

## **Owner or Operation Causation Liability Arranger/Transporter Liability**

### **Section XXXXX Liability for person responsible for an activity that causes a release, arrangers or transporters**

- (1) Notwithstanding any other provision or rule of law and except as provided in section xxxxx (*Liability-response contractors*), and section xxxxx (*Liability-security interest*) the following persons are liable under this part:
- (a) An owner or operator who causes a release or threat of release which occurs at or creates a facility.
  - (b) A co-owner who causes a release or threat of release which occurs at or creates a facility and who cannot establish the defense provided in subsection (4).
  - (c) A person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by the person, by any other person, at a facility owned or operated by another person and containing the hazardous substance. This subdivision includes liability resulting from a person's acceptance and management of a secondary material. As used in this subdivision, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, which has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products which may otherwise be produced from a raw or virgin material. This subdivision does not include any of the following:
    - (i) A person who, on or after June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product.
    - (ii) A person who, prior to June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product unless the state has incurred response activity costs associated with these secondary materials prior to December 17, 1999.
    - (iii) A person who arranges the lawful transport or disposal of any product or container commonly used in a residential household, which is in a quantity commonly used in a residential household, and which was used in the person's residential household.
  - (d) A person who accepts or accepted any hazardous substance for transport to a facility selected by that person.
  - (e) The estate or trust of a person described in subdivisions (a) to (d).
- (2) In addition to subsection (1), and not as a limitation to proofs, a person is liable under this section if either of the following can be established:
- (a) The person was an owner or operator prior to the effective date of this part who used; controlled, or had the ability to control; or stored, one or more hazardous substances, or used; controlled, or had the ability to control processes or equipment that utilized or contained one or more of the same hazardous substances, that are present as environmental contamination at the facility.
  - (b) The person is responsible for circumstances that may reasonably be anticipated to cause a release at a facility because either of the following can be established:
    - (i) The person used, controlled, or stored hazardous substances that are the same or similar to those present at the facility and the management of one or more hazardous substances is reasonably anticipated to have caused one or more releases at the facility.

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- (ii) After the effective date of this part, the person did not comply with one or more substantial elements of an environmental permit, statute, or rule that is intended to prevent a release or threat of release of the same or similar hazardous substance that is present as environmental contamination at the facility.
  
- (3) A person described in subsection (1)(a) may establish he or she is not liable by proving by a preponderance of the evidence the facility was solely caused by one or more of the following:
  - (a) An act of God;
  - (b) An act of war;
  - (c) An act or omission of a third party that is either of the following:
    - (i) A person other than an employee or agent.
    - (ii) A person other than one that had the ability to control or take reasonable precautions to prevent the release or threat of release.
  - (d) The migration of environmental contamination originating from a point of release not on the real property owned or operated by the person.
  
- (4) A person described in subsection (1)(b) may establish he or she is not liable by proving by a preponderance of the evidence that he or she did not cause the release.
  
- (5) Notwithstanding any other provision of this part, the state or a local unit of government is not liable under this part for costs or damages as a result of response activity taken in response to a release or threat of release. This subsection does not preclude liability for costs or damages as a result of gross negligence, including reckless, willful or wanton misconduct, or intentional misconduct by the state or local unit of government.
  
- (6) If necessary, describe burden of proof – see current section 20126(6).

Note: Intend to include provision to clarify the burden of proof on the timing of a release.