

HOUSE No. 886

By Mr. Wagner of Chicopee, petition of Joseph F. Wagner relative to the operating and management of rights of way. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE OPERATING 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 5 of Chapter 21E of the General Laws, as appearing in the
2 2004 Official Edition, is hereby amended by striking out subsection
3 (j) and inserting in place thereof the following subsection:—

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

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

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

19 (3) no act of the agency, authority, or public utility company, or of
20 the agency's, authority's or public utility company's employee or
21 agent, caused or otherwise contributed to the release or threat of
22 release or caused the release or threat of release to become worse
23 that it otherwise would have been;

24 (4) it notified the department immediately upon obtaining knowl-
25 edge of a release or threat of release for which notification is
26 required pursuant to, and in compliance with, Section 7 or regula-
27 tions promulgated pursuant thereto;

28 (5) it provided reasonable access, including moving utilities or
29 disrupting service, to the site or vessel to employees, agents and con-
30 tractors of the department to conduct response actions, and to other
31 persons intending to conduct necessary response actions;

32 (6) if it has undertaken a response action or portion of a response
33 action at the site, the agency, authority or public utility company
34 conducted such response action or portion of a response action in
35 compliance with the requirements of this chapter and the Massachu-
36 setts Contingency Plan; and

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

40 For purposes of this subsection, the phrase “public utility com-
41 pany” means the Massachusetts Wholesale Electric Company estab-
42 lished pursuant to Chapter 775 of the acts of 1975, or any successor
43 thereto, Massachusetts municipal light departments organized under
44 Chapter 164 or any other special law, Massachusetts gas and electric
45 companies made subject to the jurisdiction of the department of
46 telecommunications and energy by any provision of law except
47 Chapter 110A of the General Laws and Chapter 651 of the acts of
48 1910, as amended or the Massachusetts Bay Transportation
49 Authority pursuant to Section 41 of Chapter 161A, as amended.