

SENATE No. 1549

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the operation 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:

1 SECTION 1. Section 5(j) of chapter 21 E of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by striking out section 5(j) in its entirety and inserting the
3 following new section 5(j):

4 Section 5(j): “ An agency or authority of the commonwealth and a public utility company
5 that owns, holds title to, possesses an easement in, or maintains any property interest in, a right
6 of way that is a site at which the department has incurred costs for response actions shall not be
7 liable to the commonwealth for those costs if the agency, authority, or public utility company,
8 respectively, can establish by a preponderance of the evidence that: “

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

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

15 (3) “no act of the agency, authority, or public utility company, or of the agency’s,
16 authority’s or public utility company’s employee or agent, caused or otherwise contributed to the
17 release or threat of release or caused the release or threat of release to become worse than it
18 otherwise would have been;

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

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

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

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

31 For purposes of this subsection, the phrase “public utility company” means the
32 Massachusetts Wholesale Electric Company established pursuant to chapter seven hundred and
33 seventy-five of the acts of nineteen hundred and seventy-five, or any successor thereto,

34 Massachusetts municipal light departments organized under chapter one hundred and sixty-four
35 or any other special law, and Massachusetts gas and electric companies made subject to the
36 jurisdiction of the department of telecommunications and energy by any provision of law except
37 chapter one hundred and ten A of the General Laws and chapter six hundred and fifty-one of the
38 acts of nineteen hundred and ten, as amended or the “Massachusetts Bay Transportation
39 Authority” pursuant to chapter one hundred and sixty one A, section forty one, as amended.