

2016 -- S 2802

LC005184

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

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

Introduced By: Senator William J. Conley

Date Introduced: March 23, 2016

Referred To: Senate Environment & Agriculture

(Environmental Management)

It is enacted by the General Assembly as follows:

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

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

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

(2) Bona fide prospective purchasers who have received:

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

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

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

(iv) Correspondence from the department acknowledging that the person (or a tenant of a
person) acquired ownership of a facility after January 11, 2002, and that the person has certified
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

- 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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