

By Mr. Norton, a petition (accompanied by bill, Senate, No. 986) of Francis X. Bellotti, Attorney General, and Thomas C. Norton for legislation to establish the procedure for obtaining administrative inspection warrants in connection with enforcement of certain state hazardous waste laws. The Judiciary.

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## The Commonwealth of Massachusetts

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

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### AN ACT ESTABLISHING THE PROCEDURE FOR OBTAINING ADMINISTRATIVE INSPECTION WARRANTS IN CONNECTION WITH ENFORCEMENT OF CERTAIN MASSACHUSETTS HAZARDOUS WASTE LAWS.

*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. Paragraph (1) of section 8 of chapter 21C of the  
2 General Laws is hereby amended by inserting before the word  
3 "warrant", as it appears in the second instance, the words: — ad-  
4 ministrative inspection.

1 SECTION 2. Paragraph (1) of section 8 of chapter 21C of the  
2 General Laws is hereby amended by striking out the last sentence  
3 of said paragraph (1).

1 SECTION 3. Chapter 21C of the General Laws is hereby  
2 amended by inserting after section 8 the following new section: —  
3 Section 8A.

4 a) Administrative inspection warrants shall issue for the  
5 inspection of any premises, public or private, or for any property,  
6 vehicle, equipment, or container relating to activities subject to  
7 this chapter. As used in this section "administrative inspection  
8 warrants" are warrants for the purpose of inspecting, copying and  
9 verifying the correctness of any license, vehicle identification  
10 device, manifest or other document required to be kept by this  
11 Chapter or by any order, regulation, license or approval issued

12 or adopted hereunder and for the seizure and/or sampling of any  
13 property, vessel, container, vehicle, equipment, or document  
14 appropriate to such inspection.

15 b) A district court justice or superior court justice may, upon  
16 proper oath or affirmation by personnel or authorized agents of  
17 the department, or by a police officer showing probable cause,  
18 issue warrants for the purpose of conducting administrative  
19 inspections authorized by this chapter or rules hereunder, and  
20 seizures of property if appropriate to the inspections. For the  
21 purposes of the issuance of administrative inspection warrants,  
22 probable cause shall be deemed to exist upon a showing of  
23 reasonable and valid public interest in the effective enforcement  
24 of this chapter or any order, regulation, or approval issued or  
25 adopted hereunder under a general plan sufficient to justify  
26 administrative inspection of an area, property, premises,  
27 buildings, vessels, containers, vehicles or equipment in the  
28 circumstances specified in the application for such warrant.

29 c) An administrative inspection warrant shall issue only upon  
30 affidavit, sworn to before the court or justice, establishing the  
31 grounds for issuing the warrant. If the court or justice is satisfied  
32 that grounds for the issuance of such warrant exists or that there  
33 is probable cause to believe they exist, he shall issue such warrant  
34 identifying the area, property, premises, buildings, vessels,  
35 containers, vehicles or equipment to be inspected, the purpose of  
36 the inspection, and, if appropriate, the type of property to be  
37 inspected, if any. Such warrant shall:

38 (1) be directed to personnel or authorized agents of the  
39 department or to a police officer;

40 (2) command the person to whom it is directed to inspect the  
41 area, property, premises, buildings, vessels, containers, vehicles  
42 or equipment identified for the purpose specified and, if appro-  
43 priate, direct the seizure of the property specified;

44 (3) describe the item or types of property to be inspected or  
45 seized, if any; and

46 (4) direct that it be served during normal business hours.

47 d) An administrative inspection warrant issued and executed  
48 pursuant to the provisions of this section shall be returned to the  
49 issuing court, except if said warrant is issued by the superior court  
50 it shall be returned to any court named in such warrant, within

51 ten days of the date of issuance thereof unless, upon a showing  
52 of a need for additional time, the court or justice orders otherwise.  
53 If property is seized pursuant to such warrant, a copy of the  
54 inventory shall be given to the person from whom or from whose  
55 premises the property is taken, together with a receipt for the  
56 property taken. A copy of the inventory shall be delivered to the  
57 person from whom or from whose premises the property was  
58 taken and to the applicant for such warrant at the time it is  
59 returned to a court.

60 e) When authorized by an administrative inspection warrant  
61 issued pursuant to this section, personnel or authorized agents of  
62 the department, upon showing such warrant to the owner,  
63 operator, or agent in charge, may enter any premises for the  
64 purpose of conducting an administrative inspection.

65 f) A person executing an administrative inspection warrant  
66 may:

- 67 (1) use reasonable force and means to execute the warrant;
- 68 (2) inspect and copy any license, vehicle identification device,  
69 manifest or other document required to be kept by this Chapter  
70 or any license, order, regulation or approval hereunder;
- 71 (3) inspect, within reasonable limits and in a reasonable  
72 manner, premises and all pertinent equipment, finished and  
73 unfinished material, containers and labeling found therein, and  
74 all other things therein, including records, files, papers, processes,  
75 controls, and facilities bearing on violation of this chapter; and
- 76 (4) inventory any stock of any hazardous substance therein and  
77 obtain samples thereof.

78 (g) This section shall not prevent entries and administrative  
79 inspections, including seizures of property, without a warrant:

- 80 (1) if the owner, operator, or agent in charge of the premises  
81 consents; or
- 82 (2) in situations presenting imminent danger of health or safety;  
83 or
- 84 (3) in situations involving inspection of equipment, containers,  
85 and vehicles if there is reasonable cause to believe that the mobility  
86 of the equipment, container or vehicle makes it impracticable to  
87 obtain a warrant; or
- 88 (4) in any other exceptional or emergency circumstance where  
89 time or opportunity to apply for a warrant is lacking; or

90 (5) in any situation where an administrative inspection,  
91 including seizure of property, would be reasonable in a pervasively  
92 regulated industry; or

93 (6) in all other situations in which a warrant is not required  
94 by the laws and constitution of the commonwealth or of the  
95 United States.

1 SECTION 2. The provisions of this act are severable and if any  
2 of its provisions shall be held invalid in any circumstances, such  
3 invalidity shall not affect any other provisions or circumstances.