

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.21323c Liability of corrective action contractor; "corrective action contract" and "corrective action contractor" defined; liability if act or failure to act consistent with national contingency plan or directed by federal on-scene coordinator or director; damages; definitions; burden of proof.

Sec. 21323c.

(1) Except as otherwise provided in this section, a person that is a corrective action contractor for any release or threatened release is not liable to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution and claims by third parties for death, personal injuries, illness, or loss of or damages to property or economic loss that result from the release or threatened release. This subsection does not apply if a release or threatened release is caused by conduct of the corrective action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(2) Subsection (1) does not affect the liability of a person under any warranty under federal, state, or common law. This subsection does not affect the liability of an employer who is a corrective action contractor to any employee of the employer under law, including any law relating to worker's compensation.

(3) An employee of this state or a local unit of government who provides services relating to a corrective action while acting within the scope of his or her authority as a governmental employee has the same exemption from liability as is provided to the corrective action contractor under subsection (1).

(4) Except as provided in this section, this section does not affect the liability under this part or under any other federal or state law of any person.

(5) As used in subsections (1) to (4):

(a) "Corrective action contract" means a contract or agreement entered into by a corrective action contractor with 1 or more of the following:

- (i) The department.
- (ii) The department of community health.
- (iii) A person that is arranging for corrective action under this part.

(b) "Corrective action contractor" means all of the following:

- (i) A person that enters into a corrective action contract with respect to a release or threatened release and is carrying out the terms of a contract.
- (ii) A person that is retained or hired by a person described in subparagraph (i) to provide any service relating to a corrective action.
- (iii) A qualified underground storage tank consultant.

(6) Notwithstanding any other provision of law, a person is not liable for corrective action costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice with respect to a release of petroleum into or on the surface waters of the state or on the adjoining shorelines to the surface waters of the state if the act or failure to act was consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or the director. This subsection does not apply to any of the following:

- (a) A person that is liable under section 21323a that is a responsible party.
- (b) An action with respect to personal injury or wrongful death.
- (c) A person that is grossly negligent or engages in willful misconduct.

(7) A person that is liable under section 21323a and that is a responsible party is liable for any corrective action costs and damages that another person is relieved of under subsection (6).

(8) As used in this subsection and subsections (6) and (7):

(a) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the release or threatened release of petroleum.

(b) "Federal on-scene coordinator" means the federal official predesignated by the United States environmental protection agency or the United States coast guard to coordinate and direct federal responses under the national contingency plan or the official designated by the lead agency to coordinate and direct corrective action under the national contingency plan.

(c) "National contingency plan" means the national contingency plan prepared and published under section 311 of title III of the federal water pollution control act, 33 USC 1321.

(9) This section does not affect a plaintiff's burden of establishing liability under this part.

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