

## Liability-Response activity contractor, rendering care or advice

### **Section XXXXX Liability of response activity contractor; liability of person in rendering care, assistance.**

- (1) Except as otherwise provided in this section, a person who is a response activity 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 response activity contractor that is negligent, 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 response activity 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 response activity 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 response activity 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) "Response activity contract" means a written contract or agreement entered into by a response activity contractor with 1 or more of the following:
    - (i) The department.
    - (ii) The department of public health.
    - (iii) A person who is arranging for response activity under this part.
  - (b) "Response activity contractor" means 1 or both of the following:
    - (i) A person who enters into a response activity contract with respect to a release or threatened release and is carrying out the terms of a contract.
    - (ii) A person who is retained or hired by a person described in subparagraph (i) to provide any service relating to a response activity.
- (6) Notwithstanding any other provision of law, a person is not liable for response activity costs or damages that result from an act or a failure to act in the course of rendering care, assistance, or advice ~~in accordance 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, *with respect to an incident creating a danger to the public health or welfare or the environment as a result of any release or threat of release of a hazardous substance*. This subsection does not apply to any of the following:
  - (a) A person who is liable under section ~~xxxxx~~ (*Liability-causation, arranger or transporter*) who 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.

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- (7) A person who is liable under section xxxxx (*Liability-causation, arranger or transporter*) ~~who is a responsible party~~ is liable for any response activity 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 response activity under the national contingency plan.
  - (c) "National contingency plan" means the *National Oil and Hazardous Substances Pollution Contingency Plan national contingency plan* prepared and published under *the authority of 42 U.S.C. 9601-9651; 33 U.S.C. 1321(d); E.O. 11735, 36 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757*~~section 311 of title III of the federal water pollution control act, chapter 758, 86 Stat. 862, 33 U.S.C. 1321.~~
  - ~~(d) "Petroleum" means that term as it is defined in part 213.~~
  - ~~(e) "Responsible party" means a responsible party as defined under section 1001 of title I of the oil pollution act of 1990, Public Law 101-380, 33 U.S.C. 2701.~~
- (9) This section does not affect a plaintiff's burden of establishing liability under this part.