

**SENATE . . . . . No. 2485**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Ten**  
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An Act to revitalize urban centers.

*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 21E, Section 2 of the General Laws, as appearing in the most  
2 recent edition, is hereby amended by inserting the following new definition following the  
3 definition of “Act of God”:

4           “Background,” those levels of oil and hazardous material that would exist in the absence  
5 of the disposal site of concern which are either:

6           (a) ubiquitous and consistently present in the environment at and in the vicinity of the  
7 disposal site of concern, and attributable to geologic or ecological conditions, the presence of  
8 historic fill, or atmospheric deposition of industrial process or engine emissions;

9           (b) attributable to coal ash or wood ash associated with fill material;

10          (c) releases to groundwater from a public water supply system;

11          (d) petroleum residues that are incidental to the normal operation of motor vehicles; or

12 (e) in the case of residences, are consistent with typical residential indoor air  
13 concentrations.

14 SECTION 2. Chapter 21E, Section 2 of the General Laws, as appearing in the most  
15 recent edition, is hereby amended by inserting the following new definition following the  
16 definition of “Hazardous material”:

17 “Historic fill,” disturbed soil or fill material placed prior to the effective date of MGL c.  
18 21E, and containing arithmetic mean (average) concentrations of oil and hazardous materials  
19 consistent with the average concentrations expected for this type of material.

20 SECTION 3. Chapter 21E, Section 2 of the General Laws, as appearing in the most  
21 recent edition, is hereby amended by deleting the existing definition of “Release,” and inserting  
22 in its place the following new definition:

23 "Release", any spilling, leaking, pumping, pouring, emitting, emptying, discharging,  
24 injecting, escaping, leaching, dumping or disposing into the environment, but excludes: (1)  
25 emissions from the exhaust of an engine, (2) release of source, by product, or special nuclear  
26 material from a nuclear incident, as those terms are defined in 42 USC Sec. 2014, if such release  
27 is subject to requirements with respect to financial protection established by the Nuclear  
28 Regulatory Commission under 42 USC Sec. 2210, (3) the normal application of fertilizer, (4) the  
29 application of pesticides consistent with their labeling, (5) the placement of historic fill, and (6)  
30 releases resulting from the normal use of household products containing oil or hazardous  
31 materials.

32 SECTION 4. Chapter 21E, Section 2 of the General Laws, as appearing in the most  
33 recent edition, is hereby amended by inserting the following new definition following the  
34 definition of “Trade secret”:

35 “Typical residential indoor air concentrations,” those concentrations of oil and hazardous  
36 material typically found in indoor air in residences, as determined from time to time by the  
37 Department.

38 SECTION 5. Within ninety (90) days of the effective date of said amendment, the  
39 Department shall promulgate regulations revising 310 CMR 40.0006 to be consistent with  
40 Sections 1 through 4 above.

41 SECTION 6. Said Chapter 21E, Section 3A is further amended in Subsection (g) by  
42 deleting the second sentence of the fourth paragraph thereof and replacing it with the following:

43 “Where feasible, a permanent solution which involves the implementation of a measure  
44 or combination of measures to attain a condition of No Significant Risk shall also include a  
45 measure or measures designed to reduce, to the extent possible, the level of oil or hazardous  
46 materials associated with the release to background.”