



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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Brownfields Liability Relief

Reformatted December 2017

The Brownfields Act established statutory liability relief for certain parties undertaking brownfields projects. Parties interested in determining if they are eligible for this protection should refer to [MGL 21E Chapter 2](#), and consult with an attorney with expertise in liability relating to oil/hazardous material releases.

"Eligible" Owners and Operators: Limits liability for "eligible persons" once they meet MassDEP's cleanup standards for oil or hazardous material releases. Defines "eligible person" as an owner or operator who did not own or operate the site at the time of the release and who did not cause or contribute to the contamination at the site. Once a permanent cleanup or remedy operation status is achieved, an eligible person is protected from Commonwealth claims for response action costs and from claims by third parties for contribution, response action costs and property damage under c. 21E and property damage under common law.

Downgradient Property Owners: Exempts certain owners and operators from liability for contamination that has migrated onto their property, provided they meet certain requirements specified in the law.

Tenants: Exempts certain tenants from operator liability if their tenancy began after the release was reported to MassDEP, if they did not cause or contribute to the contamination, and meet other requirements specified in the law.

Redevelopment Authorities and Community Development Corporations (CDCs): Exempts redevelopment agencies and authorities, CDCs and Economic Development and Industrial Corporations (EDICs) from liability as long as they acquired the property after August 5, 1998 and meet other requirements specified in the law.

Secured Lenders: Replaces the "participation in management" liability standard with a causation standard and deletes the 5-year limit on the exemption after the secured lender takes ownership or possession of the property, provided they seek to divest of the property and meet other requirements specified in the law.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.
TTY# MassRelay Service 1-800-439-2370
MassDEP Website: www.mass.gov/dep

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Brownfields Covenant Not to Sue Program: Provides liability protection for projects where the statutory eligibility protection described above does not apply. Owners who caused the contamination at a site who are selling their property can get liability protection through this program. Parties undertaking a cleanup that can only reach a temporary solution can also get protection. The [Office of the Attorney General](#) administers this program.