Chapter 21E of the General Laws  
2 is hereby further amended by striking out the definition of  
3 “owner” or “operator”, and inserting the following definition: —  
4 “Owner” or “Operator”, (1) in the case of a vessel, any person  
5 owning, operating, or chartering by demise such vessel, (2) in the  
6 case of a site, any person owning or operating such site, and (3) in  
7 the case of an abandoned site, any person who owned, operated,  
8 or otherwise controlled activities at such site prior to such  
9 abandonment. The term shall not include a person who, without

10 participating in the management of a vessel or site holds indicia  
11 of ownership primarily to protect his security interest in said vessel  
12 or site. The term also shall not include a financial institution, an  
13 affiliate of a financial institution, or a parent of a financial  
14 institution which acquired the site by foreclosure or by deed in  
15 lieu of foreclosure as a result of the enforcement of a mortgage  
16 or security interest held by such financial institution, parent of  
17 such financial institution, or affiliate of such financial institution  
18 before said entity had knowledge that there had been a release  
19 or threat of release of oil or hazardous material at or from the  
20 vessel or site, and which did not manage or control activities at  
21 or on the vessel or site that contributed to the release or threat  
22 of release of oil or hazardous material. For the purposes of this  
23 definition, the term "management" shall not include participation  
24 in or supervising the finances or fiscal operations of a responsible  
25 person or an owner or operator in connection with a loan to,  
26 services provided for, or fiscal obligation of that responsible  
27 person or owner or operator or actions taken to protect or  
28 preserve the value of the vessel or site or operations conducted  
29 at or on the vessel or site.

1 SECTION 3. Section 4 of Chapter 21E of the General Laws  
2 is hereby further amended by striking out the third sentence  
3 thereof, and inserting the following sentence: — Prior to  
4 undertaking any response action, the department shall provide  
5 written notice to the owner or operator of the site or vessel and  
6 to the first mortgagee holding a mortgage on the site or vessel  
7 of its intent to take such action.

1 SECTION 4. Section 5 of Chapter 21E of the General Laws  
2 is hereby further amended by striking out paragraph (d), and  
3 inserting in place thereof the following paragraph: —

4 (d) Any person whose land has been the site of a release of oil  
5 or hazardous material for which the department has incurred costs  
6 for assessment, containment, and removal under section four and  
7 who can establish by a preponderance of the evidence that he is  
8 otherwise eligible for the defenses set forth in paragraph (c), shall  
9 be liable to the department for such expenses only to the extent

10 of the value of the property following the department's  
11 assessment, containment, and removal actions and only if: (1) the  
12 oil or hazardous material was owned by the person who owns the  
13 site; or (2) the oil or hazardous material was brought onto the  
14 site by a person with whom the owner of the site has a direct or  
15 indirect contractual relationship; or (3) the oil or hazardous  
16 material was brought onto the site by a person who has permission  
17 of the owner to do so.

1 SECTION 5. Section 5 of Chapter 21E of the General Laws  
2 is hereby further amended by adding after paragraph (d) the  
3 following paragraphs and by relettering paragraphs (e) and (f) as  
4 paragraphs (h) and (i), respectively: —

5 (e) Any person who is the owner or operator of the site of a  
6 release or threat of release of oil or hazardous material which was  
7 located upon the site at the time when said person became owner  
8 or operator shall not be liable under this section five if said person  
9 can establish by a preponderance of the evidence that, after  
10 making a reasonable inquiry, he had no knowledge or reason to  
11 know that said oil or hazardous material was located on the site,  
12 and that he has complied with the requirements of section seven  
13 of this chapter. Any person who is the owner or operator of a  
14 site at which the department has incurred costs for response action  
15 with respect to oil or hazardous material which was located upon  
16 the site at the time when said person became owner or operator  
17 who cannot establish pursuant to the preceding sentence that he  
18 had no knowledge or reason to know that said oil or hazardous  
19 material was located on the site shall be liable for said response  
20 costs only to the extent of the value of the site following the  
21 department's response action. For the purposes of this paragraph  
22 (e), a reasonable inquiry shall mean, with respect to all properties,  
23 visually inspecting the property for unusual appearances of  
24 vegetation, surface soil, or water, as well as for obvious signs of  
25 hazardous materials disposal, and inquiring of the department  
26 and of the hazardous waste coordinator (if any), the fire  
27 department, the board of health, and the building department of  
28 the city or town in which the site is located to ascertain whether  
29 their respective records indicate that oil or hazardous material has

30 been present at or released at the property. In the event that said  
31 visual inspection or inquiries indicate that oil or hazardous  
32 material was used for industrial, commercial, or landfill purposes  
33 in a manner such that oil or hazardous material was likely to have  
34 been released, a reasonable inquiry shall also include the following  
35 further assessment to be performed by or under the supervision  
36 of a registered professional engineer, hydrogeologist, or other  
37 qualified scientist with experience in such matters; (1) subsurface  
38 exploration and sampling in number and location adequate in the  
39 professional opinion of such engineer, hydrogeologist, or other  
40 scientist to reasonably screen for the presence of oil or hazardous  
41 material in soil and ground water on the property in the area from  
42 the land surface to and including the water table of the uppermost  
43 aquifer or drilling refusal, whichever is encountered first; and (2)  
44 qualitative screening analysis for volatile organic compounds and  
45 such other hazardous materials as in the professional opinion of  
46 such engineer, hydrogeologist, or other scientist are likely to have  
47 been released at the property. The results of such further  
48 assessment shall be compiled in a report prepared by such  
49 engineer, hydrogeologist, or other scientist which shall include  
50 therein copies of boring logs and other data developed during the  
51 course of performing the assessment, and a copy of such  
52 assessment shall be submitted to the department. The department  
53 shall, to the extent it deems necessary, promulgate regulations  
54 setting forth additional guidelines concerning the type(s) of  
55 inquiry which will satisfy the provisions of this paragraph and  
56 shall revise said regulations as necessary to reflect advances in  
57 scientific knowledge respecting the detection of oil or hazardous  
58 materials. An assessment which is certified by the registered  
59 professional engineer, hydrogeologist, or other scientist as  
60 complying with the standard set forth herein and any regulations  
61 with respect to assessments promulgated by the department may  
62 be relied upon conclusively as constituting reasonable inquiry for  
63 purposes of this paragraph (e) by an owner or operator, including  
64 the holder of a mortgage or other security interest who as  
65 hereinafter described becomes an owner or operator of the land  
66 subject to the assessment, unless, within fifteen (15) days following  
67 the submission of such assessment to the department, the

68 department determines that such assessment fails to comply with  
69 said standards and regulations and so notifies any person on  
70 whose behalf such assessment was prepared, specifying in detail  
71 the basis for such determination. In no event shall the fact that  
72 oil or hazardous material was present on a site preclude any person  
73 from thereafter establishing, pursuant to the provisions of this  
74 paragraph (e) and following implementation of an appropriate  
75 response action, that he had no knowledge or reason to know that  
76 any oil or hazardous material remained on such site. In the case  
77 of a holder of a mortgage or other instrument designed primarily  
78 to protect his security interest in a site who becomes owner or  
79 operator of the site by virtue of (1) taking possession of the site  
80 as a mortgage or other secured party, (2) foreclosure or accepting  
81 an instrument in lieu of foreclosure, or (3) otherwise exercising  
82 his rights or remedies under the mortgage or other instruments  
83 the applicability of this paragraph (e) shall be determined by  
84 reference to the state of knowledge of the original holder of the  
85 mortgage or other instrument at the time of recording of such  
86 mortgage or other instrument with the registry of deeds or registry  
87 district or recording office rather than at the time when said holder  
88 became owner or operator; provided, however, that this limitation  
89 shall not apply if said person participated in the management of  
90 said site in a manner which contributed to the release of oil or  
91 hazardous material. In no event shall any liability be incurred  
92 under this paragraph (e) by an owner or operator, including the  
93 holder of a mortgage or other security interest, who becomes an  
94 owner or operator of a site the main building on which is a one  
95 to four family dwelling, or of an individual dwelling unit in a  
96 condominium or cooperative.

97 (f) Any person who is the owner or operator of the site of a  
98 release or threat of release of oil or hazardous material which was  
99 located upon the site at the time when said person became owner  
100 or operator shall not be liable under this section five if said person  
101 acquired ownership or control of the site by inheritance or  
102 bequest. Any person who has become the owner or operator of  
103 a site by inheritance or bequest shall not be liable under this  
104 section five as a result of any actions taken in connection with  
105 the site or the activities carried out thereon prior to the time when  
106 said person became owner or operator.

107 (g) In no case shall a financial institution, an affiliate of a  
108 financial institution, or a parent of a financial institution be liable  
109 under this section five by virtue of supervision of, or other  
110 involvement with, the finances and operations of a person liable  
111 under this section five in connection with a loan, obligation, or  
112 other services provided.

1 SECTION 6. This Act shall take effect as of March 23, 1983.

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RESEARCH REPORT

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