HOUSE . . . . . No. 4898

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, June 21, 2022.

The committee on House Ways and Means to whom was referred the petition (accompanied by bill, House, No. 3837) of Sheila C. Harrington relative to liability for release of hazardous materials, reports recommending that the accompanying bill (House, No. 4898) ought to pass.

For the committee,

AARON MICHLEWITZ.

FILED ON: 6/21/2022

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The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to liability for release of hazardous materials.

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 2 of chapter 21E of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking out the definition of "Condition of substantial release migration" and inserting in place thereof the following definition:-

"Condition of substantial release migration", (a) a release of oil or hazardous material that is likely to be transported through environmental media where the mechanism, rate or extent of transport has resulted in or, if not promptly addressed, has the potential to result in: (1) health damage, safety hazards or environmental harm; or (2) a substantial increase in the extent or magnitude of the release, the degree or complexity of future response actions, or the amount of response costs.

(b) Conditions of substantial release migration shall include, but not be limited to:

(1) releases that have resulted in the discharge of separate-phase oil or separate-phase hazardous material to surface waters, buildings or underground utilities or conduits;

(2) releases to the ground surface or to the vadose zone that, if not promptly removed or contained, are likely to significantly impact the underlying groundwater or significantly exacerbate an existing condition of groundwater pollution;

(3) releases to the groundwater that have migrated or are expected to migrate more than 200 feet per year;

(4) releases to the groundwater that have been or are within 1 year likely to be detected in a public or private water supply well;

(5) releases to the groundwater that have been or are within 1 year likely to be detected in a surface water body, wetland or public water supply reservoir;

(6) releases to the groundwater or to the vadose zone that have resulted in or have the potential to result in the discharge of vapors into a school, daycare or child care center or occupied residential dwelling at concentrations greater than indoor air threshold values for the evaluation of a vapor intrusion pathway as established by the department; provided, that conditions that indicate a potential discharge of vapors into a school, daycare or child care center or occupied residential dwelling shall include, but shall not be limited to:

(i) soil or soil gas impacted with 1 or more volatile organic compounds within 6 feet, measured horizontally from the wall of the structure, and within 10 feet measured vertically from the basement floor or foundation at concentrations that are likely to discharge vapors into the structure;

(ii) 1 or more volatile organic compound in the groundwater exceed the applicable Groundwater Category GW-2 Standard within 30 feet of the structure, and the average annual depth to groundwater in that area is 15 feet or less;

(iii) volatile light non-aqueous phase liquid is present in a groundwater monitoring well, excavation, or subsurface depression within 30 feet of the structure at a measured thickness equal to or greater than 1/8 inch or .01 feet; or

(iv) evidence of vapor migration along preferential pathways at a location that is likely to result in the discharge of vapors into the structure; or

(7) any release for which a notification has been required by the department.

(c) Any person required to notify the department pursuant to section 7 shall notify the department of such condition upon obtaining knowledge thereof and shall take any appropriate and feasible response actions as may be required by the department. Notwithstanding any general or special law to the contrary, the department shall not use any other definition of condition of substantial release migration.

SECTION 2. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting, after the definition of “Contain”, the following definition:-

“Critical exposure pathways”, those routes by which oil or hazardous material released at a disposal site are transported, or are likely to be transported, to human receptors via: (i) vapor-phase emissions of oil or hazardous materials into the living or working space of a pre-school, daycare, school or occupied residential dwelling at concentrations greater than indoor air threshold values for the evaluation of a vapor intrusion pathway as established by the

department; or (ii) ingestion, dermal absorption or inhalation of measurable concentrations of oil or hazardous materials from drinking water supply wells located at and servicing a pre-school, daycare, school or occupied residential dwelling.

SECTION 3. Section 5C of said chapter 21E, as so appearing, is hereby amended by adding the following subsection:-

(l) A department audit of response actions at the site or portion of the site owned or operated by an eligible person, as delineated in a waste site cleanup activity opinion, for which a permanent solution or remedy operations status exists and is maintained or has been achieved and maintained in accordance with such opinion, which (i) identifies no violations of this chapter and regulations promulgated thereto, or (ii) if such violations are identified, such violations are promptly corrected, shall be deemed conclusive evidence that the eligible person has no liability, and the department may take no action as to such eligible person, for any releases at any property not previously identified as part of the site or any other disposal site. Notwithstanding any general or special law to the contrary, the department shall not promulgate regulations relative to this subsection.

SECTION 4. (a) Notwithstanding any general or special law to the contrary, no person shall be liable for any substantial release migration at any property not previously identified as part of a disposal site or any other disposal site if the department of environmental protection:

(i) has, at any time before the effective date of this act, performed an audit of response actions at a site, or a part of a site; and

(ii)(1) has determined that a permanent solution or remedy operations status was achieved and maintained in accordance with a waste site cleanup activity opinion or any other notification

to such person; or (2) has notified such person that a violation of chapter 21E of the General Laws or any regulation was identified and promptly corrected.

(b) The department of environmental protection shall have no defense in any action or claim, nor shall the department present evidence to contest liability of an eligible person, upon a showing that a permanent solution or remedy operations status was achieved and maintained.