HOUSE DOCKET, NO. 4264 FILED ON: 2/6/2012

HOUSE . . . . . No. 4018

The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

AN ACT ESTABLISHING A DEPARTMENT OF ENVIRONMENTAL PROTECTION APPEALS BOARD..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Louis L. Kafka	*8th Norfolk*
James E. Timilty	
John H. Rogers	*12th Norfolk*
Paul McMurtry	*11th Norfolk*

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By Mr. Kafka of Stoughton, a petition (subject to Joint Rule 12) of Louis L. Kafka and others relative to establishing a department of environmental protection appeals board. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

AN ACT ESTABLISHING A DEPARTMENT OF ENVIRONMENTAL PROTECTION APPEALS BOARD..

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 19 of chapter 21A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after the word "meanings:", the following definition:-

"Appeals board", the department of environmental protection appeals board, established pursuant to section 19G ½.

SECTION 2. Chapter 21A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after section 19G, the following section:-

Section 19G ½ There is hereby established within the executive office of energy and environmental affairs a board to be known as the department of environmental protection appeals board. The appeals board shall consist of five members, the chair who shall be the secretary of the executive office of energy and environmental affairs or his designee; provided, however, that

12 the designee shall be a full-time employee of the office at all times while so designated, and such
13 designee shall not be a member of the board of registration of hazardous waste site cleanup
14 professionals. The governor shall appoint the other four members of the appeals board to 2 year
15 terms, one member shall be a licensed hazardous waste site cleanup professional, one member
16 from a statewide organization that promotes the protection of the environment, one member from
17 a labor organization who is knowledgeable with respect to issues involving response to releases
18 of oil and hazardous materials, and one member shall be a hydrologist, who is knowledgeable
19 with respect to issues involving response to releases of oil and hazardous materials and
20 environmental protection; provided, however, that none of the appointees are members of the
21 board of registration of hazardous waste site cleanup professionals.

22 Each of the 4 members of the appeals board appointed by the governor whose term has
23 expired shall continue to be a member of the appeals board until the member's successor is
24 appointed and qualified, at which time the successor shall complete the unexpired portion of the
25 term. Each of the 4 members of the appeals board appointed by the governor shall serve without
26 compensation.

27 The board may make such rules or by-laws, not inconsistent with law, as it may deem
28 necessary in the performance of its duties and may establish forms of appeals and petitions, and
29 reasonable fees for the filing thereof. The board shall hold only such meetings as are required to
30 perform its duties. Time, place and notice of all meetings shall be required by rules or by-laws. A
31 majority of the board, constituted as above provided, may transact business, but a lesser number
32 may adjourn from time to time.

33 No member shall act as a member of the board, or vote as such, in connection with any
34 matter as to which his private right, distinct from the public interest, is immediately concerned.

35 The secretary of the executive office of energy and environmental affairs, as chair, shall
36 employ such staff and other persons as are required to assist the appeals board, or both, in the
37 performance of its functions and duties pursuant to sections 19 through 19 J, inclusive.

38 SECTION 3. Said chapter 21A is hereby further amended by striking out section 19H,
39 as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

40 Section 19H. Whoever is aggrieved by a determination by the board of registration of
41 hazardous waste site cleanup professionals or other person charged with the enforcement of the
42 rules and regulations of such board, may, within 10 days after the service of notice thereof,
43 appeal therefrom, to the appeals board. The appeals board shall, after such notice as it may
44 direct, hold a public hearing on such appeal at a time and place to be fixed by it, but not later
45 than 30 days after the entry of such appeal, unless such time shall be extended by agreement with
46 the appellant. The appellant may appear in person or by agent or attorney at such hearing. The
47 appeals board shall hear all pertinent evidence and determine the facts, and shall issue an
48 appropriate decision or order reversing, affirming or modifying in whole or in part the
49 determination. Such decision or order of the board shall be made within a reasonable time, and
50 within 45 days after such hearing, unless such time is extended by like agreement. The board
51 shall forthwith send by registered mail a copy of its decision or order to the interested parties.

52 Any person aggrieved by a decision or order of the appeals board, whether or not a party
53 to the proceeding may, within 30 days after receipt of notice of such decision or order obtain
54 judicial review thereof pursuant to chapter 30A. Said court shall hear all pertinent evidence and

55 determine the facts and may annul such decision if it is found to exceed the authority of said
56 board, or may make such other decree as justice may require as set forth in section 19I. Costs
57 shall not be allowed against the appeals board unless it appears to the court that said board acted
58 with gross negligence or in bad faith or with malice in making the decision or order appealed
59 from. Costs shall not be allowed against a party appealing from the decision or order of such
60 appeals board unless it appears to the court that the appellant acted in bad faith or with malice in
61 making the appeal to the court.

62 Compliance with any determination of the board of registration of hazardous waste site
63 cleanup professionals or other person charged with the enforcement of the rules and regulations
64 of such board shall be excused pending the final determination of any appeal therefrom taken
65 under this section; provided, however, that if, in making a determination subject to this section,
66 the appeals board finds that an imminent threat to public health or safety or to the environment
67 could result during the pendency of a judicial review, the board may order that the determination
68 become provisionally effective and enforceable immediately upon issuance, and shall remain so
69 notwithstanding and until the conclusion of the judicial review, unless the appeals board orders
70 otherwise during the course of the proceeding.