

2016 -- H 7834

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO HEALTH AND SAFETY - INDUSTRIAL PROPERTY REMEDIATION AND  
REUSE ACT

Introduced By: Representatives Edwards, Shekarchi, Carson, Hearn, and Bennett

Date Introduced: March 03, 2016

Referred To: House Municipal Government

(Environmental management)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 23-19.14-7 of the General Laws in Chapter 23-19.14 entitled  
2 "Industrial Property Remediation and Reuse Act" is hereby amended to read as follows:

3 **23-19.14-7. Exemptions to liability.** -- The following parties are not responsible parties  
4 and shall not be held liable for costs or damages associated with a release of hazardous material  
5 and/or petroleum:

6 (1) Persons otherwise liable who can establish by a preponderance of the evidence that  
7 the release or threat of release of a hazardous substance and the damages resulting from that  
8 release or threat of release were caused solely by an act of God or an act of war;

9 (2) Bona fide prospective purchasers who have received:

10 (i) A remedial decision letter and are actively engaged in implementing the remedial  
11 action approved therein; provided, that the remedial action is being diligently pursued to  
12 completion in accordance with approved work schedules; ~~or~~

13 (ii) A letter of compliance confirming successful completion of a remedial action  
14 approved by the department; ~~or~~

15 (iii) An enforceable settlement agreement under § 23-19.14-10-; or

16 (iv) Correspondence from the department acknowledging that the person (or a tenant of a  
17 person) acquired ownership of a facility after January 11, 2002, and that the person has certified  
18 to each of the following criteria:

1           (A) Evidence that all disposal at the facility took place before the tenant leased the  
2 facility (through due diligence);

3           (B) The tenant made "all appropriate inquiry" into the prior uses and ownership of the  
4 facility in accordance with generally accepted good commercial and customary standards and  
5 practices (standard for due diligence);

6           (C) The tenant will provide all legally required notices for any discovery or release of  
7 hazardous substances at the facility;

8           (D) The tenant will exercise appropriate care to stop ongoing releases, prevent threatened  
9 future releases and prevent or limit human, environmental, or natural resource exposure to any  
10 previously released hazardous substance;

11           (E) The tenant will cooperate with, assist, and provide access to those performing  
12 remedial work at a facility;

13           (F) The tenant will comply with and will not impede the effectiveness or integrity of any  
14 institutional controls at a facility; and

15           (G) The tenant has no affiliation with any responsible party and was not created through a  
16 reorganization of a business entity that was a responsible party.

17           (3) Persons who maintain an indicia of ownership solely to protect a secured interest in  
18 land and are not operators;

19           (4) Persons who are not operators and who act solely as custodial receivers or who can  
20 establish by a preponderance of evidence that they are an innocent landowner and the release or  
21 threat of release were caused solely by an act or omission of a third party other than an employer  
22 or agent of the defendant, or whose act or omission occurs in connection with a contractual  
23 relationship, existing directly or indirectly, with the defendant if the defendant establishes:

24           (i) He or she exercised due diligence in the acquisition of the site at the time of purchase  
25 and exercised due care with respect to the hazardous material and/or petroleum concerned, taking  
26 into consideration the characteristics of the hazardous material, in light of the facts and  
27 circumstances; and

28           (ii) He or she took precautions against foreseeable acts, or omissions of any third party  
29 and the consequences that could foreseeably result from those acts or omissions;

30           (5) A unit of state or local government which acquired ownership or control  
31 involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances in which  
32 the government involuntarily acquires title by virtue of its function as sovereign; provided,  
33 however, that the unit of state or local government did not cause or contribute to the release or  
34 threatened release of a hazardous material at the site; and

1 (6) (i) A person that owns real property that is contiguous to or otherwise similarly  
2 situated with respect to, and that is or may be contaminated by a release or threatened release of a  
3 hazardous material from, real property that is not owned by that person shall not be considered to  
4 be a responsible party for the site solely by reason of the contamination if:

5 (A) The person did not cause, contribute, or consent to the release or threatened release;

6 (B) The person is not:

7 (I) Potentially liable, or affiliated with any other person that is potentially liable, for  
8 response costs at the site through any direct or indirect familial relationship or any contractual,  
9 corporate, or financial relationship (other than a contractual, corporate, or financial relationship  
10 that is created by a contract for the sale of goods or services); or

11 (II) The result of a reorganization of a business entity that was potentially liable;

12 (C) The person takes reasonable steps to:

13 (I) Stop any continuing release;

14 (II) Prevent any threatened future release; and

15 (III) Prevent or limit human, environmental, or natural resource exposure to any  
16 hazardous substance released on or from property owned by that person;

17 (D) The person provides full cooperation, assistance, and access to persons that are  
18 authorized to conduct response actions or natural resource restoration at the site from which there  
19 has been a release or threatened release (including the cooperation and access necessary for the  
20 installation, integrity, operation, and maintenance of any complete or partial response action or  
21 natural resource restoration at the site);

22 (E) The person:

23 (I) Is in compliance with any land use restrictions established or relied on in connection  
24 with the response action at the site; and

25 (II) Does not impede the effectiveness or integrity of any institutional control employed  
26 in connection with a response action; and

27 (F) The person provides all legally required notices with respect to the discovery or  
28 release of any hazardous substances at the facility.

29 (ii) To qualify as a person described in this subdivision, a person must establish by a  
30 preponderance of the evidence that the conditions in subparagraphs (i)(A) through (i)(F) of this  
31 subdivision have been met.

32 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO HEALTH AND SAFETY - INDUSTRIAL PROPERTY REMEDIATION AND  
REUSE ACT

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1           This act would exempt certain individuals from liability for costs associated with a  
2 release of hazardous material and/or petroleum where ownership of a facility was acquired after  
3 January 11, 2002, and certain conditions have been met, including due diligence and compliance.

4           This act would take effect upon passage.

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