

HOUSE No. 3837

The Commonwealth of Massachusetts

PRESENTED BY:

Sheila C. Harrington

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 relative to liability for release of hazardous materials.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/18/2021</i>

HOUSE No. 3837

By Mrs. Harrington of Groton, a petition (accompanied by bill, House, No. 3837) of Sheila C. Harrington relative to liability for release of hazardous materials. Environment, Natural Resources and Agriculture.

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:

1 SECTION 1. Section 2 of chapter 21E of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out the definition “Condition of substantial
3 release migration” and inserting in place thereof the following definition:-

4 “Condition of substantial release migration”, a release of oil or hazardous material that is
5 likely to be transported through environmental media where the mechanism, rate or extent of
6 transport has resulted in or, if not promptly addressed, has the potential to result in: (a) health
7 damage, safety hazards or environmental harm; or (b) a substantial increase in the extent or
8 magnitude of the release, the degree or complexity of future response actions, or the amount of
9 response costs. Conditions of substantial release migration shall include:

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

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

15 (3) releases to the groundwater that have migrated or are expected to migrate more than
16 200 feet per year;

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

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

21 (6) releases to the groundwater or to the vadose zone that have resulted in or have the
22 potential to result in the discharge of vapors into a school, daycare or child care center or
23 occupied residential dwelling at concentrations greater than indoor air threshold values for the
24 evaluation of a vapor intrusion pathway as established by the department; or

25 (7) any release for which a notification has been required by the department. Conditions
26 that indicate a potential discharge of vapors into a school, daycare or child care center or
27 occupied residential dwelling shall include, but are not limited to:

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

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

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

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

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

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

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

53 or hazardous materials from drinking water supply wells located at and servicing a pre-school,
54 daycare, school or occupied residential dwelling.

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

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

67 SECTION 4. (a) No person shall be liable for any substantial release migration at any
68 property not previously identified as part of a disposal site or any other disposal site if the
69 department of environmental protection:

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

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

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

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