

Liability-Joint and Several, Divisibility of Harm

Section XXXXX Joint and several liability; divisibility of harm and apportionment of liability

- (1) A person who is liable under this part is jointly and severally liable for all of the following:
 - (a) Performance of all response activities and any other obligations required by this part, including any injunctive relief.
 - (b) All costs of response activity lawfully incurred by the state or any other person under this part.
 - (c) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the release pursuant to this part.
 - (d) Interest on costs and damages as described in section xxxxx (*Claims-general*).
 - (e) Premiums and penalties pursuant to this part.

- (2) If two or more persons acting independently are liable for an indivisible harm under section xxxxx (*Liability-causation, arrangers or transporters*) each person is jointly and severally liable for the entire harm to the public health, safety, or welfare, or the environment. If there is a reasonable basis for division of harm and apportionment of liability, each person is subject to liability under this part only for the portion of the total harm attributable to that person. However, a person seeking to limit his or her liability on the grounds that the entire harm is capable of division has the burden of proof as to the divisibility of the harm and as to the apportionment of liability. Apportionment of liability shall only be allowed where there is a reasonable basis for determining the contribution of each cause to a single harm and where the evidence supports the divisibility of harm jointly caused by the persons liable under section xxxxx (*Liability-causation, arrangers or transporters*).

NOTE: Based on the recent U.S. Supreme Court decision, *Burlington Northern & Santa Fe Railway Company v. United States*, the above provision will need to be refined..