H.226

An act relating to the regulation of underground storage tanks

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Underground Storage Tanks; Petroleum Cleanup Fund * * *

Sec. 1. 10 V.S.A. § 1922 is amended to read:

§ 1922. DEFINITIONS

~~For purposes of~~ As used in this chapter:

* * *

(20) "Petroleum Cleanup Fund" or "Fund" means the fund created by section 1941 of this title.

(21) "Motor Fuel Account" means the Motor Fuel Account of the Fund created by section 1941 of this title.

(22) "Heating Fuel Account" means the Heating Fuel Account of the Fund created by section 1941 of this title.

Sec. 2. 10 V.S.A. § 1927 is amended to read:

§ 1927. REGULATION OF CATEGORY ONE TANKS

* * *

(e) The following tank systems shall be closed in accordance with rules adopted by the Secretary:

(1) not later than January 1, 2016, single-wall tank systems; and

(2) not later than January 1, 2018, combination tank systems, except that combination tank systems in which the tank has been lined shall be closed by

January 1, 2018 or by ten years from the date by which the tank was lined, whichever is later.

(f) A tank owner may petition the Secretary to allow a lined combination tank system to remain in service an additional five years beyond the date established in subdivision (e)(2) of this section. The Secretary may grant the petition upon a determination that:

(1) no release has occurred from the tank system;

(2) the tank system has passed an inspection for lined tank systems adopted by the Secretary by rule; and

(3) no repairs are suggested or needed to the tank liner.

(g) On and after the effective date of this subsection, a person shall not line a single-wall or combination tank system, unless the single-wall or combination system meets standards for new lined systems adopted by procedure by the Secretary. At a minimum, these standards shall address the tank system's piping, secondary containment for all portions of the system except the tank, leak detection, liquid tight containment sumps on the tank top, and liquid tight dispenser sumps.

(h) Notwithstanding the provisions of subsection (g) of this section, a person shall not line a single-wall or combination tank system after January 1, 2014.

Sec. 3. 10 V.S.A. § 1941 is amended to read:

§ 1941. PETROLEUM CLEANUP FUND

* * *

(b) The ~~secretary~~ Secretary may authorize disbursements from the ~~fund~~ Fund for the purpose of the cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum from underground storage tanks and aboveground storage tanks, including air emissions for remedial actions, and for compensation of third parties for injury and damage caused by a release. This ~~fund~~ Fund shall be used for no other governmental purposes, nor shall any portion of the ~~fund~~ Fund ever be available to borrow from by any branch of government; it being the intent of the ~~legislature~~ General Assembly that this ~~fund~~ Fund and its increments shall remain intact and inviolate for the purposes set out in this chapter. Disbursements under this section may be made only for uninsured costs incurred after January 1, 1987 and for which a claim is made prior to July 1, ~~2014~~ 2019 and judged to be in conformance with prevailing industry rates. This includes:

(1) costs incurred by taking corrective action as directed by the ~~secretary~~ Secretary for any release of petroleum into the environment from:

(A) an underground storage tank defined as a category one tank, provided disbursements on any site shall not exceed $1,240,000.00 and shall be made from the Motor Fuel Account, as follows:

(i) after the first $10,000.00 of the cleanup costs have been borne by the owners or operators of ~~tanks~~ double-wall tank systems used for commercial purposes ~~or after the first $250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for farms or residential purposes. Disbursements on any site shall not exceed $1,240,000.00. These disbursements shall be made from the motor fuel account~~;

(ii) after the first $15,000.00 of cleanup costs have been borne by the owners or operators of combination tank systems, whether lined or unlined, used for commercial purposes, unless the system is a lined combination tank system that has been granted a five-year extension under subsection 1927(f) of this title;

(iii) after the first $25,000.00 of cleanup costs have been borne by the owners or operators of lined combination tank systems that have been granted a five-year extension to operate under subsection 1927(f) of this title;

(iv) after the first $25,000.00 of cleanup costs have been borne by the owners or operators of single-wall tank systems used for commercial purposes;

(B) an underground motor fuel tank after the first $250.00 of the cleanup costs have been borne by the owners or operators of tanks with a capacity equal to or less than 1,100 gallons and used for farming or residential

purposes. Disbursements on any site shall not exceed $990,000.00 and shall be made from the Motor Fuel Account;

(C) an underground heating fuel tank used for on-premise heating after the first $10,000.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities over 1,100 gallons used for commercial purposes, or after the first $250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for commercial purposes, or after the first $250.00 of the cleanup costs have been borne by the owners or operators of residential and farm tanks. ~~These disbursements~~ Disbursements on any site shall not exceed $990,000.00 and shall be made from the ~~heating fuel account~~ Heating Fuel Account;

~~(C)~~(D) an aboveground storage tank site after the first $1,000.00 of the cleanup costs have been borne by the owners or operators of tanks used for commercial purposes, or after the first $250.00 of the cleanup costs have been borne by the owners or operators of residential and farm tanks. Disbursements under this subdivision (b)(1)~~(C)~~(D) on any individual site shall not exceed $25,000.00. These disbursements shall be made from the ~~motor fuel account or heating fuel account~~ Motor Fuel Account or Heating Fuel Account, depending upon the use or contents of the tank;

~~(D)~~(E) a bulk storage aboveground motor fuel or heating fuel storage tank site after the first $10,000.00 of the cleanup costs have been borne by the

owners or operators of tanks used for commercial purposes. Disbursements under this subdivision (b)(1)~~(D)~~(E) on any individual site shall not exceed $990,000.00. These disbursements shall be made from the ~~motor fuel account~~ Motor Fuel Account;

~~(E)~~(F) ~~where~~ if a site is contaminated by petroleum releases from both heating fuel and motor fuel tanks, or where the source of the petroleum contamination has not been ascertained, the ~~secretary~~ Secretary shall have the discretion to disburse funds from either the ~~heating oil or motor fuel account~~ Heating Fuel or Motor Fuel Account, or both;

* * *

(g) The owner of a farm or residential heating fuel storage tank used for on-premises heating or an underground or aboveground heating fuel storage tank used for on-premises heating by a mobile home park resident, as defined in section 6201 of this title, who desires assistance to close, replace, or upgrade the tank may apply to the ~~secretary~~ Secretary for such assistance. The financial assistance may be in the form of grants of up to $2,000.00 or the costs of closure, replacement, or upgrade, whichever is less. Grants shall be made only to the current property owners, except at mobile home parks where a grant may be awarded to a mobile home park resident. To be eligible to receive the grant, an environmental site assessment must be conducted by a qualified consultant during the tank closure, replacement, or upgrade if the

tank is an underground heating fuel storage tank. In addition, if the closed tank is to be replaced with an underground heating fuel storage tank, the replacement tank and piping shall provide a level of environmental protection at least equivalent to that provided by a double wall tank and secondarily contained piping. Grants shall be awarded on a priority basis to projects that will avoid the greatest environmental or health risks. The ~~secretary~~ Secretary shall also give priority to applicants who are replacing their underground heating fuel tanks with aboveground heating fuel storage tanks that will be installed in accordance with the ~~secretary's~~ Secretary's recommended standards. The ~~secretary~~ Secretary shall also give priority to lower income applicants. To be eligible to receive the grant, the owner must provide the previous year's financial information, and, if the replacement tank is an aboveground tank, must assure that any work to replace or upgrade a tank shall be done in accordance with industry standards (National Fire Protection Association, or NFPA, Code 31), as it existed on July 1, 2004, until another date or edition is specified by rule of the ~~secretary~~ Secretary. The ~~secretary~~ Secretary shall only authorize up to ~~$300,000.00~~ $350,000.00 in assistance for underground and aboveground heating fuel tanks in any one fiscal year from the ~~heating fuel account~~ Heating Fuel Account for this purpose. The application must be accompanied by the following information:

* * *

Sec. 4. 10 V.S.A. § 1942 is amended to read:

§ 1942. PETROLEUM DISTRIBUTOR LICENSING FEE

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this ~~state~~ State, which will be assessed against every distributor, dealer, or user as defined in 23 V.S.A. chapters 27 and 28, and which will be deposited into the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The ~~secretary~~ Secretary, in consultation with the ~~petroleum cleanup fund advisory committee~~ Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the ~~legislature~~ General Assembly on the balance of the ~~motor fuel account of the fund~~ Motor Fuel Account and shall make recommendations, if any, for changes to the program. The ~~secretary~~ Secretary shall also determine the unencumbered balance of the ~~motor fuel account of the fund~~ Motor Fuel Account as of May 15 of each year, and if the balance is equal to or greater than $7,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The ~~secretary~~ Secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee will be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee will be collected by the ~~commissioner of motor vehicles~~ Commissioner of

Motor Vehicles and deposited into the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund. This fee requirement shall terminate on April 1, ~~2016~~ 2021.

(b) There is assessed ~~against every seller receiving more than $10,000.00 annually for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this state~~ a licensing fee of one cent per gallon for the bulk retail sale of ~~such~~ heating oil, kerosene, or other dyed diesel fuel sold in this State. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233, and the fees collected under this subsection by the ~~commissioner of taxes~~ Commissioner of Taxes shall be deposited into the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The ~~secretary~~ Secretary, in consultation with the ~~petroleum cleanup fund advisory committee~~ Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the ~~legislature~~ General Assembly on the balance of the ~~heating fuel account of the fund~~ Heating Fuel Account and shall make recommendations, if any, for changes to the program. The ~~secretary~~ Secretary shall also determine the unencumbered balance of the ~~heating fuel account of the fund~~ Heating Fuel Account as of May 15 of each year, and if the balance is equal to or greater than $3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The ~~secretary~~ Secretary shall

promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate April 1, ~~2016~~ 2021.

Sec. 5. 10 V.S.A § 1943 is amended to read:

§ 1943. PETROLEUM TANK ASSESSMENT

(a) Each owner of a category one tank used for storage of petroleum products shall annually remit to the ~~secretary on October 1 of each year~~ Secretary $100.00 per double-wall tank system; ~~$150.00~~ $250.00 per combination tank system if the single-wall tank has been lined; $500.00 for all other combination tank systems; and ~~$200.00~~ $1,000.00 per single-wall tank system, which shall be deposited to the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund established by section 1941 of this title, except that:

(1) For retail gasoline outlets that sell less than 40,000 gallons of motor fuel per month, the fee shall be:

(A) $75.00 per double-wall tank system;

(B) $125.00 per combination tank system; and

(C) $175.00 per single-wall tank system.

(2) The fee shall be reduced by 50 percent if the owner or permittee provides to the satisfaction of the ~~secretary~~ Secretary evidence of financial responsibility to allow the taking of corrective action in the amount of $100,000.00 per occurrence and the compensation of third parties for bodily injury and property damage in the amount of $300,000.00 per occurrence.

(3) The fee shall be relieved if the owner provides to the satisfaction of the ~~secretary~~ Secretary, evidence of financial responsibility to allow the taking of corrective action and the compensation of third parties for bodily injury and property damage each in the amount of $1,000,000.00 per occurrence.

(4) The fee for retail motor fuel outlets selling 20,000 gallons or less per month shall not exceed $100.00 per year for all double-wall tanks at a single location and shall not exceed $300.00 for all combination tank systems at a single location. This cap shall not apply to a retail motor fuel outlet utilizing a single-wall tank system.

(5) For any municipality that uses an annual average of less than 40,000 gallons of motor fuel per month, provided that all of the tanks of that municipality meet the requirements of this chapter, the fee shall be:

(A) $50.00 per double-wall tank system;

(B) $100.00 per combination tank system; and

(C) $150.00 per single-wall tank system.

* * *

(c) This tank assessment shall terminate on July 1, ~~2014~~ 2019.

* * *

Sec. 6. 10 V.S.A. § 1944(a) is amended to read:

(a) The ~~secretary~~ Secretary may make individual loans of up to ~~$75,000.00~~ $150,000.00 for:

(1) the replacement or removal of category one tanks used for the storage of petroleum products. These loans shall be made from the ~~motor fuel account of the fund established under subsection 1941(a) of this title~~ Motor Fuel Account;

(2) the removal, or the replacement or improvement, or both, of piping, tank-top sumps, and other components of the secondary containment and release detection systems of category one tanks, for the purpose of reducing the likelihood of a release of regulated substance to the environment. These loans shall be made from the ~~motor fuel account of the fund established under subsection 1941(a) of this title~~ Motor Fuel Account;

(3) the removal, replacement, or upgrade of an underground or aboveground storage tank used for the storage of petroleum products for the purpose of reducing the likelihood of a release of petroleum into the environment. These loans shall be made from the ~~motor fuel account or heating fuel account of the fund established under subsection 1941(a) of this title,~~ Motor Fuel Account or Heating Fuel Account depending upon the use or contents of the tank.

Sec. 7. 10 V.S.A. § 1941a is added to read:

§ 1941a. SINGLE-WALL AND COMBINATION TANKS; TANK REMOVAL

(a) Notwithstanding the requirements of 10 V.S.A. § 1941(b)(1)(A)(iv), when a release is discovered during the closure and removal of a single-wall underground storage tank, the Fund may pay cleanup costs after the first $10,000.00, and disbursements on any site shall not exceed $1,240,000.00.

(b) Notwithstanding the requirements of 10 V.S.A. § 1941(b)(1)(A)(ii), when a release is discovered during the closure and removal of a combination tank system, whether lined or unlined, the Fund may pay cleanup costs after the first $10,000.00, and disbursements on any site shall not exceed $1,240,000.00.

Sec. 8. PETROLEUM CLEANUP FUND ADVISORY COMMITTEE REPORT FOR 2014

The annual report of the Petroleum Cleanup Fund Advisory Committee to be submitted to the General Assembly on January 15, 2014 pursuant to 10 V.S.A. § 1941 shall provide recommendations as to whether:

(1) 10 V.S.A. § 1941(b) should enable the Secretary to make disbursements from the Fund for the purpose of removing or remediating underground or aboveground storage tanks that present an actual or imminent threat of release;

(2) there should be an increase in the total annual amount that the Secretary is authorized to disburse pursuant to 10 V.S.A. § 1941(g) (grants to close, replace, or upgrade farm or residential underground or aboveground heating fuel storage tanks); and

(3) there should be an increase in the individual grant amount that the Secretary is authorized to disburse pursuant to 10 V.S.A. § 1941(g) (grants to close, replace, or upgrade farm or residential underground or aboveground heating fuel storage tanks).

Sec. 9. REPEAL

The following are repealed:

(1) 10 V.S.A. § 1941a(a) on January 1, 2016;

(2) 10 V.S.A. § 1941a(b) on January 1, 2018.

* * * Brownfields; Redevelopment * * *

Sec. 10. LEGISLATIVE INTENT

For the purposes of Secs. 10 through 13 of this act, it is the intent of the General Assembly that:

(1) It is appropriate to confer a limited defense to liability for hazardous material cleanup when a municipality, regional development corporation, or regional planning commission conforms to the requirements of 10 V.S.A. § 6615(d)(3), in the case of municipalities, and 10 V.S.A § 6615(d)(4).

(2) It is of vital importance for purchasers of commercial properties to conduct environmental site assessments that conform to statutorily recognized standards.

(3) In construing the defense to liability established pursuant to 10 V.S.A. § 6615(f), the courts of this State shall be guided by the construction of similar terms contained in 42 U.S.C. § 9601(35)(A)(i) and (B), as amended, and the courts of the United States.

(4) It is appropriate to confer limited defense to liability for secured lenders and fiduciaries under state law that is equivalent to liability under federal law.

(5) In construing the defense to liability established pursuant to 10 V.S.A. § 6615(g), the courts of this State will be guided by the construction of similar terms contained in 42 U.S.C. §§ 9601(20)(F) and 9607(n), as amended, and the courts of the United States.

Sec. 11. 10 V.S.A § 6602 is amended to read:

§ 6602. DEFINITIONS

For the purposes of this chapter:

(1) "Secretary" means the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources, or his or her duly authorized representative.

* * *

(4) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including ~~but not limited to~~ those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat, or other means, which in the judgment of the ~~secretary~~ Secretary may cause, or contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the ~~state~~ State. All special nuclear, source, or by-product material, as defined by the Atomic Energy Act of 1954 and amendments thereto, codified in 42 U.S.C. § 2014, is specifically excluded from this definition.

* * *

(6) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the ~~state~~ State of Vermont or any agency, department or subdivision of the ~~state~~ State, federal agency, or any other legal or commercial entity.

* * *

(10) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of waste. A facility may consist of several treatment, storage, or disposal operational units.

* * *

(13) "Waste" means a material that is discarded or is being accumulated, stored, or physically, chemically, or biologically treated prior to being discarded or has served its original intended use and is normally discarded or is a manufacturing or mining by-product and is normally discarded.

* * *

(16)(A) "Hazardous material" means all petroleum and toxic, corrosive, or other chemicals and related sludge included in any of the following:

(i) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;

(ii) petroleum, including crude oil or any fraction thereof; or

(iii) hazardous wastes, as determined under subdivision (4) of this section;

(B) "Hazardous material" does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, state, and local laws and regulations and according to manufacturer's

instructions. Nothing in this subdivision shall affect the authority granted and the limitations imposed by section 6608a of this title.

(17) "Release" means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands in the ~~state~~ State, or into waters outside the jurisdiction of the ~~state~~ State when damage may result to the public health, lands, waters, or natural resources within the jurisdiction of the ~~state~~ State.

* * *

(23) "Secured lender" means a person who holds indicia of ownership in a facility, furnished by the owner or person in lawful possession, primarily to assure the repayment of a financial obligation. Such indicia include interests in real or personal property which are held as security or collateral for repayment of a financial obligation such as a mortgage, lien, security interest, assignment, pledge, surety bond, or guarantee and include participation rights, held by a financial institution solely for legitimate commercial purposes, in making or servicing loans. The term "secured lender" includes a person who acquires indicia of ownership by assignment from another secured lender.

* * *

(34) "Participation in management" means, for the purpose of subsection 6615(g) of this title, a secured lender's or fiduciary's actual

participation in the management or operational affairs of a facility. It does not mean a secured lender's or fiduciary's mere capacity to influence, or unexercised right to control, facility operations. A secured lender or fiduciary shall be considered to have participated in management if the secured lender or fiduciary:

(A) exercises decision-making control over environmental compliance related to the facility, such that the secured lender or fiduciary has undertaken responsibility for hazardous materials handling or disposal practices related to the facility; or

(B) exercises control at a level comparable to that of a manager of the facility, such that the secured lender or fiduciary has assumed or manifested responsibility:

(i) for the overall management of the facility encompassing day-to-day decision making with respect to environmental compliance; or

(ii) over all or substantially all of the operational functions, as distinguished from financial or administrative functions, of the facility other than the function of environmental compliance.

(35) "Regional development corporation" means a nonprofit corporation organized in this State whose principal purpose is to promote, organize, or accomplish economic development, including providing planning and resource development services to local communities, supporting existing industry,

assisting the growth and development of new and existing small businesses, and attracting industry or commerce to a particular economic region of the State.

(36) "Regional planning commission" means a planning commission created for a region established under 24 V.S.A. chapter 117, subchapter 3.

Sec. 12. 10 V.S.A. § 6615 is amended to read:

§ 6615. LIABILITY

(a) Subject only to the defenses set forth in subsections (d) and (e) of this section:

(1) the owner or operator of a facility, or both;

(2) any person who at the time of release or threatened release of any hazardous material owned or operated any facility at which such hazardous materials were disposed of;

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous materials owned or possessed by such person, by any other person or entity, at any facility owned or operated by another person or entity and containing such hazardous materials; and

(4) any person who accepts or accepted any hazardous materials for transport to disposal or treatment facilities selected by such persons, from

which there is a release, or a threatened release of hazardous materials shall be liable for:

(A) abating such release or threatened release; and

(B) costs of investigation, removal, and remedial actions incurred by the ~~state~~ State which are necessary to protect the public health or the environment.

* * *

(d)(1) There shall be no liability under this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of hazardous material and the damages resulting therefrom were caused solely by any of the following:

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant. If the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, for purposes of this section, there shall be considered to be no contractual relationship at all. This subdivision (d)(1)(C) shall only serve as a defense if the defendant establishes by a preponderance of the evidence:

(i) that the defendant exercised due care with respect to the hazardous material concerned, taking into consideration the characteristics of that hazardous material, in light of all relevant facts and circumstances; and

(ii) that the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions; or

(D) any combination of the above.

* * *

(3) A municipality shall not be liable under subdivision (a)(1) of this section as an owner provided that the municipality can show all the following:

(A) The property was acquired by virtue of its function as sovereign through bankruptcy, tax delinquency, abandonment, or other similar circumstances.

(B) The municipality did not cause ~~or,~~ contribute to ~~the contamination of~~, or worsen a release or threatened release of a hazardous material at the property.

(C)(i) The municipality has entered into an agreement with the ~~secretary regarding sale of the property acquired or has undertaken abatement, investigation, remediation, or removal activities as required by subchapter 3 of this chapter~~ Secretary, prior to the acquisition of the property, requiring the municipality to conduct a site investigation with respect to any release or

threatened release of a hazardous material and an agreement for the municipality's marketing of the property acquired.

(ii) The Secretary shall consult with the Secretary of Commerce and Community Development on the plan related to the marketing of the property.

(iii) The municipality may assert a defense to liability only after implementing a site investigation at the property acquired and taking reasonable steps defined by the agreement with the Secretary to market the property.

(iv) In developing an agreement regarding site investigation, the Secretary shall consider: the degree and extent of the known releases of hazardous materials at the property; the financial ability of the municipality; and the availability of state and federal funding when determining what is required by the agreement for the investigation of the site.

(4) A regional development corporation or regional planning commission shall not be liable under subdivision (a)(1) of this section as an owner provided that the regional development corporation or regional planning commission can show all the following:

(A) The regional development corporation or regional planning commission did not cause, contribute to, or worsen a release or threat of release at the property.

(B) The regional development corporation received, in the 12 months preceding the acquisition of the property, a performance contract for economic development pursuant to 24 V.S.A. chapter 76. The requirement of this subdivision (d)(4)(B) shall not apply to regional planning commissions.

(C)(i) The regional development corporation or regional planning commission has entered into an agreement with the Secretary, prior to the acquisition of the property, requiring the regional development corporation or regional planning commission to conduct a site investigation with respect to any release or threatened release of a hazardous material and an agreement for the regional development corporation's or regional planning commission's marketing of the property acquired.

(ii) The Secretary shall consult with the Secretary of Commerce and Community Development on the plan related to the marketing of the property.

(iii) The regional development corporation or regional planning commission may assert a defense to liability only after implementing a site investigation at the property acquired and taking reasonable steps defined by the agreement to market the property.

(iv) In developing an agreement regarding site investigation, the Secretary shall consider: the degree and extent of the known releases of hazardous materials at the property; the financial ability of the regional development corporation or the regional planning commission; and the

availability of state and federal funding when determining what is required by the agreement for the investigation of the site.

(e) Any person who is the owner or operator of a facility where a release or threatened release existed at the time that person became owner or operator shall be liable unless he or she can establish by a preponderance of the evidence ~~that after making~~, based upon a diligent and appropriate investigation of the facility~~,~~ in conformance with the requirements of section 6615a of this title, that he or she had no knowledge or reason to know that ~~said~~ the release or threatened release was located on the facility.

* * *

(g)(1) A secured lender or a fiduciary, as ~~that~~ the term fiduciary is defined in 14 V.S.A. ~~§ 204(b)~~ § 204(2), shall not, absent other circumstances resulting in liability under this section, be liable as either an owner or operator under this section merely because of any one or any combination of more than one of the following:

* * *

(J) in an emergency, requiring or undertaking activities to prevent exposure of persons to hazardous materials or to contain a release; ~~or~~

(K) requiring or conducting abatement, investigation, remediation, or removal activities in response to a release or threatened release, provided that:

(i) prior notice of intent to do any such activity is given to the ~~secretary~~ Secretary in writing, and, unless previously waived in writing by the ~~secretary~~ Secretary, no such activity is undertaken for 30 days after receipt of such notice by the ~~secretary~~ Secretary;

(ii) a workplan is prepared by a qualified consultant prior to the commencement of any such activity;

(iii) if the ~~secretary~~ Secretary, within 30 days of receiving notice as provided in subdivision (i) of this subdivision (K), elects to undertake a workplan review and gives written notice to the secured lender or fiduciary of such election, no such activity is undertaken without prior workplan approval by the ~~secretary~~ Secretary;

(iv) appropriate investigation is undertaken prior to any abatement, remediation, or removal activity;

(v) regular progress reports and a final report are produced during the course of any such activity;

(vi) all plans, reports, observations, data, and other information related to the activity are preserved for a period of 10 years and, except for privileged materials, produced to the ~~secretary~~ Secretary upon request;

(vii) persons likely to be at or near the facility are not exposed to unacceptable health risk; and

(viii) such activity complies with all rules, procedures, and orders of the secretary; or

(L) foreclosing on the facility and after foreclosure: selling; winding up operations; undertaking an investigation or corrective action under the direction of the state or federal government with respect to the facility; or taking any other measure to preserve, protect, or prepare the facility prior to sale or disposition, provided that:

(i) a secured lender shall be liable as an operator if the secured lender participated in the management of the facility; and

(ii) a secured lender shall be liable as an owner if during the course of any transaction of the property, the secured lender fails to disclose any known release or threat of release.

(2) There shall be no protection from liability for a secured lender or a fiduciary under ~~subsections (g) and (h) of this section~~ this subsection if the secured lender or fiduciary causes, worsens, or contributes to a release or threat of release of hazardous material. A secured lender or fiduciary who relies on subdivision (g)(1)(K) of this section~~, or an agreement with the secretary entered into under subsection (h) of this section~~ shall bear the burden of proving compliance with this subdivision.

~~(h)(1) Subject to the provisions of this subsection, the secretary may enter into an agreement with a secured lender or a fiduciary regarding a facility from~~

~~which there is a release or threat of release of hazardous materials. Upon entering into an agreement with the secretary, a secured lender or fiduciary, to the extent allowed by the agreement and in compliance with the terms and conditions of the agreement, may:~~

~~(A) in the case of a secured lender, take possession, foreclose or otherwise take full title to the facility; and~~

~~(B) undertake other activities at the facility in addition to those of subdivisions (g)(1)(A) (K) of this section, including use of the facility and new development.~~

~~(2) Such an agreement may be entered into only when the secretary has determined, in the secretary's sole discretion, that there exists a release or threat of release, that there will be a substantial benefit to the public health or the environment that would not otherwise be realized and that the proposed activity will not cause, worsen or contribute to a release or threat of release of hazardous materials at the facility or expose persons likely to be at or near the facility to unacceptable health risk. Prior to entering into an agreement which provides for any abatement, investigation, remediation, or removal activities to be taken by a secured lender or fiduciary in response to a release or threatened release, the secretary shall cause notice to be published in a local newspaper generally circulated in the area where the facility is located. The notice shall set forth the abatement, investigation, remediation, and removal activities~~

~~proposed, shall state that the secretary is considering entering into an agreement providing for such activities, and shall request public comment on the proposed activities within 15 days after publication. The decision of the secretary as to whether an agreement should be entered into and the terms and conditions of any agreement shall be final.~~

~~(3) Such an agreement, if previously approved by the attorney general, may provide for the payment, in whole or in part, of past or future costs described in subdivision (a)(4)(B) of this section and may limit, in whole or in part, the secured lender's or the fiduciary's liability under this section.~~

~~(4) A proposal by a secured lender or fiduciary to enter into such an agreement shall be accompanied by a fee of $1,000.00. If the secretary's costs related to the proposal exceed the fee paid, then any agreement shall provide for the secured lender or fiduciary to reimburse the secretary for the additional costs incurred. The fee and any excess costs paid to the secretary under this subsection shall be deposited into the contingency fund established under subsection 1283(a) of this title.~~

~~(5) If the secured lender or fiduciary enters into an agreement with the secretary, complies with the agreement and does not cause, worsen or contribute to a release or threat of release of a hazardous material, the maximum liability of such person under this section to the state for costs or injunctive relief shall be as provided in the agreement or, in the absence of~~

~~such a provision, the fair market value of the property at the time of the agreement, estimated as if there were no release or threatened release of any hazardous materials, less any costs reasonably incurred by the person for any abatement, investigation, remediation or removal activity undertaken in compliance with subdivision (g)(1)(K) of this section or incurred in compliance with the agreement.~~

* * *

Sec. 13. 10 V.S.A. § 6615a is added to read:

§ 6615a. DILIGENT AND APPROPRIATE INVESTIGATION FOR HAZARDOUS MATERIALS

(a) Except as provided for in subsection (b) of this section, a diligent and appropriate investigation, as that term is used in subsection 6615(e) of this title, means, for all properties, an investigation where an owner or operator of a property conforms to the standard developed by the Secretary by rule for a diligent and appropriate investigation. If no standard exists, the owner or operator of a property shall conform to one of the following:

(1) the all appropriate inquiry standard set forth in 40 C.F.R. Part 312, as amended; or

(2) the current standard for phase I environmental site assessments established by the American Society for Testing and Materials.

(b) In the case of residential property used for residential purposes, diligent and appropriate investigation shall mean a facility inspection and title search that:

(1) reveal no basis for further investigation; and

(2) do not reveal that the property was used for or was part of a larger parcel that was used for commercial or industrial purposes.

* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

(a) This section and Secs. 1 through 9 (underground storage tanks; Petroleum Cleanup Fund) of this act shall take effect on passage, except Sec. 5 (petroleum tank assessment) of this act shall take effect on July 1, 2014.

(b) Secs. 10 through 13 (brownfields) of this act shall take effect on July 1, 2013.