

GENERAL LAWS OF MASSACHUSETTS

PART I. ADMINISTRATION OF THE GOVERNMENT.

TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH.

CHAPTER 21E. MASSACHUSETTS OIL AND HAZARDOUS MATERIAL RELEASE PREVENTION AND RESPONSE ACT.

Chapter 21E: Section 3B. Permit application fees; annual compliance assurance fees.

Section 3B. Notwithstanding any general or special law to the contrary, the department may, by regulation, establish permit application fees payable by all persons filing applications for a permit pursuant to the provisions of this chapter. For the purposes of this chapter, "permit" shall mean any permit, license, certificate, formal determination, registration, plan approval, variance, or other approval issued by or required by the department pursuant to the authority of chapter twenty-one E. For applications filed on or before December thirty-first, nineteen hundred and ninety-four, the fee for the category of permit application that involves the most extensive processing and consideration shall not exceed six thousand dollars per application and shall be the highest application fees. For applications filed on or after January first, nineteen hundred and ninety-five; the department shall, by regulation, establish such fees based on the department's reasonable costs for processing and considering such permit applications including, without limitation, providing technical assistance, and performing and analyzing such environmental monitoring as is necessary to act on such applications. Such fees shall be based on a scale that accounts for the department's reasonable costs, appropriate for different categories of permit applications and permits. Permit application fees shall be payable upon filing the application.

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. Notwithstanding any general or special law to the contrary, the department may, by regulation, establish annual compliance assurance fees for response actions at sites or vessels, payable by all persons, excluding agencies of the commonwealth, who are carrying out response actions pursuant to the provisions of this chapter, for each year or fraction thereof from the time that notice is first required to be given to the department pursuant to section seven until the time that a permanent solution is being implemented or a level of no significant risk has been achieved in accordance

with subsection (g) of section three A; provided, that such fees shall not be required for response actions that are of short duration and that are in response to a sudden release or threat of release of oil or hazardous material. Such fees shall be based on the department's cost for inspection, auditing and enforcement activities necessary to ensure compliance by persons carrying out such response actions.

Such fees shall be based on a scale that accounts for the extent of such enforcement and compliance activity that is appropriate for different categories of permits; provided that the compliance assurance fee for the category of permit that involves the most extensive enforcement and compliance activity shall not exceed ten thousand dollars per response action per site or vessel per year and shall be the highest compliance assurance fee. At least forty-five days before the date such fee is due, the department shall notify each person carrying out such response action of the amount of the fee due and date by which payment is due. In instances of severe financial hardship, the commissioner or his designee may grant a timely request to extend the time for making payment.

Failure by any person to pay any annual compliance assurance fee when due may result in suspension of or, if such failure continues for sixty days or more, may result in revocation of a permit issued pursuant to the provisions of this chapter, and shall be grounds for denial of any permit application filed by such person that is pending before the department, and for suspension or revocation of any or all other permits, licenses, or other approvals that such person has obtained from the department. In the event of untimely payment, interest on the amount due shall be assessed at the rate determined by the secretary of the executive office for administration and finance pursuant to section twenty-nine C of chapter twenty-nine. Such interest shall be in addition to any other remedy or penalty that might be applicable. Notwithstanding the provisions of section five, a person who has paid in full an annual compliance assurance fee pursuant to this section, including interest if and when applicable, shall not be liable to the commonwealth for the costs incurred by the department or by its agents or contractors for overseeing, or for supporting the overseeing of, the response action being performed by such person at or for a site or vessel, including but not limited to the costs of inspections, auditing, or enforcement activities necessary to ensure compliance with requirements for response actions at or for a site or vessel, if such costs were incurred during the period for which the annual compliance assurance fee was required to be paid for those response actions at or for that site or vessel.

The department shall, by regulation, establish a schedule for timely action on the permits pursuant to this chapter. Said schedules may be based on the lengths of time appropriate for different categories of permits, and may make provisions for situations when permits other than those required pursuant to this chapter might be required. Each such schedule shall be as follows:

- (1) the schedule shall begin when an application is received by the department and the application fee paid;

(2) one or more periods of reasonable length, based on the nature and complexity of the review required of the department, at the end of which time the department shall issue a decision to grant or deny the permit, or an identification of deficiencies in the application; provided, that the schedule may reasonably limit the amount of time to which the applicant may remedy such deficiencies;

(3) a period of reasonable length, based on the nature and complexity of the review required of the department, beginning with receipt of materials submitted by the applicant in response to the department's identification of deficiencies, at the end of which time the department shall issue a decision to grant or deny the permit;

(4) allowance for applicable state or federal public participation requirements; and

(5) a provision extending the time periods set forth in clauses (2) and (3) when action by another federal, state, or municipal government agency is required before the department may act, when judicial proceedings affect the ability of the department or the applicant to proceed with application, when the department has commenced enforcement proceedings which could affect the application, or when the applicant provides written assent extending any applicable time period.

If the department fails to take timely action on a permit application within a time period set forth in the applicable schedule, one day shall be subtracted from the number of days allowed for the department's next action in the appropriate schedule for each day that the department's action is tardy, unless the period has been extended pursuant to clause (5). Should the department fail to take timely action on a permit application within the time period set forth in the applicable schedule pursuant to clause (3), subject to any adjustment required by the preceding sentence, the department shall refund without further appropriation the permit application fee paid by the applicant unless the time period has been extended pursuant to clause (5), and shall continue to process the permit application on a high priority basis. The requirements for schedules set forth in this section shall not apply to adjudicatory hearings conducted by the department.

As a precondition to the department's authority to establish permit application fees and annual compliance assurance fees pursuant to the provisions of this chapter, and prior to the first establishment of such fees, the department shall promulgate all regulations required pursuant to this section.

On or before July first, nineteen hundred and ninety-four, and on or before July first of every third year thereafter, the department shall review all fees and schedules established by the department pursuant to this section, and shall by regulation adjust fees and schedules as necessary, and in compliance with the requirements of this section, to reflect changes in regulatory requirements, technologies, the nature and cost of the department's permitting and compliance activities, and improvements in the department's practices and procedures. To the maximum extent practicable, this review shall be coordinated and combined with the review required pursuant to subsection (j) of section eighteen of chapter twenty-one A.

The department shall submit any regulations promulgated under the provisions of this section establishing permit application fees or annual compliance assurance fees to the joint legislative committee on natural resources and agriculture and to the house and senate committees on ways and means at least sixty days prior to the effective date of said regulations.

All monies received by the department for permit application fees and annual compliance assurance fees pursuant to this chapter, and not refunded to permit applicants, shall be deposited in the Environmental Challenge Fund, established pursuant to section two J of chapter twenty-nine.

The provisions of subsections (e), (f), (g), and (h) of section eighteen of chapter twenty-one A shall apply to activities conducted pursuant to the provisions of this chapter, and fees collected for such activities shall be deposited in the Environmental Permitting and Compliance Assurance Fund, established pursuant to section two P of chapter twenty-nine.

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CHAPTER 21E. MASSACHUSETTS OIL AND HAZARDOUS MATERIAL RELEASE PREVENTION AND RESPONSE ACT

Chapter 21E: Section 13 Liens on property of persons liable; priority; releases

[Text of section effective until July 1, 2001. For text effective July 1, 2001, see below.]

Section 13. Any liability to the commonwealth under this chapter shall constitute a debt to the commonwealth. Any such debt, together with interest thereon at the rate of twelve percent per annum from the date such debt becomes due, shall constitute a lien on all property owned by persons liable under this chapter when a statement of claim naming such persons is recorded, registered or filed. If a fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or a secured lender has title to or possession of the property, and if the fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or secured lender is not a person liable under this chapter when a statement of

claim is recorded, registered or filed, such debt, together with interest thereon at the rate of twelve percent per annum from the date such debt becomes due, shall constitute a lien on the property in question when a statement of claim describing such property is duly recorded, registered or filed. If the site described in such statement comprises real property, such lien shall be effective when duly recorded and indexed in the grantor index in the registry of deeds or registered in the registry district of the land court for the county or district wherein the land lies so as to affect its title, and describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries. In addition, such lien shall be effective with respect to such other real property owned by such person when notice thereof is duly recorded and indexed in the registry of deeds or registered in the registry district of the land court for the county or district wherein any such other land lies. If the site described in such statement is personal property, whether tangible or intangible, the statement shall be filed in accordance with the provisions of section 9-401 of chapter one hundred and six. Any such statement shall be sufficient if executed or approved by the commissioner of the department. Any lien recorded, registered or filed pursuant to this section shall have priority over any encumbrance theretofore recorded, registered or filed with respect to any site, other than real property the greater part of which is devoted to single or multi-family housing, described in such statement of claim, but as to other real property shall be subject to encumbrances or other interests recorded, registered or filed prior to the recording, registration or filing of such statement, and as to all other personal property shall be subject to the priority rules of said chapter one hundred and six. Such lien shall continue in force with respect to any particular real or personal property until a release of the lien signed by the commissioner is recorded, registered or filed in the place where the statement of claim as to such property affected by the lien was recorded, registered or filed. In addition to discretionary releases of liens, the commissioner shall forthwith issue such a release in any case where the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. If no action to enforce or foreclose the lien is brought by the deadline prescribed in subsection (1) of section eleven A, the lien shall be dissolved after said deadline. This section shall not apply to any property, real or personal, tangible or intangible, any money, fees, charges, revenues or otherwise, owned payable to or by, held in trust by or for, or otherwise owned, operated or managed by the Massachusetts Municipal Wholesale Electric Company established pursuant to chapter seven hundred and seventy-five of the acts of nineteen hundred and seventy-five, Massachusetts municipal light departments organized under chapter one hundred and sixty-four or any other special law, or with respect to any property real or personal whatsoever of municipal light departments administered pursuant to chapters forty-four and one hundred and sixty-four A. Notwithstanding the foregoing, the aforesaid Massachusetts Municipal Wholesale Electric Company and municipal light departments shall use their authority as provided by applicable statute to assess, contain or remove any such oil or hazardous material release for which they are responsible under this chapter.

The provisions of this section shall apply to any site or vessel which has been the subject of a response action and which is owned or possessed by a fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or secured lender, except that nothing

in this section shall be deemed to allow the commonwealth to take any action otherwise authorized by this section with respect to any property while it is owned or possessed by a secured lender except to (1) record, register or file a lien or release of a lien as provided in this section, (2) in the case of real property, foreclose upon a lien and subsequently sell the property in question in accordance with the procedures set forth in chapter two hundred and forty-four, and (3) in the case of personal property, take possession and sell, lease or otherwise dispose of the secured property in accordance with the procedures for the disposition of collateral set forth in part five of section nine of chapter one hundred and six. If the property is sold for less than the amount of the lien, a secured lender who meets the requirements of clause (b) of the definition of owner or operator in section two shall not be deemed an owner or operator of the site or vessel in question and shall not be liable to the commonwealth for the deficiency.

Chapter 21E: Section 13 Liens on property of persons liable; priority; releases

[Text of section as amended by 2001, 26, Secs. 3 and 4 effective July 1, 2001 applicable as provided by 2000, 26, Sec. 53. For text effective until July 1, 2001, see above.]

Section 13. Any liability to the commonwealth under this chapter shall constitute a debt to the commonwealth. Any such debt, together with interest thereon at the rate of twelve percent per annum from the date such debt becomes due, shall constitute a lien on all property owned by persons liable under this chapter when a statement of claim naming such persons is recorded, registered or filed. If a fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or a secured lender has title to or possession of the property, and if the fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or secured lender is not a person liable under this chapter when a statement of claim is recorded, registered or filed, such debt, together with interest thereon at the rate of twelve percent per annum from the date such debt becomes due, shall constitute a lien on the property in question when a statement of claim describing such property is duly recorded, registered or filed. If the site described in such statement comprises real property, such lien shall be effective when duly recorded and indexed in the grantor index in the registry of deeds or registered in the registry district of the land court for the county or district wherein the land lies so as to affect its title, and describes the land by metes and bounds or by reference to a recorded or registered plan showing its boundaries. In addition, such lien shall be effective with respect to such other real property owned by such person when notice thereof is duly recorded and indexed in the registry of deeds or registered in the registry district of the land court for the county or district wherein any such other land lies. If the site described in such statement is personal property, whether tangible or intangible, the statement shall be filed in accordance with the provisions of article 9 of chapter 106 as if the debtor were located in the commonwealth under said section 9-307 of said chapter 106. Any such statement shall be sufficient if executed or approved by the commissioner of the department. Any lien recorded, registered or filed pursuant to this section shall have priority over any encumbrance theretofore recorded, registered or filed with respect to any site, other than real property the greater part of

which is devoted to single or multi-family housing, described in such statement of claim, but as to other real property shall be subject to encumbrances or other interests recorded, registered or filed prior to the recording, registration or filing of such statement, and as to all other personal property shall be subject to the priority rules of said chapter one hundred and six. Such lien shall continue in force with respect to any particular real or personal property until a release of the lien signed by the commissioner is recorded, registered or filed in the place where the statement of claim as to such property affected by the lien was recorded, registered or filed. In addition to discretionary releases of liens, the commissioner shall forthwith issue such a release in any case where the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. If no action to enforce or foreclose the lien is brought by the deadline prescribed in subsection (1) of section eleven A, the lien shall be dissolved after said deadline. This section shall not apply to any property, real or personal, tangible or intangible, any money, fees, charges, revenues or otherwise, owned payable to or by, held in trust by or for, or otherwise owned, operated or managed by the Massachusetts Municipal Wholesale Electric Company established pursuant to chapter seven hundred and seventy-five of the acts of nineteen hundred and seventy-five, Massachusetts municipal light departments organized under chapter one hundred and sixty-four or any other special law, or with respect to any property real or personal whatsoever of municipal light departments administered pursuant to chapters forty-four and one hundred and sixty-four A. Notwithstanding the foregoing, the aforesaid Massachusetts Municipal Wholesale Electric Company and municipallight departments shall use their authority as provided by applicable statutes to assess, contain or remove any such oil or hazardous material release for which they are responsible under this chapter.

The provisions of this section shall apply to any site or vessel which has been the subject of a response action and which is owned or possessed by a fiduciary, city or town, redevelopment authority, redevelopment agency, community development corporation, economic development and industrial corporation or secured lender, except that nothing in this section shall be deemed to allow the commonwealth to take any action otherwise authorized by this section with respect to any property while it is owned or possessed by a secured lender except to (1) record, register or file a lien or release of a lien as provided in this section, (2) in the case of real property, foreclose upon a lien and subsequently sell the property in question in accordance with the procedures set forth in chapter two hundred and forty-four, and (3) in the case of personal property, take possession and sell, lease or otherwise dispose of the secured property in accordance with the procedures for the disposition of collateral set forth in part 6 of article 9 of chapter 106. If the property is sold for less than the amount of the lien, a secured lender who meets the requirements of clause (b) of the definition of owner or operator in section two shall not be deemed an owner or operator of the site or vessel in question and shall not be liable to the commonwealth for the deficiency.