

By Ms. Amick, a petition (accompanied by bill, Senate, No. 1076) of Carol C. Amick for legislation to further regulate the control and removal of oil and hazardous materials. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

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

AN ACT FURTHER REGULATING THE CONTROL AND REMOVAL OF OIL AND HAZARDOUS MATERIALS.

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. Chapter 21D of the General Laws, as appearing
2 in the 1984 Official Edition, is hereby amended by striking clauses
3 (d), (e) and (f) of section five and inserting in place thereof the
4 following: —

5 (d) Any person whose land is being used to primarily provide
6 not more than four units of residential housing on the effective date
7 of this act which has been the site of a release of hazardous material
8 for which the department has incurred costs for assessment, con-
9 tainment and removal under section four and who can establish by
10 a preponderance of the evidence that he is otherwise eligible for the
11 defenses set forth in paragraph (c) shall not be liable for any costs
12 incurred by the Commonwealth for any response action pertaining
13 to his property. The department shall cause a statement to be
14 recorded on the owner's certificate of title in the appropriate regis-
15 try district where said title is recorded. Said statement shall des-
16 cribe the department's assessment, containment and removal
17 actions and include a declaration by the department that the owner
18 is free from liability, having established by a preponderance of the
19 evidence that he was eligible for the paragraph (c) defenses. Any
20 person who subsequently becomes an owner of said property shall
21 not be liable on the basis of clause (1) of paragraph (a) of this
22 section for any costs incurred by the commonwealth for any
23 response action pertaining to the property, provided that the
24 hazardous materials that cause the department to undertake the

25 response action had been placed on or in the property prior to the
26 effective date of this act and there was no withholding of pertinent
27 information or fraud by the prior owner.

28 (e) Any person whose land, on the effective date of this act, is
29 being used in any manner other than for one-to-four residential
30 units may seek to establish a status of innocent owner so-called, to
31 be eligible for the defenses set forth in paragraph (c) of this section
32 or for the purpose of reducing said person's liability insurance by
33 completing the following: —

34 (1) Have an assessment of his land performed by a registered
35 professional engineer which shall include, but not be limited to,
36 subsurface exploration and sampling in number and location ade-
37 quate in the professional opinion of said engineer to reasonably
38 screen for and detect the presence of oil, or hazardous materials in
39 the soil and the groundwater on the site and qualitative screening
40 analysis for volatile organic compounds and such other hazardous
41 materials as in the professional opinion of said engineer are likely
42 to have been released at the site. The results of such assessment
43 shall be compiled in a report including copies of boring logs and
44 other data developed during the course of performing the assess-
45 ment, as well as a summary which accurately characterizes the
46 condition of the land, including the location and types of any
47 hazardous materials on the land, or the absence of any such mate-
48 rials, and shall contain the verified statement and seal of the
49 registered professional engineer certifying that the assessment and
50 the summary fully and accurately depict the condition of the land.

51 (2) Submit the assessment required in (1) above to the depart-
52 ment and cause to be recorded on the owner's certificate of title the
53 summary of said registered professional engineer's findings, and
54 the name and business location of said engineer.

55 The department shall promulgate, and from time to time may
56 revise, regulations specifying the contents and form of assessment
57 reports submitted under this paragraph and establishing standards
58 to be applied by the department in reviewing such reports.

59 The department shall review the assessment reports filed pursu-
60 ant to (1) and (2) above to make a determination that the public's
61 health and safety, or the protection of the environment warrants an
62 immediate cleanup. The department will set a schedule for said
63 cleanup not to exceed five years from the date the assessment
64 report was submitted.

65 If the land assessment by a registered professional engineer
66 indicates an absence of hazardous material on the property, the
67 owner of said land shall be presumed to be an innocent owner,
68 so-called, by causing to be recorded with his certificate of title the
69 summary of the registered professional engineer's findings, the
70 engineer's name and business location.

71 If the land assessment by a registered professional engineer
72 indicates a presence of hazardous material on the land and the land
73 owner can establish by a preponderance of the evidence that he is
74 otherwise eligible for the defenses set forth in paragraph (c), the
75 department shall declare the owner to be an innocent owner,
76 so-called, and shall cause that property declaration to be recorded
77 with the title in the registry of deeds.

78 Said status of innocent owner shall entitle the owner to have the
79 commonwealth fund any response action, to assess, contain or
80 remove any hazardous materials at the time and in the manner the
81 department shall so specify. Said innocent owner status shall not
82 be transferable, but shall only exist for owners of land prior to the
83 effective date of this act. If said owner wishes to transfer ownership
84 of his property before the commonwealth has undertaken its
85 response action, any new owner shall be liable to the department
86 for the costs of assessment, containment and removal only to the
87 extent of the value of the property.

88 (f) All persons liable under this section who are liable for a
89 release or a threat of release for which the department incurs costs
90 for assessment, containment and removal, shall be liable, jointly
91 and severally, to the commonwealth in an amount up to three times
92 their liability as set forth in this section.

93 (g) No indemnification, hold harmless, or similar agreement or
94 conveyance shall be effective to transfer from the owner or opera-
95 tor of any vessel or site or from any person who may be liable for a
96 release or threat of release of hazardous material under this sec-
97 tion, to any other person the liability imposed under this section.
98 Nothing in this paragraph shall bar any agreement to insure, hold
99 harmless, or indemnify a party to such agreement for any liability
100 under this section.

1 SECTION 2. Said chapter 21E is hereby further amended by
2 inserting at the end thereof the following new section: —

3 Section 14. No interest in real property in the commonwealth

4 may be transferred after the effective date of this act unless, prior to
5 each transfer, the owner of the property or the buyer has completed
6 an assessment pursuant to paragraph (e) (1) of section five, has
7 submitted the assessment to the department and has caused to be
8 recorded the summary of the engineer's findings, his name and
9 business location on the owner's certificate of title.

1 SECTION 3. There is hereby established a tax on the transfer or
2 conveyance of any real property interest in real property in the
3 commonwealth, to be applied solely to defray the costs of the
4 purposes set forth in this act and in chapter twenty-one E of the
5 General Laws. The receipts of said tax to be known as the hazard-
6 ous waste cleanup tax, shall be paid to the commonwealth to be
7 administered by the department of environmental quality engineer-
8 ing in conjunction with funds authorized by sections six, seven and
9 eight of chapter seven of the acts of 1983.

1 SECTION 4. The commissioner of administration, in consulta-
2 tion with the commissioner of the department of environmental
3 quality engineering, shall establish and annually review a schedule
4 of reasonable fees to be paid as the hazardous waste cleanup tax
5 based upon a percentage of the fair market value of the real prop-
6 erty and the use of the property. Such fees shall be established by
7 regulations adopted after public hearings and in accordance with
8 section 2 of chapter thirty a.

9 Annually such fees shall be established at a rate or rates intended
10 to augment the assessment and cleanup costs of hazardous waste
11 sites for which the owner has been declared to be free of liability
12 pursuant to paragraph (d) and (e) of section five of chapter 21E.

13 The tax imposed by this section shall be an encumbrance on the
14 title of the grantor for the purposes of section twenty-one of chapter
15 184 of the General Laws and a tax assessed upon the land for the
16 purposes of section 37 of chapter 60 of the General Laws.

17 Annually, the commissioner of administration shall report to the
18 House and Senate committees on Ways and Means, monies received
19 as the Hazardous Waste Clean-up tax, and expended on account of
20 projects to assess, contain and remove releases and threats of
21 release of oil and hazardous material during the preceding year, and
22 the amounts anticipated to be received as such fees and to be expended
23 on account of such projects during the following year.