

## Chapter 206 of the Acts of 1998

### AN ACT RELATIVE TO ENVIRONMENTAL CLEANUP AND PROMOTING THE REDEVELOPMENT OF CONTAMINATED PROPERTY.

*Whereas* , The deferred operation of this act would tend to defeat its purpose, which is to ensure forthwith environmental cleanup and promote the redevelopment of contaminated property, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*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 16 of chapter 21A](#) of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by inserting after the word "of", in line 23, the following words:- oil or.

**SECTION 2.** Said [section 16 of said chapter 21A](#), as so appearing, is hereby further amended by inserting after the word "twenty-one E", in line 24, the following words:- , or (5) consisted of failure to maintain a permanent solution or a remedy operation status, pursuant to [chapter 21E](#), or (6) consisted of failure to comply with the terms of an activity and use limitation pursuant to [section 6 of said chapter 21E](#).

**SECTION 3.** Said [section 16 of said chapter 21A](#), as so appearing, is hereby further amended by inserting after the word "of", in line 149, the following words:- oil or.

**SECTION 4.** Said [section 16 of said chapter 21A](#), as so appearing, is hereby further amended by inserting after the word "twenty-one E", in line 150, the following words:- , or a failure to maintain a permanent solution or remedy operation status, pursuant to said [chapter 21E](#) or a failure to comply with the terms of an activity and use limitation pursuant to [section 6 of said chapter 21E](#).

**SECTION 5.** The definition of "Waste site cleanup activity opinion" in [section 19 of said chapter 21A](#), as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following two sentences:- A waste site cleanup activity opinion shall not be relied upon as sufficient to protect public health, safety, welfare, or the environment unless such opinion is rendered by a hazardous waste site cleanup professional licensed pursuant to sections 19 to 19J, inclusive, who (a) is qualified by appropriate education, training, and experience, and (b) (1) in the case of an opinion related to an assessment, has either (i) managed, supervised or actually performed such assessment, or (ii) periodically reviewed and evaluated the performance by others of such assessment; or (2) in the case of an opinion related to a containment or removal action, has either (i) managed, supervised or actually performed such action, or (ii) periodically observed the performance by others of such action, to determine whether the completed work has complied with the provisions of [chapter 21E](#) and the Massachusetts Contingency Plan promulgated pursuant to said chapter. A successor hazardous waste site cleanup professional may render a waste site cleanup activity opinion regarding response actions performed under a previous hazardous waste site cleanup professional, and that opinion may be relied upon as sufficient to protect public health, safety, welfare, or the environment, only when the successor hazardous waste site cleanup professional has: (a) reviewed all reasonably available documentation

known to the successor hazardous waste site cleanup professional that describes previous releases, site assessment activities and results, and work performed in connection with the assessment, containment or removal action that is the subject of the opinion; (b) conducted a site visit to observe current conditions and to verify the completion of as much of the work as is reasonably observable; and (c) concluded, in the exercise of his independent professional judgment, that he has sufficient information upon which to render the waste site cleanup activity opinion.

**SECTION 6.** [Section 19A of said chapter 21A](#), as so appearing, is hereby amended by striking out, in lines 16 and 17, the words "be a full time employee of a firm engaged in the manufacturing and processing of petroleum products" and inserting in place thereof the following words:- have significant experience in the assessment or redemption of sites contaminated with petroleum.

**SECTION 7.** [Section 2 of chapter 21E](#) of the General Laws, as so appearing, is hereby amended by inserting before the definition of "Assess and assessment" the following definition:-

"Activity and use limitation", a restriction, covenant or notice concerning the use of real property which is imposed upon real property by a property owner or the department pursuant to and in accordance with this chapter and regulations promulgated hereunder.

**SECTION 8.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by inserting after the definition of "Commissioner" the following two definitions:-

"Community Development Corporation", a community development corporation created and operated in accordance with the provisions of [chapter 40F](#).

"Condition of substantial release migration", 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: (a) health damage, safety hazards or environmental harm; or (b) 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. This section shall be further defined in regulations promulgated by the department. Any person required to notify pursuant to [section 7 of this chapter](#) 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.

**SECTION 8A.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by inserting after the definition of "Disposal site" the following four definitions:-

"Economic development and industrial corporation", a corporation created and operated in accordance with the provisions of [chapter 121C](#) or any other special acts, including, without limitation, chapter 1097 of the acts of 1971.

**SECTION 9.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by inserting after the definition of "Disposal site" the following three definitions:-

"Economically distressed area", an area or municipality that has been designated as an economic target area, or that would otherwise meet the criteria for such designation pursuant to [section 3D of chapter 23A](#), or the site of a former manufactured gas plant.

"Eligible person", an owner or operator of a site or a portion thereof from or at which there is or has been a release of oil or hazardous material who:

(i) would be liable under this chapter solely pursuant to clause (1) of paragraph (a) of section 5; and

(ii) did not cause or contribute to the release of oil or hazardous material from or at the site and did not own or operate the site at the time of the release.

"Eligible tenant", a person who acquires occupancy, possession or control of a site, or a portion thereof, after a release of oil or hazardous material from or at such site has been reported to the department, who did not cause or contribute to the release and who would not otherwise be liable pursuant to clauses (2) to (5), inclusive, of paragraph (a) of section 5.

**SECTION 10.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by striking out, in line 167, the words "vessel and" and inserting in place thereof the following word:- vessel,.

**SECTION 11.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by striking out, in line 171, the word "vessel" and inserting in place thereof the following words:- vessel, and (11) after a redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation which is not an owner or operator pursuant to this definition takes ownership or possession of a site or a portion thereof, any person who owned or operated such site or portion thereof immediately prior to such redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation acquiring ownership or possession of the site or portion thereof, except where such immediate previous owner or operator meets the criteria as an eligible person who has achieved a liability endpoint pursuant to section 5C.

**SECTION 12.** Said [section 2 of said chapter 21E](#) is hereby further amended by striking out the sentence contained in lines 227 to 229, inclusive, and inserting in place thereof the following sentence:- A fiduciary who takes any action described in subclauses (A) to (E), inclusive, of paragraph (2) of subsection (b) of this definition shall not be deemed an owner or operator solely because said fiduciary took such action.

**SECTION 13.** The definition of "Owner" or "Operator" in said [section 2 of said chapter 21E](#), as so appearing, is hereby amended by striking out paragraph (c) and inserting in place thereof the following paragraph:-

(c) A secured lender shall not be deemed an owner or operator with respect to the site securing the loan if the applicable following requirements are met:

(1) A secured lender who meets all of the requirements of this paragraph, as applicable, shall be excluded from the definition of owner or operator only with respect to releases and threats of release that first begin to occur before such secured lender acquires ownership or possession of the site or vessel. Nothing in this definition shall relieve a secured lender of any liability for a release or threat of release that first begins to occur at or from a site or vessel during the time that such secured lender has ownership or possession of such site or vessel for any purpose.

(2) Notwithstanding any other provision of this definition, a secured lender shall be deemed an owner or operator of an abandoned site or vessel if such secured lender owned, operated, or held ownership or possession of such site or vessel immediately prior to such abandonment.

(3) No act of the secured lender, or of the secured lender's employees or agents, causes or contributes to

a release or threat of release of oil or hazardous materials or causes the release or threat of release to become worse than it otherwise would have been.

(4) Neither the secured lender nor the secured lender's employees or agents compel the borrower to:

(i) undertake an action which causes a release of oil or hazardous material; or (ii) violate any law or regulation regulating the use or handling of oil or hazardous materials.

(5) After acquiring ownership or possession of a site or vessel the secured lender satisfies all of the following conditions:-

(A) the secured lender notifies the department, in compliance with this chapter and regulations promulgated thereto, upon obtaining knowledge of a release or threat of release of oil or hazardous material for which notification is required pursuant to this chapter and regulations promulgated thereto,

(B) the secured lender provides reasonable access to the site or vessel to employees, agents, and contractors of the department for all purposes authorized by this chapter, and to other persons for the purpose of conducting response actions pursuant to this chapter and regulations promulgated thereto, upon obtaining knowledge of a release or threat of release of oil or hazardous material,

(C) the secured lender takes reasonable steps (i) to prevent the exposure of people to oil or hazardous material by fencing or otherwise preventing access to the site or vessel, and (ii) to contain any further release or threat of release of oil or hazardous material from a structure or container, upon obtaining knowledge of a release or threat of release of oil or hazardous material,

(D) if the secured lender undertakes a response action at the site or vessel, the secured lender conducts such response action in compliance with the requirements of this chapter and regulations promulgated thereto,

(E) if there is an imminent hazard to public health, safety, welfare, or the environment, or if there is a condition of substantial release migration from oil or hazardous material at or from the site or vessel, the secured lender shall take response actions necessary to abate such conditions in compliance with this chapter and regulations promulgated thereto, and

(F) the secured lender acts diligently to sell or otherwise to divest itself of ownership or possession of the site or vessel. Whether the secured lender is acting or has acted diligently to sell or otherwise to divest itself of ownership or possession of the site or vessel shall be determined as follows:

(i) during the first 36 months after the secured lender first acquired ownership or possession of the site or vessel, whichever occurs earlier, there shall be a presumption that the secured lender is acting diligently to sell or otherwise to divest itself of ownership or possession of the site or vessel; this presumption may be rebutted by a preponderance of the evidence;

(ii) if the secured lender has not divested itself of ownership or possession of the site or vessel after the expiration of said 36-month period specified in subclause (i), then the burden of proof shall thereafter rest on said secured lender to demonstrate by a preponderance of the evidence that said secured lender is acting diligently to sell or otherwise to divest itself of ownership or possession of the site or vessel;

(iii) in determining whether or not the secured lender is acting diligently to sell or otherwise to divest itself of ownership or possession of the site or vessel, the following factors shall be considered:

- (a) the use or uses to which the site or vessel was put or is being put during the period in question,
  - (b) market conditions,
  - (c) the extent of contamination of the site or vessel and the effects of such contamination on marketability of the site or vessel,
  - (d) the applicability of, and compliance by such secured lender with, federal and state requirements relevant to sale or to divestment of property in which such secured lender holds or formerly held a security interest,
  - (e) legal constraints on sale or divestment of ownership or possession, and
  - (f) whether commercially reasonable steps necessary to render the site or vessel in a marketable condition have been taken.
- (6) If the secured lender has knowledge of a release or threat of release of oil or hazardous material at or from a site or vessel against which it has commenced foreclosure proceedings, the secured lender shall notify:
- (A) the department pursuant to this chapter and regulations promulgated thereto, but in no event later than the commencement of the public foreclosure auction; and
  - (B) prospective bidders at the time and place of the public foreclosure auction.
- (7) A secured lender whose property has been the site of a release of oil or hazardous material for which the department has incurred costs for assessment, containment, or removal actions pursuant to sections 3A, 4, 5A, 5B, 8, 9, 10, 11, 12, 13, or 14, in responding to an imminent hazard or a condition of substantial release migration, that occurred after the secured lender first acquired ownership or possession, shall be liable to the commonwealth only to the extent of the value of the property following the department's response actions, less the total amount of costs reasonably paid by said secured lender for carrying out response actions in responding to the imminent hazard or the condition of substantial release migration in compliance with this chapter and regulations promulgated thereto.

**SECTION 14.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by striking out, in line 429, the words "(E) of clause (3)" and inserting in place thereof the following words:- subclause (iii) of subparagraph (F) of clause (5).

**SECTION 15.** The definition of "Owner" or "Operator" in said [section 2 of said chapter 21E](#), as so appearing, is hereby amended by adding the following two paragraphs:-

- (e)(1) An eligible tenant after acquiring occupancy, possession or control of a site or portion of a site from or at which there is or has been a release of oil or hazardous material shall not be deemed an operator if all of the following requirements are met on the site or portion of the site occupied, possessed or controlled by the eligible tenant:
  - (A) no act or failure of duty of the tenant or of its employee or agent causes or contributes to the release, causes the release to become worse than it otherwise would have been, or causes a new exposure to the release;

(B) the tenant notifies the department in compliance with this chapter and regulations promulgated thereto, upon obtaining knowledge of a release or threat of release on or from the site or portion of the site under its occupancy, possession or control;

(C) the tenant provides reasonable access to the site or portion of the site under its occupancy, possession or control to employees, agents, and contractors of the department for all purposes authorized by this chapter, and to other persons for the purpose of conducting response actions pursuant to this chapter and regulations promulgated thereto;

(D) if the tenant uses oil or hazardous material similar to those which have been released, the tenant demonstrates by a preponderance of the evidence that it has not contributed to the release;

(E) the tenant takes reasonable steps (i) to prevent the exposure of people to oil or hazardous material by fencing or otherwise preventing access to the portion of the site under its control, (ii) to contain any further release or threat of release of oil or hazardous material from a structure or container under its control, and (iii) if there is an imminent hazard at or from the site or portion of the site under its control, the tenant controls the potential risk to public health, safety, welfare, or the environment by taking immediate response actions at the site or portion of the site under the control of the tenant; and

(F) any response action voluntarily conducted or required by this section is conducted in compliance with this chapter and regulations promulgated thereto;

(2) Nothing in this section shall relieve a tenant of liability for a release or threat of release of oil or hazardous material which first begins to occur at or from the site or portion of the site occupied, possessed or controlled by such tenant during such tenant's occupancy, possession, or control.

(3) Merely ceasing to occupy, possess or control a site or portion of a site shall not cause an eligible tenant to be liable for a release or threat of release of oil or hazardous material at or from such site or such portion of a site.

(4) An eligible tenant shall not be liable for property damage resulting from a release or threat of release at or from a portion of the site not under its occupancy, possession or control for which it would not otherwise be liable pursuant to this chapter.

(f) A redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation shall not be deemed an owner or operator if all of the following requirements are met:

(1) the redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation has acquired its portion of the site in accordance with the provisions of [chapter 40F](#), [chapter 121B](#) or [chapter 121C](#) or any applicable special

(2) no act or failure of duty of the redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation or of any employee or agent thereof, caused or contributed to, or exacerbated any release or threat of release of oil or hazardous material at or from the site;

(3) the redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation satisfies all of the following conditions:

(A) notifies the department in compliance with this chapter and regulations promulgated thereto upon obtaining knowledge of a release or threat of release of oil or hazardous material for which notification is required pursuant to this chapter and regulations promulgated pursuant thereto;

(B) provides reasonable access to the site or portion of the site under its control to employees, agents and contractors of the department for all purposes authorized by this chapter, and to other persons for the purpose of conducting response actions pursuant to this chapter and regulations promulgated thereto;

(C) takes reasonable steps (i) to prevent the exposure of people to oil or hazardous material by fencing or otherwise preventing access to the portion of the site under its ownership or possession, and (ii) to contain any further release or threat of release of oil or hazardous material from a structure or container under its ownership or possession;

(D) if there is an imminent hazard at or from the portion of the site under its control, controls the potential risk to public health, safety, welfare, or the environment at or from the site by taking immediate response actions at the portion of the site under its ownership or possession, in compliance with this chapter and regulations promulgated thereto;

(E) conducts any response action undertaken at the site in compliance with this chapter and regulations promulgated thereto; and

(F) acts diligently to sell or otherwise to divest itself of ownership or possession of its portion of the site in accordance with the provisions of [chapter 40F](#), [chapter 121B](#) or [chapter 121C](#), or any applicable special acts. Whether the redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation is acting or has acted diligently to sell or otherwise to divest itself of ownership or possession of its portion of the site shall be determined by considering the same criteria applicable to secured lenders set forth in subclause (iii) of subparagraph (F) of clause (5) of paragraph (c).

(4) if the redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation acquired ownership or possession of a site or portion of a site prior to the effective date of this act, the redevelopment authority, redevelopment agency, community development corporation or economic development and industrial corporation notifies the department of any releases of oil or hazardous material of which it has knowledge in accordance with section 7 and the regulations promulgated thereunder, and shall meet the requirements in clause (3) of this paragraph relative to such releases within six months of being notified by the department of the requirements in this paragraph.

**SECTION 16.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by inserting after the definition of "Public vessel" the following definition:-

"Redevelopment authority" or "redevelopment agency", an authority or agency created and operated in accordance with the provisions of [chapter 121B](#) and an economic development authority created and operated in accordance with the provisions of chapter 22 of the acts of 1995.

**SECTION 17.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by inserting after the definition of "Release" the following definition:-

"Remedy operation status", a response action that has eliminated a condition of any substantial hazard to public health, safety, welfare or the environment and relies upon active operation and maintenance for

the purpose of achieving a permanent solution.

**SECTION 18.** Said [section 2 of said chapter 21E](#), as so appearing, is hereby further amended by inserting after the definition of "Site" the following definition:-

"Standard of care", the degree of care that a reasonable and diligent waste site cleanup professional licensed pursuant to sections [19](#) to [19J](#), inclusive, of chapter 21A shall exercise when rendering a waste site cleanup activity opinion pursuant to said sections 19 to 19J, inclusive.

**SECTION 19.** Paragraph (j) of [section 3A of said chapter 21E](#), as so appearing, is hereby amended by striking out clause (2) and inserting in place thereof the following two clauses:-

(2) A person who has resolved his liability to the commonwealth in an administrative or judicially approved settlement shall not be liable for claims for contribution, cost recovery or equitable share regarding matters addressed in the settlement to any person (i) to whom the settling party has provided notice of the settlement, or who has otherwise received notice, and (ii) who has had an opportunity to comment on the settlement to the settling parties. Matters addressed in a settlement shall be defined in each settlement. An opportunity to comment shall mean an opportunity for a person to submit written comments to the settling parties during a period of 90 calendar days commencing with such person's receipt of notice or the date of publication of notice. The settling governmental entity may, in its sole discretion, extend the 90-day comment period upon a request made prior to the expiration of such comment period. Notice shall include, but shall not be limited to, notice of how, when and to whom to make comments. Notice means actual notice or notice provided by registered mail, return receipt, to all owners of record in the respective registry of deeds or the appropriate land registration office of the registry district for the preceding 50 years for all property within the site, and all parties who have received notice from the department of environmental protection pursuant to section 4. For all others notice means notice by publication. Notice by publication shall be deemed adequate upon publication of the settlement (i) in the *Environmental Monitor* and (ii) in a newspaper, if any, published in the municipality where the site is located or in a newspaper with general circulation in the town where the site is located, once in each of three successive weeks. If no newspaper is published in such municipality, notice may be published in a newspaper with general circulation where the site is located. A newspaper which by its title page purports to be printed or published in such municipality, and having a circulation therein, shall be sufficient for the purpose of providing notice by publication pursuant to this section. No such settlement shall be effective prior to the closing of the comment period. Such settlement does not discharge any other person unless its terms so provide, but shall reduce the potential liability of all other liable persons by the amount of the settlement. (3) Pursuant to the limitations set forth in this subsection, the commonwealth may, in its sole discretion, enter into a brownfields covenant not to sue agreement with a current or prospective owner or operator of property that is contaminated by oil or hazardous material.

(a) The commonwealth may enter into such an agreement only where:

(i) the proposed redevelopment or reuse of the property will contribute to the economic or physical revitalization of the community in which it is located, and provides one or more of the following public benefits: (a) provides new, permanent jobs, or (b) results in affordable housing benefits, or (c) provides historic preservation, or (d) creates or revitalizes open space, or (e) will provide some other public benefit to the community as determined by the attorney general; and

(ii) a permanent solution or remedy operation status shall be achieved and maintained for the site that is the subject of the covenant, in accordance with this chapter and regulations promulgated pursuant

thereto; or, if the person to whom such covenant is provided is an eligible person as defined in section 2, and such person can demonstrate that it is not feasible to achieve a permanent solution for the site in accordance with paragraph (g) of this section, that a temporary solution is achieved and maintained in accordance with paragraph (f) of this section; and

(iii) a development plan describing the proposed use or reuse of the site and the proposed public benefits is submitted in accordance with the regulations promulgated pursuant to this section.

(b) In entering into such covenants not to sue, the commonwealth shall give first priority to sites located in the 15 cities with the highest poverty rate in the commonwealth; second priority to sites located in the remaining municipalities located within an economically distressed area as defined in section 2 of this chapter; and third priority to sites located in any remaining municipalities in the commonwealth.

(c) A person who has entered into a brownfields covenant not to sue agreement shall not be liable to the commonwealth or to any other person who has received notice of an opportunity to join the covenant not to sue agreement, for claims for contribution, response action costs or for property damage pursuant to this chapter or for property damage under the common law, except for liability arising under a contract; provided, however, that no person shall be relieved of any liability by this provision with respect to any matter or property that is not addressed by said brownfields covenant not to sue agreement.

(d) Nothing in this clause shall relieve a potentially liable person of any liability for a release or threat of release of oil or hazardous material: (i) that first begins to occur after the brownfields covenant not to sue vests; (ii) from which there is a new exposure that results from any action or failure to act pursuant to this chapter during such person's ownership or operation of the site; or (iii) that violates or is inconsistent with an activity and use limitation established pursuant to this chapter and regulations promulgated thereunder.

(e) The attorney general shall, in consultation with the department of environmental protection and the department of economic development, within one year of the effective date of this act, adopt regulations to carry out the purposes of this subsection.

**SECTION 20.** Clause (1) of paragraph (p) of said [section 3A of said chapter 21E](#), as so appearing, is hereby amended by striking out subclause (ii) and inserting in place thereof the following subclause:-

(ii) the department has issued an order pursuant to clause (B) of paragraph (1) of subsection (b) of section 10 for a person to carry out response actions or to apply for a permit to carry out response actions or both.

**SECTION 21.** [Section 3B of said chapter 21E](#), as so appearing, is hereby amended by striking out, in line 12, the words "fees for" and inserting in place thereof the following words:- fees. For.

**SECTION 22.** Said [section 3B of said chapter 21E](#), as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

In instances of severe financial hardship, the commissioner or his designee may grant a timely request to extend the time for making payment. The department may require that persons applying for permits as a result of an order issued pursuant to clause (B) of paragraph (1) of subsection (b) of section 10, or as a result of any other enforcement action by the department or another agency of the commonwealth or its subdivisions, pay double the otherwise applicable fee.

**SECTION 23.** [Section 5 of said chapter 21E](#), as so appearing, is hereby amended by inserting after the word "of", in line 137, the following words:- oil or.

**SECTION 24.** Said [section 5 of said chapter 21E](#), as so appearing, is hereby further amended by adding the following paragraph:-

(1) Any governmental body or charitable corporation or trust which holds a conservation restriction, agricultural preservation restriction, watershed preservation restriction or affordable housing restriction pursuant to [section 32 of chapter 184](#) shall not be deemed to be an owner or operator if all of the following requirements are met:

(1) no act or failure of duty of the governmental body or charitable corporation or trust, or of its employee or agent, caused or contributed to the release or threat of release or caused the release or threat of release to become worse than it otherwise would have been;

(2) it did not control activities at the site except to the extent that it implemented and enforced its rights under the restriction;

(3) it is not the owner or operator of any building, structure, equipment, storage container, motor vehicle, rolling stock or aircraft from or at which the release or threat of release occurred;

(4) it notified the department, in compliance with this chapter and regulations promulgated thereto, upon obtaining knowledge of a release or threat of release for which notification is required pursuant to this chapter and regulations promulgated thereto; and

(5) if it undertakes a response action at the site, it conducts such response action in compliance with the requirements of this chapter and regulations promulgated thereto.

**SECTION 25.** Said chapter 21E is hereby further amended by inserting after section 5B the following two sections:-

Section 5C. (a) An eligible person shall be exempt from liability to the commonwealth or to any other person for contribution, response action costs or property damage pursuant to this chapter or for property damage under the common law, except for liability arising under a contract, for any release of oil or hazardous material at the site or portion of a site owned or operated by said eligible person, as delineated in a waste site cleanup activity opinion, for which a permanent solution or remedy operation status exists and is maintained or has been achieved and maintained in accordance with such opinion, provided that all of the requirements of this section are met. This exemption shall only apply if such opinion meets the standard of care as defined in section 2.

(b) The liability exemption provided by this section shall only apply where:

(1) the eligible person owns or operates a site or portion of a site at or from which there has been a release of oil or hazardous material that has affected only soil, and has not affected groundwater or surface water, and achieves and maintains a permanent solution or remedy operation status for the release on the property owned or operated by such eligible person;

(2) the eligible person owns or operates a site or portion of a site which is the source of a release of oil or hazardous material to groundwater or surface water and achieves and maintains a permanent solution or remedy operation status for the entire site; or

(3) the eligible person who meets the requirements of section 5D shall be eligible for the liability exemption in paragraph (a) of this section if he otherwise satisfies clause (1) of paragraph (b) of this section.

(c) To qualify for the liability exemption provided by this section, an eligible person shall:

(1) comply with the notice requirements of this chapter and regulations promulgated thereto, as applicable;

(2) provide reasonable access to the portion of the site owned or operated by such eligible person to employees, agents, and contractors of the department for all purposes authorized by this chapter and to other persons intending to conduct response actions pursuant to this chapter and regulations promulgated thereto;

(3) respond in a reasonably timely manner to any request made by the department or the attorney general to produce information as required pursuant to this chapter;

(4) ensure that response actions at the site or portion of the site owned or operated by the eligible person are conducted in accordance with this chapter and regulations promulgated thereto;

(5) ensure that response at or from the site or portion of the site owned or operated by the eligible person meet the standards of care as defined in section 2; and

(6) settle response action costs that are incurred by the commonwealth and for which such eligible person is potentially liable pursuant to this chapter. The settlement of such costs shall be negotiated between the commonwealth and such eligible person. The commonwealth is directed to consider the future economic benefits such as future job gains and the economic revitalization of the community in the negotiation of an appropriate settlement of costs incurred by the commonwealth. The commonwealth shall also consider the ability of the eligible person to pay such response action costs in the negotiation of an appropriate settlement.

(d) An eligible person who is in full compliance with this chapter and the regulations promulgated hereunder and subsequently transfers ownership or operation of the site or portion of the site under his control to another eligible person before achieving a permanent solution or remedy operations status shall, at such time as a subsequent owner or operator achieves a permanent solution or remedy operations status at the site or portion thereof, be exempt from liability as set forth in paragraph (a), provided the eligible person conducts all response actions pursuant to this chapter and regulations promulgated thereto, and otherwise complies with the provisions of paragraphs (b) and (c) during the period of time when such eligible person owns or controls the site or portion of the site.

(e) An eligible person who first owns or operates its portion of a site after a permanent solution or remedy operation status has been achieved and maintained shall be exempt from liability as set forth in paragraph (a); provided, however, that such person satisfies subparagraphs (1) to (3), inclusive, of paragraph (c) and (2) maintains the permanent solution or remedy operation status.

(f) Where a liability exemption pursuant to this section is obtained for a release of oil, the person who owned or operated the site immediately prior to the eligible person shall be liable except that such person may assert the defense pursuant to clause (3) of paragraph (c) or paragraph (h) of section 5, if applicable.

(g) Nothing in this section shall prohibit an eligible person from voluntarily conducting response actions in addition to those required to achieve and to maintain the liability exemption pursuant to this section.

(h) Nothing in this section shall relieve an eligible person of liability for a release or threat of release of oil or hazardous material that first begins to occur at or from the site or portion of the site under his control during such person's ownership or operation.

(i) Nothing in this section shall relieve an eligible person of any liability for a release or threat of release of oil or hazardous material:

(1) that is exacerbated, caused, or contributed to by the acts or failure to act pursuant to this chapter of such person or its agent or employee; or

(2) to which there is a new exposure resulting from any action or failure to act pursuant to this chapter during such person's ownership or operation of the site that violates or is inconsistent with an activity and use limitation.

(j) Nothing in this section shall relieve an eligible person of any liability for any action or failure to act that violates or is inconsistent with an activity and use limitation.

(k) A person asserting that it is an eligible person with respect to a release who owns or operates its portion of a site prior to the date on which the release is reported to the department shall bear the burden of proving by a preponderance of the evidence that it is an eligible person pursuant to this section.

Section 5D. (a) A person who would otherwise be liable for a release of oil or hazardous material solely pursuant to clause (1) of paragraph (a) of section 5 and who did not cause or contribute to the release, shall not be liable to the commonwealth or to any other person for contribution, response action costs for property damage pursuant to this chapter or for property damage under the common law, except for liability under a contract, if such release of oil or hazardous material has migrated in or on groundwater or surface water from a known source where the following requirements are met:

(1) such oil or hazardous material was released from an upgradient or upstream source or sources and has come to be located at the downgradient or downstream property owned or operated by such person;

(2) such person does not own or operate and did not previously own or operate any portion of the site from or at which the source of the release originated;

(3) such person complies with the notice requirements of this chapter and regulations promulgated thereto; and

(4) such person: (i) provides reasonable access to the portion of the site it owns or operates to employees, agents and contractors of the department for all purposes authorized by this chapter and to other persons for the purpose of conducting response actions pursuant to this chapter and regulations promulgated thereto; (ii) takes reasonable steps (a) to prevent the exposure of people to oil or hazardous material by fencing or otherwise preventing access to the portion of the site under its control, and (b) to prevent an imminent hazard at the downgradient or downstream property owned or operated by such person by taking immediate response actions at the portion of the site owned or operated by such person; (iii) does not unreasonably impede or interfere with the performance of response actions or the restoration of natural resources by any person; and (iv) does not exacerbate the release of oil or hazardous material affecting the downgradient or downstream property owned or operated by such

person.

(b) With respect to a release of oil or hazardous material that has migrated in or on groundwater or surface water from an unknown source, a person who can demonstrate by a preponderance of the evidence that it otherwise meets all of the criteria in paragraph (a) shall not be liable to the commonwealth or to any other person for contribution, response action costs or property damage pursuant to this chapter or for property damage under the common law, except for liability arising under a contract.

(c) The department shall promulgate regulations in order to define the terms "known source" and "unknown source".

(d) Nothing in this section shall relieve any person of any liability for releases or threats of release of oil or hazardous material:

(1) that are exacerbated, caused, or contributed to by the acts or failure to act pursuant to this chapter of such downgradient or downstream owner or operator, or its agent or employee;

(2) that originate on the downgradient or downstream property owned or operated by such person;

(3) that originate on the downgradient or downstream property owned or operated by such person and commingled with the oil or hazardous material migrating from upgradient or upstream property in groundwater or surface water; or

(4) to which there is a new exposure resulting from an act or failure to act pursuant to this chapter of a downgradient or downstream owner or operator or such person's agent or employee.

(e) Nothing in this section shall affect the department's audit authority, as provided by paragraph (o) of section 3A.

(f) If the commonwealth prevails in an action brought pursuant to this chapter for recovery of costs incurred by the department against a party that has asserted liability protection pursuant to this section, the court may impose sanctions in accordance with paragraph (e) of section 5.

**SECTION 26.** [Section 6 of said chapter 21E](#), as appearing in the 1996 Official Edition, is hereby amended by adding the following paragraph:-

Any owner or operator of real property at which a permanent solution or remedy operation status has been achieved and maintained and an activity and use limitation has been implemented shall not be liable to the commonwealth or to any other person for contribution, response action costs for property damage pursuant to this chapter or for property damage under the common law, which arise after the term of such owner or operator's ownership or possession, and which arise from acts or a failure to act, pursuant to this chapter, of a subsequent property owner, an operator under a subsequent property owner, or another person, which violate or are inconsistent with the terms of such activity and use limitation, provided that:

(a) during its term of ownership or operation of the property, the former property owner or operator complied with the terms of the activity and use limitation and the provisions of this chapter and regulations promulgated pursuant thereto; and

(b) the former property owner or operator did not cause or contribute to any act or failure to act pursuant to this chapter of the subsequent property owner or operator, or other person, which violated or was inconsistent with the terms of the activity and use limitation.

Notwithstanding any other provisions of this section, an owner or operator of real property at which a permanent solution or remedy operation status has been achieved and maintained and an activity and use limitation has been implemented shall be relieved of liability under this section to any person other than the commonwealth, only if

(i) said owner or operator has never conducted, or been required to conduct, a clean up of hazardous substances pursuant to the federal Resource Conservation and Recovery Act or the federal Comprehensive, Environmental, Response, Compensation and Liability Act; and

(ii) said owner or operator is not subject to an outstanding administrative or judicial enforcement action under this chapter for a release of oil or hazardous materials at the time of the transfer of the subject property, and

(iii) said owner or operator records notice of the restrictions of the use of said property pursuant to section 6 of this chapter, and any regulations promulgated hereunder.

**SECTION 27.** The first paragraph of [section 7 of said chapter 21E](#), as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Any owner or operator of a site or vessel, and any person otherwise described in paragraph (a) of section 5, and any fiduciary, city, town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or secured lender who holds title to or possession of a site or vessel and any eligible tenant who acquires occupancy or possession of a site or a portion thereof, as soon as he has knowledge of a release or threat of release of oil or hazardous material, shall immediately notify the department thereof.

**SECTION 28.** [Section 8 of said chapter 21E](#), as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

In the event that it has reason to believe that an owner or operator of a site or vessel, a fiduciary, a city or town, a redevelopment authority, a redevelopment agency, a community development corporation, an economic development and industrial corporation, an eligible person or secured lender that has title to or possession of a site or vessel, an eligible tenant that acquires occupancy or possession of a site or a portion thereof, or a person asserting downgradient property status pursuant to section 5D has made fraudulent representations to the department or has destroyed or concealed evidence relating to a release or threat of release or to the assessment, containment, or removal of a release or threat of release, the department may seize any records, equipment, property, or other evidence it deems necessary. During the course of any assessment, containment, and removal actions, the department may restrict and deny entry to the site or vessel and proximate property to protect the public health, safety, welfare and the environment and to provide for the efficient, expeditious and safe conduct of such actions; such restriction and denial shall not preclude access by an owner or operator of such site or vessel, fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation, eligible person or secured lender that has title to or possession of such site or vessel, eligible tenant that acquires occupancy or possession of a site or a portion thereof, or person asserting downgradient property status pursuant to section 5D that acquires occupancy or possession of a site or a portion thereof; provided, however, that such owner, operator, fiduciary, city or town, redevelopment authority, redevelopment agency, community development

corporation, economic development and industrial corporation, eligible person, secured lender, eligible tenant or person asserting downgradient property status pursuant to section 5D complies with all safety and operational protocols and requirements imposed by and to the satisfaction of the department; and provided, further, that such owner, operator, city or town, fiduciary, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation, eligible person, eligible tenant, secured lender or person asserting downgradient property status pursuant to said section 5D does not interfere with the efficient, expeditious and safe conduct of the department's assessment, containment and removal actions.

**SECTION 29.** [Section 13 of said chapter 21E](#), as so appearing, is hereby amended by inserting after the word "fiduciary", in lines 6 and 7 and in line 62, in each instance, the following words:- , city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation.

**SECTION 30.** Said chapter 21E is hereby further amended by adding the following section:-

Section 19. (a) There is hereby created an office of brownfields revitalization, under the direct supervision and control of the governor. Said office of brownfields revitalization shall, in consultation with the departments of housing and community development, environmental protection, economic development, public health, the Massachusetts Development Finance Agency, and other entities as appropriate, coordinate development and implementation of a Massachusetts brownfields strategy for cleanup and redevelopment of contaminated sites in economically distressed areas of the commonwealth. Such strategy shall: (1) promote the redevelopment and reuse of sites that are located in economically distressed areas and are contaminated by oil or hazardous material, and (2) to the maximum extent feasible, reap the combined benefits of environmental protection and economic redevelopment for the commonwealth.

(b) In implementing such brownfields strategy, the office of brownfields revitalization shall:

(1) with respect to each brownfields covenant not to sue agreement implemented under section 3A consult with the attorney general;

(2) provide assistance to the advisory group established in section 8G of chapter 212 of the acts of 1975, as amended, in the development of advisory recommendations for funding projects;

(3) in conjunction with the departments of economic development, housing and community development, and environmental protection, provide technical assistance to municipalities, redevelopment authorities, redevelopment agencies, community development corporations, economic development and industrial corporations and other persons interested in redeveloping brownfields;

(4) serve as liaison with local, state and federal agencies on development issues affecting response actions performed pursuant to this chapter and regulations promulgated hereunder; and

(5) ensure that the commonwealth realizes all possible benefits of federal and private assistance for brownfields redevelopment efforts.

(c) The governor is hereby authorized to appoint a director of the office of brownfields revitalization established by this section, who shall serve as brownfields ombudsman. The governor shall choose from among three candidates nominated by the brownfields advisory group, established by section 8G of chapter 212 of the acts of 1975, as amended. Candidates for the position of ombudsman shall have

extensive experience or expertise in two or more of the following:

- (i) environmental discovery, containment and remediation;
- (ii) economic development in urban areas of the commonwealth;
- (iii) commercial or industrial property development;
- (iv) property or environmental law.

(d) Such office is hereby authorized to employ three staff, one of whom shall be a waste site cleanup professional licensed by the commonwealth pursuant to sections [19](#) to [19J](#), inclusive, of chapter 21A, one of whom shall be a specialist in urban redevelopment with particular experience in bringing together community and development interests to implement specific projects, and one of whom shall provide administrative support to such office.

**SECTION 31.** Subdivision 1 of [section 3C of chapter 23A](#) of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by adding the following clause:-

(h) The EACC shall annually submit on March 1 to the attorney general, the department of environmental protection, and the office of brownfields revitalization established by section 19 of chapter 21E, a list of areas or municipalities that qualify as economically distressed areas as defined in [section 2 of said chapter 21E](#).

**SECTION 32.** Said chapter 23A is hereby further amended by adding the following two sections:-

Section 60. (a) For the purposes of this section and section 61 the following terms shall, unless the context clearly requires otherwise, have the following meaning:

"Agency", the Massachusetts office of business development, or its successor, or its designated agent.

"Borrower", any business or governmental subdivision of the commonwealth that receives a loan with respect to which a reserve is created in accordance with this section.

"Business", the carrying on of any business activity in the commonwealth for profit, or not for profit as specified under [chapter 180](#), whether as a corporation, partnership, limited liability company, trust, sole proprietorship, or otherwise.

"Default", a failure of a borrower to meet the obligations of a loan agreement as a result of the discovery of unanticipated environmental response costs, provided that a default shall not exist where the agency determines that there are program resources available for a project that are adequate to cover said unanticipated environmental costs and that a project would continue to be economically viable with the expenditure of such resources.

"Environmental contamination", oil or hazardous material, as defined in section 2 of chapter 21E that is released on one or more properties located within the commonwealth.

"Environmental response action", an action to assess, contain or remove, as those terms are defined in section 2 of chapter 21E, oil or hazardous material, in compliance with the requirements of said chapter 21E and the regulations promulgated pursuant thereto.

"Financial institution", any bank, as defined in [section 1 of chapter 167](#) or any national banking association, federal savings and loan association or federal savings bank or any other financial institution authorized to make loans in the commonwealth and approved by the agency for the purposes of this program.

"Fund", Redevelopment Access to Capital Fund, established pursuant to subsection (i) and any earnings derived therefrom, held by the agency or its agent for the implementation and administration of the program.

"Loan", without limitation, a conventional loan, a sale and lease back, a financial lease, a conditional sale or any other arrangement that is in the nature of a loan and with respect to which a reserve is created in accordance with this section.

"Participating financial institution", any financial institution participating in the program established by this section.

"Program", the redevelopment access to capital program.

"Site", a place or area where oil or hazardous material has been released, as further defined in section 2 of chapter 21E.

"Unanticipated environmental costs", new environmental costs that were not known or anticipated at the time of originating a loan to a borrower pursuant to this section, including but not limited to environmental response action costs or costs that result from a change in state or federal rules or regulations.

(b) A participating financial institution may originate a loan to a borrower pursuant to the program to be used within the commonwealth exclusively for environmental response actions necessary for the redevelopment of one or more properties for business purposes. Prior to the origination of such loan the agency shall determine that the loan to the borrower is not otherwise available on reasonable terms from private sources or other state, federal, or local programs. At the time of making such loan to a borrower, the participating financial institution shall place a specified amount into the fund in accordance with the agreement described in subsection (k). The participating financial institution may obtain all or a portion of the specified amount from its own funds, or as payment from the borrower, or may advance the specified amount to the borrower as part of the loan.

(c) At the time of making such loan to a borrower, the participating financial institution shall obtain from said borrower an amount equal to the amount specified by the agency in accordance with the agreement described in subsection (k) and shall place such specified amount into said fund. The participating financial institution may obtain all or a portion of the specified amount as payment from the borrower or may advance the specified amount to the borrower as part of the loan.

(d) After such loan to a borrower has been made, the participating financial institution shall certify to the agency, in such fashion and with such supporting information as the agency shall prescribe, that it has made such loan and has placed the specified amount required pursuant to subsection (b) and the equal specified amount required of the borrower pursuant to subsection (c) into said fund.

(e) The agency shall, after a certification is provided pursuant to paragraph (d), transfer to the fund an amount equal to the total of the specified amounts of the participating financial institution and the borrower or such additional amount, as determined by the agency.

(f) The agency may enter into contracts to insure borrowers against unanticipated environmental costs and defaults. Proceeds of such insurance may be used to pay for such unanticipated environmental costs or to pay for loan losses pursuant to subsection (h) and in accordance with the agreement described in subsection (k). The agency may use monies from the fund to purchase such insurance policies and pay deductibles for such insurance policies. The agency may require the participating financial institution to require a borrower to pay a portion of the unanticipated environmental costs, the required amount to be determined pursuant to the agreement described in said subsection (k).

(g) Upon obtaining knowledge that the borrower has incurred or will incur unanticipated environmental costs that will result in a cost overrun, the borrower shall notify the participating financial institution and the participating financial institution shall notify the agency of the anticipated amount and the reasons for the cost overrun.

(h) In the event unanticipated environmental response costs arise, the financial institution, subject to the agreement executed pursuant to subsection (f), may in its discretion and with the concurrence of the agency, draw upon the fund or access available insurance benefits, minus applicable deductions, to pay such costs. In the event the participating financial institution determines that there is a default on a loan made pursuant to this program, the financial institution, with the concurrence of the agency, may draw upon the fund or insurance to satisfy the loan. No payments from insurance or from the fund for unanticipated environmental response costs or for default loan losses shall be paid until all funds originally allocated to remediation have been spent. The agency may recover funds disbursed pursuant to this program through subrogation and may place a lien on the land remediated with fund assets, but may not commence or cause another to commence a foreclosure procedure.

(i) There is hereby established within the agency the Redevelopment Access to Capital Fund to which shall be credited monies contributed by the commonwealth, the borrower, and participating financial institutions pursuant to this section including any appropriations or other monies authorized by the general court and specifically designated to be credited to said fund and any grants, gifts or any other monies directed to the fund. All amounts placed into said fund shall be deposited by the agency into an account at an institution designated by the agency. All earnings or interest on said fund account shall be added to the principal of said fund account and held as additional funds for the program, except as provided in subsection (j).

(j) The agency may require at any time and from time to time that in accordance with the provisions of paragraphs (a) and (c) of section 61, a portion of the accrued earnings or interest remaining in said fund account be paid to the agency to be used to defray the costs of administering the program.

(k) Any financial institution desiring to become a participating financial institution shall execute an agreement in such form as the agency may prescribe, which agreement shall contain the terms and provisions set forth in subsections (a) to (j), inclusive, and such other terms and provisions as the agency may deem necessary or appropriate.

Section 61. The Massachusetts Office of Business Development or its successor, hereinafter referred to as MOBD, is hereby authorized to do the following:

(a) Enter into a contract with the Massachusetts Business Development Corporation, hereinafter referred to as MBDC, established under the provisions of chapter 671 of the acts of 1953, to act as the agent of MOBD with respect to the administration of the program. Said contract: (1) shall be for a period of two years and shall be renewed for additional two-year periods subject to the requirements of paragraph (b); and (2) shall provide for compensation and reimbursement of the agent on terms that the MOBD may

deem appropriate for the administration of said program for any expenses incurred by the MBDC in connection with its services as agent and necessary for the implementation of the program.

(b) Conduct an annual review and assessment of the performance of the MBDC in its capacity as agent for MOBD to determine whether the contract referenced in paragraph (a) should be renewed for an additional two-year period. Said review shall be based on whether the MBDC has satisfactorily met the terms and conditions of the contract.

Upon an initial determination by MOBD that the performance of MBDC is unsatisfactory, the MBDC shall be given notice of such determination and an opportunity to take corrective action. If, upon a final review of the MBDC's performance MOBD continues to conclude that the performance of the MBDC is unsatisfactory, it shall, 90 days prior to terminating the contract with MBDC, submit to the joint committee on commerce and labor its recommendation to terminate such contract with MBDC and transfer the contract to another agent.

(c) Make and publish rules and regulations respecting the implementation of the redevelopment access to capital program and any other rules and regulations necessary to fulfill the purposes of this section.

(d) Do any and all things necessary or convenient to carry out its purposes and exercise the powers expressly given and granted in this section.

**SECTION 33.** Chapter 59 of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by inserting after section 59 the following section:-

Section 59A. Municipalities may establish, relative to sites or portions of sites from or at which there has been a release of oil or hazardous material, an agreement between the city or town and any eligible person, as defined in section 2 of chapter 21E, regarding the abatement of outstanding interest, penalties, and payment of real estate tax obligations on said sites or portions of sites; provided, however, that said sites or portions of sites are zoned for commercial or industrial uses by the municipality in which said sites or portions of sites exist. Such agreement, for the purpose of continuing environmental cleanup on such sites and redevelopment in such communities, shall include, but shall not be limited to, the amount outstanding, the per cent of interest to accrue if determined applicable by the parties, the description of quantifiable monthly payments, the inception date of such payments, the date of the final payment, late penalties, and any other contractual obligations arranged between the parties. The terms of repayment shall be set at the discretion of the municipality and shall be included in the agreement between the parties. Copies of this agreement shall be signed by the chair of the city council or board of selectmen and the owner of the property in question, notarized, attested to by the town or city clerk, and provided to the Massachusetts department of environmental protection, the federal environmental protection agency, the commissioner, the city council or board of selectmen, and the owners of the property in question. This section shall take effect in any city or town only upon its acceptance by such city or town.

**SECTION 34.** [Section 6 of chapter 62](#) of the General Laws, as amended by section 63 of chapter 43 of the acts of 1997, is hereby further amended by adding the following subsection:-

(j)(1) A taxpayer who commences and diligently pursues an environmental response action within 3 years of the effective date of this act and who achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations promulgated thereunder which includes an activity and use limitation shall, at the time such permanent solution or remedy operation status is achieved, be allowed a base credit of 25 per cent of the net response and removal costs incurred between August 1, 1998 and January 1, 2005 for any property it owns or leases for business purposes

and which is located within an economically distressed area as defined in section 2 of said chapter 21E; provided, however, that said costs shall be no less than 15 per cent of the assessed value of the property prior to remediation; provided, further, that the site was reported to the department of environmental protection; and provided, further, that a credit of 50 per cent of such costs shall be allowed for any such taxpayer who achieves and maintains a permanent solution or remedy operation status in compliance with said chapter 21E and the Massachusetts Contingency Plan promulgated pursuant to said chapter which does not include an activity and use limitation. Only a taxpayer that is an eligible person, as defined by said section 2 of said chapter 21E, and is not subject to any enforcement action under said chapter 21E shall be allowed a credit.

Any credit allowed under this subsection may be taken only after a response action outcome statement or remedy operation status submittal has been filed with the Massachusetts department of environmental protection as set forth in the Massachusetts Contingency Plan.

(2) If the taxpayer ceases to maintain the remedy operation status or the permanent solution in violation of the Massachusetts Contingency Plan prior to the sale of the property or the termination of the lease, the difference between the credit taken and the credit allowed for maintaining the remedy shall be added back as additional taxes due in the year the taxpayer fails to maintain the remedy operation status or permanent solution. The amount of the credit allowed for maintaining the remedy shall be determined by multiplying the original credit by the ratio of the number of months the remedy was adequately maintained over the number of months of useful life of the property. For the purposes of this paragraph, the useful life of the property shall be the same as that used by corporations for depreciation purposes when computing federal income tax liability; provided, however, that in the case of real property that is not depreciable, the useful life shall be deemed to be 12 months.

(3) Notwithstanding the provisions of this subsection, the maximum amount of credits otherwise allowable in any taxable year to a taxpayer shall not exceed 50 per cent of its excise imposed by this chapter. Any taxpayer entitled to a credit under this subsection for any taxable year may carry over and apply to its tax liability for any subsequent taxable year, not to exceed 5 taxable years, the portion of those credits, as reduced from year to year, which were not allowed under this subparagraph; provided, however, that in no event shall the taxpayer apply the credit in any taxable year in which it has ceased to maintain the remedy operation status or the permanent solution for which the credit was granted.

(4) For the purposes of this section, net response and removal costs shall be expenses paid by the taxpayer for the purpose of achieving a permanent solution or remedy operation status in compliance with chapter 21E; provided, however, that no credit shall be allowed under this section if said taxpayer has received financial assistance from the Redevelopment Access to Capital program established pursuant to section 60 of chapter 23A or from the Brownfields Redevelopment Fund, established pursuant to section 8G of chapter 212 of the acts of 1975.

**SECTION 35.** Chapter 63 of the General Laws is hereby amended by inserting after section 38P the following section:-

Section 38Q. (a) A domestic or foreign corporation or limited liability corporation which commences and diligently pursues an environmental response action within 3 years of the effective date of this act and which achieves and maintains a permanent solution or remedy operation status in compliance with chapter 21E and the regulations promulgated thereunder which includes an activity and use limitation shall, at the time such permanent solution or remedy operation status is achieved, be allowed a base credit of 25 per cent of the net response and removal costs incurred between August 1, 1998 and January 1, 2005 for any property it owns or leases for business purposes and which is located within an economically distressed area, as defined in section 2 of said chapter 21E; provided, however, that said

costs shall be no less than 15 per cent of the assessed value of the property prior to remediation; provided, further, that the site was reported to the department of environmental protection; and provided, further, that a credit of 50 per cent of such costs shall be allowed for any such corporation which achieves and maintains a permanent solution or remedy operation status in compliance with said chapter 21E and the Massachusetts Contingency Plan promulgated pursuant to said chapter, which does not include an activity and use limitation. Only a domestic or foreign corporation or limited liability corporation that is an eligible person, as defined in said section 2 of said chapter 21E, and is not subject to any enforcement action under said chapter 21E shall be allowed a credit.

Any credit allowed under this section may be taken only after a response action outcome statement or remedy operation status submittal has been filed with the Massachusetts department of environmental protection as set forth in said Massachusetts Contingency Plan.

(b) If the corporation ceases to maintain the remedy operation status or the permanent solution in violation of said Massachusetts Contingency Plan prior to the sale of the property or the termination of the lease, the difference between the credit taken and the credit allowed for maintaining the remedy shall be added back as additional taxes due in the year the corporation fails to maintain the remedy operation status or permanent solution. The amount of the credit allowed for maintaining the remedy shall be determined by multiplying the original credit by the ratio of the number of months the remedy was adequately maintained over the number of months of useful life of the property. For the purposes of this subsection, the useful life of the property shall be the same as that used by corporations for depreciation purposes when computing federal income tax liability; provided, however, that in the case of real property that is not depreciable, the useful life shall be deemed to be 12 months.

(c) The credit allowed by this section shall be subject to the provisions of section 32C; provided, however, that the time period for carry over of the tax credit shall be as outlined in this section.

(d) For the purposes of this section, net response and removal costs shall be expenses paid by the taxpayer for the purpose of achieving a permanent solution or remedy operation status in compliance with chapter 21E; provided, however, that no credit shall be allowed under this section if said taxpayer has received financial assistance from the Redevelopment Access to Capital program established pursuant to section 60 of chapter 23A or from the Brownfields Redevelopment Fund, established pursuant to section 8G of chapter 212 of the acts of 1975.

(e) The credit allowed under this section shall not reduce the excise payable by said corporation to less than the amount due pursuant to subsection (b) of section 32 or subsection (b) of section 39 or any other applicable section.

(f) Notwithstanding the provisions of any general or special law to the contrary, any corporation entitled to a credit under this subsection for any taxable year may carry over and apply to its tax liability for any subsequent taxable year, not to exceed 5 taxable years, the portion of those credits, as reduced from year to year, which were not allowed under this subparagraph; provided, however, that in no event shall the taxpayer apply the credit in any taxable year in which it has ceased to maintain the remedy operation status or the permanent solution for which the credit was granted.

**SECTION 36.** [Section 2 of chapter 167F](#) of the General Laws, as appearing in the 1996 Official Edition, is hereby amended by adding the following paragraph:-

To participate in the redevelopment access to capital program created under section 60 of chapter 23A and to make the loans and create the reserve and take any and all other actions as may be necessary or

appropriate for participating in such program.

**SECTION 37.** Chapter 212 of the acts of 1975 is hereby amended by inserting after section 8F the following section:-

*Section 8G. (a)* There is hereby created and placed within the Massachusetts government land bank, referred to in this section as the bank, the Brownfields Redevelopment Fund, referred to in this section as the Fund. The bank is hereby authorized and directed to establish said Fund, to which shall be credited:

- (1) any appropriations or other monies authorized by the general court and specifically designated to be credited to the Fund;
- (2) fees authorized by subsection (h);
- (3) grants, gifts or any other monies directed to the Fund; and
- (4) any income derived from an investment of amounts credited to the Fund.

*(b)* As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Economically distressed area", an area or municipality that meets the definition of an economically distressed area contained in section 2 of chapter 21E of the General Laws.

"Environmental site assessment", activity undertaken in compliance with the applicable laws to determine (i) the existence, source, nature and extent of a release or threat of release of oil or hazardous materials; or (ii) the extent of danger to the public health, safety, welfare and the environment.

"Environmental cleanup action", activity, including but not limited to environmental site assessments undertaken to contain or remove from land or structures, oil or hazardous material as defined in chapter 21E of the General Laws and regulations promulgated pursuant thereto, in compliance with all applicable laws.

"Loan", a loan or credit enhancement, including, but not limited to a loan guarantee, a letter of credit, or insurance.

"Project site", any vacant, abandoned or underutilized industrial or commercial property located within an economically distressed area where real or perceived environmental contamination and liability is an obstacle to the redevelopment or improvement of said property.

"Priority project", any project eligible for funding under this section as to which the municipality in which the site of such project is located, has made available substantial funds, in the form of grants, loans, or abated property taxes for said site, in furtherance of the purposes of this section and as to which the bank has designated said project as a priority project.

"Site", a place or area where oil or hazardous material has been released, as further defined in section 2 of chapter 21E of the General Laws.

*(c)* The bank shall hold the Fund in an account or accounts segregated from other bank funds and

accounts, and shall utilize, invest or reinvest the proceeds of the Fund, and income derived therefrom, for the following general purposes:

(1) to encourage economic development in economically distressed areas of the commonwealth by providing loans and grants to finance environmental site assessments and environmental cleanup actions;

(2) to defray costs incurred in the administration of the Fund, as provided in subsections (g) and (h) and in the Fund guidelines; and

(3) to purchase with funds not immediately required for use pursuant to clauses (1) and (2), such securities as may be lawful investments for fiduciaries in the commonwealth.

(d) (A) The bank may make and administer grants and loans to finance environmental site assessments and environmental cleanup actions provided that:

(1) the project is located at a project site within an economically distressed area as defined in section 2 of chapter 21E of the General Laws;

(2) 30 per cent of all funds administered provide grants and loans to finance environmental site assessments;

(3) any applicant shall transfer the results of the environmental assessment to the regional office of the department of environmental protection, if the applicant does not proceed with development of the project for which the project site was assessed with loan monies from the Fund;

(4) no single project, other than a priority project, shall receive a grant or loan to conduct environmental cleanup actions shall exceed \$500,000 of the assets of the Fund;

(5) no single project, other than a priority project, shall receive a grant or loan to conduct environmental site assessments which shall exceed \$50,000 of the assets of the Fund;

(6) no single priority project shall represent a commitment of more than \$2,000,000 of the assets of the Fund;

(7) no loan made hereunder shall be utilized to finance all of the costs required to complete the response action at a project site, the required match to be set forth in the Fund guidelines, except that the required match may be waived in whole or in part by the bank;

(8) no grant shall be awarded unless and until the applicant for said grant contributes an amount equal to 20 per cent of the grant for which said applicant has applied;

(9) no loan or grant shall be made for any environmental site assessment or environmental cleanup action eligible for funding under [chapter 21J](#) of the General Laws; and

(10) security for loans made hereunder may be subordinate to private or other financing provided for the site acquisition, cleanup or development of the project site;

(11) grants shall be provided only to a city or town, redevelopment authority, redevelopment agency, economic development and industrial corporation, community development corporation or an economic

development authority.

(e) To be eligible for financial assistance from the Fund, in addition to the requirements in subsection (d), the applicant and project shall meet the following requirements and the applicant shall submit to the brownfields advisory group and the bank, for the bank's final approval, a completed application providing all information required herein and by the Fund guidelines, including:

(1) the proposed redevelopment project will result in a significant economic impact in terms of the number of jobs to be created or will contribute to the economic or physical revitalization of the economically distressed area in which the project site is located and a significant level of community benefits shall be associated with the project;

(2) if the applicant is requesting financing for environmental cleanup action costs, assistance from the Fund shall be necessary to make the proposed reuse of the project site financially feasible;

(3) the applicant shall certify that (i) he would be liable solely pursuant to clause (1) of paragraph (a) of section 5 of chapter 21E of the General Laws; (ii) he did not cause or contribute to the release of oil or hazardous material at the site; (iii) he did not own or operate the site at the time of the release; (iv) that he does not have a familial relationship or any direct or indirect business relationship, other than that by which the applicant's interest in such property is to be conveyed or financed, with another party that is potentially liable under said chapter 21E with regard to the project site; and (v) except that provision (iv) may be waived with the approval of the board of directors of the bank after full disclosure by the applicant of the familial or business relationship with a potentially responsible party; and

(4) the applicant is not subject to any outstanding administrative or judicial environmental enforcement action unless the applicant has entered into an agreement with the department of environmental protection or the attorney general to resolve said enforcement action with respect to the property or properties under consideration for assistance from the Fund and with respect to any other properties located within the commonwealth for which the applicant is liable pursuant to chapter 21E of the General Laws.

(f) In evaluating an application for financing from the Fund, the brownfields advisory group, established in subsection (l), and the bank shall review each applicant's redevelopment project and the brownfields advisory group shall make advisory recommendations to the bank. The bank shall take into consideration the following factors:

(1) the level of unemployment and poverty in the economically distressed area and in the census tract, if any, within the economically distressed area in which the project site is located;

(2) the likelihood that the proposed response action will be adequate to cleanup the property in accordance with the requirements of all applicable laws;

(3) the presence of community benefits associated with the project, including, without limitation, the creation or revitalization of open space;

(4) the proximity of the property to existing transportation and utility infrastructure appropriate to support the proposed reuse of the project site;

(5) whether the project site is located in an area designated as a Federal Empowerment Zone or Enterprise Community pursuant to chapter 120 of title 42 subsection 11501 et seq. of the United States

code; and

(6) whether the municipality in which the site of such project is located has made available substantial funds, in the form of grants, loans, or abated property taxes for said site, in furtherance of the purposes of this section.

(g) The bank shall not be liable under chapter 21E of the General Laws for any claim, loss, cost, damage or injury of any nature whatsoever arising in connection with its administration of the Fund and the environmental condition of the eligible property unless such loss, cost, injury or damage is caused by the gross negligence or willful misconduct of the bank, its officers, directors, employees, or agents and their actions cause or contribute to the contamination of the property or to exposure to the contaminants. Neither the provision of a loan or grant nor the failure to provide a loan or grant to any applicant shall be considered a basis of liability for the bank.

(h) The bank may charge fees for defraying the ordinary and necessary expenses of administration and operation associated with the Fund. All fees received hereunder shall be deposited into the Fund.

(i) Except as otherwise provided in this act, the bank shall have full power to manage its loans, grants and business affairs in connection with the Fund.

(j) Prior to approving any loans or grants hereunder, the bank shall, with the advice of the brownfields advisory group, promulgate regulations which shall provide the definitions and procedures required hereunder and set forth the terms, procedures and standards which the bank shall employ to process applications, make lending decisions, safeguard the Fund and accomplish the purposes of the Fund.

(k) On March 15, 1999 and each year thereafter, the bank shall file in writing, a report to the governor, the attorney general, the commissioner of the department of environmental protection, and the clerks of the house of representatives and the senate, who shall forward the same to the president of the senate, the speaker of the house of representatives, and the chairmen of the house and senate committees on ways and means which shall include financial statements related to the effectiveness of the Fund based on the following criteria, as applicable:

(1) the number of projects assisted through the Fund, with a specification of the amount of loan or grant awarded to each;

(2) the manner in which these projects contribute to the economic and physical revitalization of the areas in which the projects are located, and a description of steps taken by the bank to make the application process efficient and manageable; and

(3) such other information that would provide a fair evaluation of the program.

(l) There shall be established within the bank a Brownfields advisory group. The Brownfields advisory group shall be comprised of the following 13 members who shall serve for two year terms: the director of the department of economic development or his designee, the commissioner of the department of environmental protection or his designee, and the attorney general or his designee. In addition, the speaker of the house of representatives shall appoint the following five Brownfields advisory group members: one hazardous waste site cleanup professional as defined in section 19 of chapter 21A of the General Laws, two representatives of community development corporations, one representative from a municipality, and one representative from the lending community. The president of the senate shall appoint the following five Brownfields advisory group members: one member of a community based

organization concerned with Brownfield redevelopment, one representative from the land use and development community, one member from an environmental advocacy organization, one representative from a municipality, and one member of the land bank board of directors. The chair of the Brownfields advisory group shall be elected by members of said advisory group. For action to be taken by the advisory group, a majority of members shall be present. The director of the office of Brownfields revitalization shall serve in an advisory capacity to the Brownfields advisory group.

(m) The bank shall give a priority to those project sites in economically distressed areas, as defined in paragraph (b), that are considered by the ombudsman and the department of economic development to be of substantial economic benefit to the community and which will result in the creation or retention of jobs for that community.

(n) The Brownfields advisory group shall advise the bank in establishing guidelines pursuant to subsection (j) of this act. The Brownfields advisory group shall convene on a monthly basis in order to review actions taken by the bank with respect to the fund and to make any advisory recommendations with respect thereto and further, to assist in producing the report required by subsection (k) of this act.

(o) The Brownfields advisory group shall nominate a total of three candidates for the position of director of the office of Brownfields revitalization, who shall serve as Brownfields ombudsman as defined in section 19 of chapter 21E of the General Laws. The governor may appoint one of the three nominated candidates, or may select a candidate of his choice, to serve as director of the office of Brownfields revitalization.

**SECTION 38.** Within one year after the effective date of this act, the commissioner of the department of environmental protection, the director of the Massachusetts Development Finance Agency, and the commissioner of the department of revenue and the attorney general, shall adopt regulations to carry out the purposes of this act. All rules and regulations promulgated hereunder shall be filed with the joint committee on natural resources and agriculture 60 days prior to their effective date and any emergency rules and regulations promulgated hereunder shall be filed with said committee 14 days prior to their effective date.

**SECTION 39.** The department of environmental protection shall develop standards to ensure that activity and use limitations are prepared, recorded or registered in the same manner and with the same professional standards as other similar real estate instruments.

**SECTION 40.** The department of environmental protection shall, in consultation with the office of the attorney general, and the department of economic development, within 18 months of the effective date of this act, conduct a study of the results and financial requirements of this act and file the results of such study with the clerks of the house of representatives and the senate and the joint committee on natural resources and agriculture and the house and senate committees on ways and means. Based upon an analysis of said study and taking into consideration the constraints of the five year capital spending plan, the governor is hereby directed to file with the general court legislation seeking authorization to issue bonds in an amount sufficient to successfully continue the programs and initiatives established by this act.

**SECTION 41.** The joint committee on natural resources is hereby authorized to conduct an investigation and study of a Brownfields Trust Fund. Said committee shall report to the general court the results of its investigation and study and its recommendations, if any, together with drafts of legislation necessary to carry such recommendations into effect, by filing the same with the clerk of the house of representatives.

Said study shall include an analysis of the feasibility of said Brownfields Trust Fund, the intent of which is to create a vehicle by which a potentially responsible party pursuant to chapter 21E of the General Laws, may make contributions into said Fund to provide such party with protection from claims by the commonwealth and third parties from future response actions costs, property damage and contribution claims.

**SECTION 42.** A study shall be conducted to promote the examination, sale and cleanup of potentially contaminated property and to promote the economic development of stagnant sites. The attorney general shall, in consultation with the department of environmental protection, the office of brownfields revitalization and the department of economic development, collaborate to study incentives to encourage landowners of potentially contaminated properties to permit potential purchasers access to their property for the purposes of making environmental site assessments and subsurface investigations to determine whether contamination, if any, exists and, if so, to determine the extent of the contamination. Incentives examined shall include, but not be limited to issues relating to liability of the landowner and the potential purchaser arising from actual or constructive knowledge attained through such investigation.

The attorney general shall submit the results of the study and its recommendations to the clerks of the senate and house of representatives on or before December 1, 1998.

**SECTION 43.** The department of environmental protection shall perform a targeted audit on all sites at which an activity and use limitation has been implemented in order to ensure that response actions not overseen or conducted by the department are performed in compliance with chapter 21E and regulations promulgated thereunder. In the event the department determines that a targeted site is not in compliance with chapter 21E, it shall take any and all action it deems appropriate to enforce the provisions of said chapter.

**SECTION 44.** The provisions of sections 34 and 35 of this act shall apply to tax years commencing on or after January 1, 1999.

Approved August 5, 1998.

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