

By Mrs. Metayer of Braintree, petition of Elizabeth N. Metayer relative to the responsibility of persons releasing hazardous waste and oil into the environment. Natural Resources and Agriculture.

The Commonwealth of Massachusetts

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

AN ACT CLARIFYING THE LAW RELATIVE TO PERSONS RESPONSIBLE FOR RELEASES OF HAZARDOUS WASTES AND OIL INTO 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. Clause 14 of section 27 of chapter 21 of the Gener-
2 al Laws, as most recently amended by chapter 705 of the acts of
3 1979, is hereby further amended by striking out the second sentence
4 of the second paragraph of said clause and inserting in place
5 thereof the following:

6 Except where the person otherwise liable under this subsection
7 can prove that a discharge, release or disposal was caused solely by
8 an act of God or an act of war, and notwithstanding any other
9 provision of law, the owner or operator of a vessel or a facility, any
10 person who at the time of disposal of any oil or hazardous waste
11 owned or operated any facility or site at which such oil or hazard-
12 ous waste are disposed of, any person who by contract, agreement,
13 or otherwise arranged for disposal, treatment or transport for
14 disposal or treatment by any other party or entity of hazardous
15 waste owned or operated by such other party or entity and contain-
16 ing such hazardous waste and any person who accepts any hazard-
17 ous substances for transport to disposal or treatment facilities or
18 sites from which a hazardous waste or oil is discharged, released, or
19 disposed of resulting in damages shall be jointly, severally and
20 strictly liable for all costs of removal or remedial action incurred by
21 the Commonwealth and any other costs or expenses incurred by
22 any person to remove oil or a hazardous waste. Said person shall

23 also be jointly, severally and strictly liable for all damages for
24 economic loss or loss due to personal injury or loss of natural
25 resources resulting from such a discharge, release, or disposal,
26 including (a) any injury to, destruction of or loss of any real or
27 personal property, including relocation costs;

28 (b) any injury to, destruction of, or loss of natural resources,
29 including the reasonable costs of assessing such injury, destruction,
30 or loss;

31 (c) any loss of income or profits or impairment of earning
32 capacity resulting from personal injury or from injury to or de-
33 struction of real or personal property or natural resources, without
34 regard to the ownership of such property or resources;

35 (d) all out-of-pocket medical expenses including rehabilitation
36 costs or burial expenses, due to personal injury; and

37 (e) any direct or indirect loss of tax, royalty, rental or net profits
38 share revenue by the state for a period not to exceed one year.

39 In the case of an injury to, destruction of, or loss of natural
40 resources, liability shall be to the commonwealth except that no
41 liability shall be imposed where the party sought to be charged has
42 demonstrated that the damages to natural resources complained of
43 were specifically identified as an irreversible and irretrievable com-
44 mitment of natural resources in an environmental impact state-
45 ment and the decision to grant a permit or license authorizes such
46 commitment of natural resources, and the facility or project was
47 otherwise operating within the terms of its permit or license. The
48 governor, through the attorney general, shall act on behalf of the
49 public as trustee of such natural resources to recover for such
50 damages. Sums recovered shall be available for use to restore,
51 rehabilitate, or acquire the equivalent of such natural resources by
52 the Commonwealth but the measure of such damages shall not be
53 limited by the sums which can be used to restore or replace such
54 resources.

55 A person liable for the discharge, release, or disposal of any oil
56 or hazardous waste under this section shall be liable for medical
57 expenses where such expenses were incurred in the treatment of
58 injury or disease which such discharge, release or disposal caused
59 or to which it significantly contributed.

1 SECTION 2. In connection with any claim for medical ex-
2 penses under section one of this act, the court may admit as

3 relevant to the issue of causation evidence tending to establish that
4 the oil or hazardous waste in question causes or contributes to
5 injury or disease of the sort claimed to have been suffered by the
6 claimant including, but without limitation, evidence indicating an
7 increase of incidence of such injury or disease in the exposed
8 population above that which is otherwise probable, results of
9 pertinent epidemiological studies, results of pertinent animal stud-
10 ies, results of pertinent tissue culture studies, results of pertinent
11 micro-organism culture studies and results of laboratory or toxico-
12 logic studies.

13 In connection with any claim for medical expenses brought
14 pursuant to section one of this act, where the claimant introduces
15 evidence sufficient to enable the trier of fact to find that the
16 claimant was exposed to a hazardous waste found in a discharge,
17 release, or disposal which the defendant caused or to which he
18 contributed, such exposure was in a quantity or for a duration with
19 respect to which there is a reasonable likelihood that it is sufficient
20 to cause or significantly contribute to injury or disease of the class
21 or type which the claimant, claims to have suffered, then it shall be
22 presumed that defendant caused or significantly contributed to
23 that injury or disease.

24 The presumption in the above paragraph affects only the burden
25 of going forward with presentation of the case. Nothing in this
26 paragraph shall affect the burden of proof which shall remain with
27 the claimant. Each department, agency, or instrumentality of the
28 executive, legislative, and judicial branches of the Commonwealth
29 shall be subject to, and comply with this Act in the same manner
30 and to the same extent, both procedurally and substantively, as any
31 nongovernmental entity, including liability for removal costs
32 under this section.

33 In any case where a person held liable under this section can
34 demonstrate by a preponderance of the evidence that the contribu-
35 tion of such person to a discharge, release, or disposal of oil or
36 hazardous waste can be distinguished or apportioned and such
37 contribution was not a significant factor in causing or contributing
38 to the discharge, release, or disposal or the damages resulting
39 therefrom, the liability of such person shall be limited to that
40 portion of the release or damages to which such person contribut-
41 ed.

42 In any action brought under this section, a person held jointly
43 and severally liable with one or more other persons is entitled to
44 seek contribution from such persons to the extent of the propor-
45 tionate liability of such persons. In any case where a person held
46 liable under this section alleges that the discharge, release, or
47 disposal or the consequent damages are solely or in part due to the
48 act or omission of a third party, such person retains all rights
49 against such third party and shall be entitled to join such third
50 party as a defendant in an action under this section.

51 In apportioning or limiting liability of any party under this
52 section, the trier of fact may consider factors including the ability
53 of the party to demonstrate that his contribution to a discharge,
54 release, or disposal of oil or hazardous waste can be distinguished;
55 the amount of oil or hazardous waste involved; the degree of
56 toxicity of the oil or hazardous waste involved, the degree of
57 involvement in the manufacture, treating, transporting, disposing
58 of the oil or hazardous waste and the degree of cooperation with
59 federal, state, or local officials to prevent any harm to the public
60 health or the environment.

61 If the owner or operator of a facility or site at which oil or
62 hazardous wastes are stored or disposed of, who owned or operat-
63 ed the property at the time it was utilized for the storage or disposal
64 of any oil or hazardous waste, and who utilized the facility or site at
65 that time for the storage or disposal of any oil or hazardous waste
66 produced, transported, stored, or disposed of by such owner or
67 operator, fail to properly provide removal or remedial action upon
68 request of the commissioner, such owner or operator shall be liable
69 to the Commonwealth for primitive damages for the amount of
70 any removal costs expended by the State. This section shall not
71 preclude liability for damages as the result of gross negligence or
72 intentional misconduct on the part of such person. For the pur-
73 poses of the preceding sentence, reckless, willful, or wanton mis-
74 conduct shall constitute gross negligence.

75 No indemnification, hold harmless, conveyance, or similar
76 agreement shall be effective to transfer from the owner or operator
77 of a facility, or from any person who may be liable for a release
78 under this section; provided that this section shall not apply to a
79 transfer in a bona fide conveyance of a facility or site between two
80 parties not affiliated with each other in any way, where there has

81 been an adequate disclosure in writing consistent with this act of all
82 facts and conditions including potential economic consequences
83 material to such liability, and to a transferor who can provide
84 assurances of financial responsibility and continuity of operation
85 consistent with the degree and duration of risks associated with
86 such facility or site.

87 No person may recover under the authority of this section for
88 damages including loss of income or profits or impairment of
89 earning capacity resulting from personal injury where the exposure
90 of the claimant to a release of a hazardous waste has occurred
91 wholly prior to January 1, 1979, but the claimant has not discov-
92 ered or had knowledge of his injury or disease until after such
93 date. For the purposes of this section, the costs of temporary or
94 permanent relocation of residences and provision of alternative
95 water supplies shall be deemed costs of removal and not damages
96 specified in this section.

