

**HOUSE . . . . . No. 01130**

---

The Commonwealth of Massachusetts

\_\_\_\_\_  
PRESENTED BY:

*Michael A. Costello*

\_\_\_\_\_

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to protect citizens of the Commonwealth from unsafe and injurious landfills

.

\_\_\_\_\_  
PETITION OF:

NAME:

DISTRICT/ADDRESS:

-----  
*Michael A. Costello*

-----  
*1st Essex*

-----  
*Steven A. Baddour*

-----  
*First Essex*

# HOUSE . . . . . No. 01130

By Mr. Michael A. Costello of Newburyport, petition (accompanied by bill, House, No. 01130) of Steven Baddour and Michael A. Costello relative to protecting citizens of the Commonwealth from unsafe and injurious landfills.. Joint Committee on Environment, Natural Resources and Agriculture.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 4639 OF 2009-2010.]

## The Commonwealth of Massachusetts

\_\_\_\_\_  
**In the Year Two Thousand Eleven**  
\_\_\_\_\_

An Act to protect citizens of the Commonwealth from unsafe and injurious landfills  
□.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 2 of Chapter 21H, as appearing in the 2008 Official Edition, is  
2 hereby amended in lines 3 through 8, inclusive, by striking the definition of “Assessment” in its  
3 entirety and inserting in place thereof the following definition:--  
4 “Assessment,” a project to investigate, monitor, survey, test and gather information to identify  
5 the existence, source, nature and extent of pollution, a threat of pollution or public nuisance and  
6 the extent of risk posed to the public health, safety or welfare, or to the environment. The term

7 shall also include without limitation studies, services, or investigations to plan, manage and  
8 direct assessment, containment, closure and clean up.

9 SECTION 2. Said section 2, as so appearing, is hereby amended in lines 25 through 29,  
10 inclusive, by striking the definition of “Clean up” in its entirety and inserting in place thereof the  
11 following definition:--

12 “Clean up”, a project for the treatment, removal or disposal of pollution from or at any existing  
13 or closed facility or any location to which such pollution has come to be located, which cleanup  
14 actions shall include, without limitation, actions which restore potability to a drinking water  
15 supply or which prevent the contamination of said supply, including without limitation the  
16 planning, design, and implementation of appropriate means of assessment and remediation of the  
17 contamination problem. Clean up shall also include any appropriate means to prevent or abate a  
18 public nuisance, including, without limitation, any planning, design or implementation of such  
19 abatement or prevention measures.

20 SECTION 3. Said section 2, as so appearing, is hereby amended in lines 30 through 34,  
21 inclusive, by striking the definition of “Closure” in its entirety and inserting in place thereof the  
22 following definition:--

23 “Closure”, a project for the deactivation and completion of a facility, including without  
24 limitation planning, design and implementation of capping, containment, completion and any  
25 other activity necessary or incidental to minimize or prevent damage, or threats of damage, to the  
26 public health, safety or welfare, or to the environment including from public nuisance. Closure  
27 also includes the post-closure maintenance and monitoring of a facility to ensure the integrity of  
28 closure, cleanup, and containment measures and to detect and prevent any adverse impacts,

29 including but not limited to adverse impacts from public nuisance, on public health, safety or  
30 welfare, or the environment.

31 SECTION 4. Said section 2, as so appearing, is hereby amended in lines 42 through 46,  
32 inclusive, by striking the definition of “Containment” in its entirety and inserting in place thereof  
33 the following definition:--

34 “Containment”, a project for the prevention of leachate, landfill gas or vapor generation and/or  
35 migration from a facility, including without limitation planning, design and implementation of  
36 surface sealing, grading, drainage control, lining, slurry trenching, grout curtain sheeting, landfill  
37 gas collection, landfill gas treatment and other activities necessary or incidental to control of  
38 leachate, landfill gas or vapor generation or migration. Containment shall also include all means  
39 to prevent pollution, threat of pollution or public nuisance conditions from adversely affecting  
40 public health, safety or welfare, or the environment.

41 SECTION 5. Said section 2, as so appearing, is hereby amended in lines 60 through 64,  
42 inclusive, by striking the definition of “Facility” in its entirety and inserting in place thereof the  
43 following definition:--

44 “Facility”, any place or site where solid waste has been or will be deposited, dumped, stored,  
45 transferred or treated, including any landfill, refuse transfer station, refuse incinerator rated by  
46 the department at more than one ton of refuse per hour, refuse composting plant, or other work  
47 for treating or disposing of solid waste, including existing and closed facilities.

48 SECTION 6. Said section 2, as so appearing, is hereby amended in line 126 by inserting after  
49 the definition of “Motor vehicle” the following definition:--

50 “Owner”, or “Operator”, and person who alone or in conjunction with others has legal  
51 ownership, a leasehold interest, or effective control over a facility or any person, including  
52 without limitation, an agent, lessee of the owner or an independent contractor, who has care,  
53 charge or control of such facility.

54 SECTION 7. Said section 2, as so appearing, is hereby amended in lines 131 through 136,  
55 inclusive, by striking the definition of “Pollution” in its entirety and inserting in place thereof the  
56 following definition:--

57 “Pollution”, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,  
58 escaping, leaching, dumping or disposing of any solid, liquid or gaseous material which, because  
59 of its quantity, concentration or other characteristics, is or may be injurious to human, plant or  
60 animal life or to property, or may unreasonably interfere with the comfortable enjoyment of life  
61 or property.

62 SECTION 8. Section 4 of said chapter 21H, as so appearing, is hereby amended by striking the  
63 section in its entirety and inserting in place thereof the following section:--

64 Section 4. The department is hereby authorized and directed to establish a program for (i) the  
65 discovery and assessment of pollution, threats of pollution or public nuisance, caused by existing  
66 or closed facilities, (ii) the containment and clean up of such pollution, threats of pollution or  
67 public nuisance, and (iii) the closure of existing facilities causing such pollution, threats of  
68 pollution or public nuisance.

69 (a) In implementing assessment under said program, the department either may take or arrange  
70 for such assessments or may award grants to public bodies, in accordance with rules and  
71 regulations adopted by the department pursuant to chapter thirty A after public hearing, for up to

72 one hundred per cent of the costs for such assessments. Such assessments may include without  
73 limitation studies, surveys, monitoring, testing and other investigations to identify the existence,  
74 source, nature and extent of such pollution and to assess the extent to which such pollution  
75 presents an existing or potential danger to the public health, safety or welfare, or the  
76 environment, and studies, services and investigations to plan, manage and direct necessary  
77 containment, clean up or closure activities.

78 (b) After the discovery of pollution, a threat of pollution or public nuisance, caused by an  
79 existing or closed facility, the department, in accordance with enforcement authority set forth in  
80 applicable statutes and regulations, shall notify the owner and/or operator of the facility of (i) any  
81 requirements to correct such pollution, threat of pollution or public nuisance, and to bring the  
82 facility into conformance with applicable statutes and regulations, and of the steps which must be  
83 taken to do so; (ii) the need for any assessment, or if adequate assessment has been made, the  
84 need for containment, closure or clean up activities to eliminate, minimize or prevent such  
85 pollution or threat of pollution or to abate, contain or clean up a public nuisance; (iii) any  
86 funding available for such assessment, containment, closure or clean up activities under section  
87 three; (iv) the department's authority to take or arrange for any such projects under subsection  
88 (c); and (v) the liability provisions of subsections (e) to (h), inclusive, for the costs incurred by  
89 the department in taking or arranging for such activities.

90 (c) Subject to the provisions of subsections (b) and (d), the department is authorized (i) to take or  
91 arrange for assessment of such pollution, threats of pollution or public nuisance, (ii) to take or  
92 arrange for containment activities in response to such pollution, threats of pollution or public  
93 nuisance, which will prevent or minimize pollution or threat of pollution so that it does not  
94 migrate or otherwise cause or threaten substantial present or future danger to the public health,

95 safety or welfare, or the environment, or, which will prevent or minimize public nuisance  
96 conditions, and (iii) to take or arrange for such closure or clean up activities as may be necessary  
97 to prevent, minimize or mitigate damage to the public health, safety or welfare, or the  
98 environment, which may result from such pollution, threats of pollution, or to prevent, minimize  
99 or mitigate public nuisance conditions.

100 (d) Prior to taking or arranging for any assessment or any containment, closure or clean up  
101 activities under subsection (c), the department shall have informed the owner or operator of the  
102 facility or other legally responsible person as set forth in subsection (b) and the department shall  
103 have notified said owner and/or operator of its intent to take or arrange for such activities;  
104 provided that, if the department determines that an imminent threat exists to the public health,  
105 safety or welfare, or to the environment, or that significant public nuisance conditions exist that  
106 warrant immediate action, then the department shall not be required to provide notice or conduct  
107 assessment prior to implementing containment or cleanup activities to abate or minimize such  
108 imminent threat or significant public nuisance conditions. Notice under subsection (b) and (c)  
109 shall also not be required when the department is unable to determine the identity or location of  
110 the owner or operator of the facility or of any other legally responsible person, or when because  
111 of an emergency or other circumstances, the giving of such notice would be impractical.

112 (e) Except as otherwise provided in this section, the owner or operator of an existing or closed  
113 solid waste facility which causes pollution, threat of pollution or public nuisance, and any person  
114 who is otherwise legally responsible for such pollution, threat of pollution or public nuisance,  
115 shall be liable to the commonwealth for all costs of any further assessment and any containment,  
116 closure and clean up incurred by the department relative to such pollution, threat of pollution or

117 public nuisance pursuant to subsection (c). Except as provided in subsection (f), such liability  
118 shall be joint and several.

119 (f) Any person otherwise liable for any costs as set forth in subsection (e) who establishes by a  
120 preponderance of the evidence that only a portion of such costs is attributable to pollution, threat  
121 of pollution or public nuisance for which he is included in said subsection (e) shall be required to  
122 pay only such portion.

123 (g) All persons liable under this section who are liable for pollution, a threat of pollution or  
124 public nuisance, caused by an existing or closed solid waste facility, for which the department  
125 has incurred costs for assessment, containment, closure or clean up under subsection (c), shall be  
126 liable, jointly and severally, to the commonwealth in an amount up to three times their liability as  
127 set forth in this section; provided, however, that if any person establishes by a preponderance of  
128 the evidence that only a portion of such costs is attributable to pollution, threat of pollution or  
129 public nuisance for which he is included in said subsection (c), in which case they shall be  
130 required to pay up to three times such portion.

131 (h) Where the person liable for such pollution, threat of pollution or public nuisance is a city or  
132 town, there shall be no liability for the costs of assessment taken or arranged by the department,  
133 and the provision of subsection (g) relating to treble liability for costs incurred by the department  
134 for containment, closure or clean up shall not apply to such public body, and any liability to the  
135 commonwealth under this section, in the case of a city or town shall not be included in the debt  
136 of such city or town for the purpose of ascertaining its legal borrowing capacity, if after  
137 receiving notice under subsection (b), and prior to any action by the department under subsection  
138 (c), such city or town has taken action to obtain financial resources to support any necessary



139 containment, closure or clean up projects, including without limitation issuing revenue bonds  
140 under section twenty-eight C of chapter forty-four or applying in good faith for financial  
141 assistance pursuant to section three.

142 (i) No indemnification, hold harmless or similar agreement or conveyance shall be effective to  
143 transfer the liability imposed under this section from the owner or operator of any existing or  
144 closed solid waste facility or from any other person who may be liable for pollution, threat of  
145 pollution or public nuisance under this section to any other person. Nothing in this paragraph  
146 shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any  
147 liability under this section.

148 (j) The department, as necessary to carry out the provisions of subsections (a) and (c) may enter  
149 into contracts for consultant services, including but not limited to engineering, technical, legal,  
150 administrative, accounting, community information, financial, management and investigatory  
151 function, and may acquire personal property and interests in real estate by leases, purchases or  
152 eminent domain under the provisions of chapter seventy-nine and may pay any relocation  
153 benefits required by law.

154 (k) For the purpose of the administration and enforcement of this chapter and chapter 111,  
155 section 150A, and for the protection of public health, safety, or welfare, or the environment,  
156 authorized personnel, agents and contractors of the department may enter any facility at  
157 reasonable times and upon reasonable notice, to investigate, sample and inspect any records,  
158 conditions, equipment, practice or property. Where necessary to ascertain facts relevant to, or not  
159 available at, such facility, any person shall, upon request by any officer, employee or duly  
160 authorized representative of the department, furnish information relating to said facility or to

161 pollution, threat of pollution or public nuisance therefrom and shall permit said officers,  
162 employees or authorized representatives to have access to, and to copy, all records relating to  
163 said facility or to pollution, threat of pollution or public nuisance therefrom. In the event that the  
164 department reasonably determines as a result of such investigation, sampling or inspection that  
165 there has been pollution, threat of pollution or public nuisance from or at such facility, the  
166 department and its authorized personnel, agents, representatives or contractors may enter such  
167 facility and areas proximate thereto and undertake such actions pursuant to this chapter and  
168 regulations promulgated hereunder relative to the assessment, containment, closure or clean up  
169 of pollution, threat of pollution or public nuisance as it reasonably deems necessary. During the  
170 course of any assessment, containment, closure and clean up activities, the department may  
171 restrict or deny entry to the facility and proximate property to protect the public health, safety or  
172 welfare, or the environment, and to provide for the efficient, expeditious and safe conduct of  
173 such actions; such restriction and denial shall not preclude access by an owner or operator of  
174 such facility; provided, however, that such owner or operator complies with all safety and  
175 operational protocols and requirements imposed by and to the satisfaction of the department; and  
176 provided, further, that such owner or operator does not interfere with the efficient, expeditious  
177 and safe conduct of the department's assessment, containment, closure or cleanup activities. The  
178 department may access and utilize funds from the financial assurance mechanisms for a facility  
179 at which there has been pollution, threat of pollution or a public nuisance to address such  
180 pollution, threat of pollution or public nuisance where the owner or operator has failed to  
181 adequately address, as determined by the department, such pollution, threat of pollution or public  
182 nuisance after having an opportunity to do so pursuant to subsection (b) and (d) herein.

183 (l) Nothing in this section shall preclude the department from acting to address pollution or  
184 threats of pollution caused by facilities under the authority of section four of chapter twenty-one  
185 E.

186 (m) Notwithstanding any other general or special law to the contrary, civil actions brought by the  
187 attorney general pursuant to this chapter to recover costs incurred by the commonwealth, and  
188 actions brought by the attorney general to enforce action by owners or operators, shall be  
189 commenced within five years from the date the commonwealth incurs all such costs or five years  
190 from the date the commonwealth discovers that the person against whom the action is being  
191 brought is a person liable pursuant to this chapter for pollution, threat of pollution or public  
192 nuisance on account of which the commonwealth has incurred such costs, whichever is later.

193 (n) The department may establish an administrative record upon which the department shall base  
194 the selection of assessment, containment, closure and cleanup activities in those cases where the  
195 department itself, or acting through its agents or contractors, carries out an assessment,  
196 containment, closure or cleanup activities. The administrative record shall be available to the  
197 public at the department office most convenient to the facility in question. The department may  
198 also place duplicates of the administrative record at any other location.

199 The department shall promulgate regulations establishing standards for the content of the  
200 administrative record. Until such regulations take effect, the administrative record shall consist  
201 of all items developed and received pursuant to procedures used by the department for selection  
202 of the assessment, containment, closure and cleanup activities, including procedures, if any, for  
203 the participation of interested parties and the public, on the date this section first takes effect.

204 The development of an administrative record, the selection of assessment, containment, closure  
205 or cleanup activities pursuant to this chapter, and the issuance of a notice by the department to  
206 any owner or operator of a facility or to any other legally responsible person asking that such  
207 person undertake assessment, containment, closure or cleanup actions shall not be adjudicatory  
208 proceedings and shall not be subject to those provisions of chapter thirty A, or of any other law,  
209 governing adjudicatory proceedings.

210 (o) Nothing in this section shall be construed as a defense to liability.

211 SECTION 9: Notwithstanding any special or general law to the contrary, the provisions of  
212 Chapter 21H of the General Laws shall apply to the site known as the Crow Lane landfill,  
213 located in Newburyport, Massachusetts, upon passage of this act.