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HOUSE . . . . . No. 848

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the operating and management of rights of way..

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

SECTION 1. Section 5 of chapter 21E of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out subsection (j) and inserting in place thereof the following subsection:-

(j) An agency or authority of the commonwealth and a public utility company that owns, holds title to, possesses an easement in, or maintains any property interest in, a right of way that is a site at which the department has incurred costs for response actions shall not be liable to the commonwealth for those costs if the agency, authority, or public utility company, respectively, can establish by a preponderance of the evidence that:

(1) it is not the owner or operator of any building, structure, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock or aircraft from which the release or threat of release has occurred;

(2) it is not a person or the successor to a person described in clauses (2), (3), (4) or (5) of paragraph (a);

(3) no act of the agency, authority, or public utility company, or of the agency's, authority's or public utility company's employee or agent, caused or otherwise contributed to the release or threat of release or caused the release or threat of release to become worse that it otherwise would have been;

(4) it notified the department immediately upon obtaining knowledge of a release or threat of release for which notification is required pursuant to, and in compliance with, section 7 or regulations promulgated pursuant thereto;

(5) it provided reasonable access, including moving utilities or disrupting service, to the site or vessel to employees, agents and contractors of the department to conduct response actions, and to other persons intending to conduct necessary response actions;

(6) if it has undertaken a response action or portion of a response action at the site, the agency, authority or public utility company conducted such response action or portion of a response action in compliance with the requirements of this chapter and the Massachusetts Contingency Plan; and

(7) it did not know or have reason to know of the presence of oil or hazardous material on the site when it came into possession of the right of way.

For purposes of this subsection, the phrase "public utility company" means the Massachusetts Wholesale Electric Company established pursuant to chapter 775 of the acts of 1975, or any successor thereto, Massachusetts municipal light departments organized under

chapter 164 or any other special law, Massachusetts gas and electric companies made subject to the jurisdiction of the department of telecommunications and energy by any provision of law except chapter 110A of the General Laws and chapter 651 of the acts of 1910, as amended or the Massachusetts Bay Transportation Authority pursuant to section 41 of chapter 161A, as amended.