

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

324.20129 Divisibility of harm and apportionment of liability; liability for indivisible harm; contribution; factors in allocating response activity costs and damages; reallocation of uncollectible amount; effect of consent order; resolution of liability in approved settlement; contribution protection; effect of state obtaining less than complete relief; contribution from person not party to consent order; subordinate rights in action for contribution.

Sec. 20129. (1) If 2 or more persons acting independently are liable under section 20126 and there is a reasonable basis for division of harm according to the contribution of each person, 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.

(2) If 2 or more persons are liable under section 20126 for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person who is liable under section 20126 during or following a civil action brought under this part. This subsection does not diminish the right of a person to bring an action for contribution in the absence of a civil action by the state under this part. In a contribution action brought under this part, the court shall consider all of the following factors in allocating response activity costs and damages among liable persons:

(a) Each person's relative degree of responsibility in causing the release or threat of release.

(b) The principles of equity pertaining to contribution.

(c) The degree of involvement of and care exercised by the person with regard to the hazardous substance.

(d) The degree of cooperation by the person with federal, state, or local officials to prevent, minimize, respond to, or remedy the release or threat of release.

(e) Whether equity requires that the liability of some of the persons should constitute a single share.

(4) If, in an action for contribution under subsection (3), the court determines that all or part of a person's share of liability is uncollectible from that person, then the court may reallocate any uncollectible amount among the other liable persons according to the factors listed in subsection (3). A person whose share is determined to be uncollectible continues to be subject to contribution and to any continuing liability to the state.

(5) A person who has resolved his or her liability to the state in an administrative or judicially approved consent order is not liable for claims for contribution regarding matters addressed in the consent order. The consent order does not discharge any of the other persons liable under section 20126 unless the terms of the consent order provide for this discharge, but the potential liability of the other persons is reduced by the amount of the consent order.

(6) A person who is not liable under this part, including a person who was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and who is otherwise in compliance with section 20107a, shall be considered to have resolved his or her liability to the state in an administratively approved settlement under the comprehensive environmental response, compensation, and liability act, 42 USC 9601 to 9675, and shall by operation of law be granted contribution protection under 42 USC 9613(f)(2) and under this part in the same manner that contribution protection is provided pursuant to subsection (5).

(7) If the state obtains less than complete relief from a person who has resolved his or her liability to the state in an administrative or judicially approved consent order under this part, the state may bring an action against any other person liable under section 20126 who has not resolved his or her liability.

(8) A person who has resolved his or her liability to the state for some or all of a response activity in an administrative or judicially approved consent order may seek contribution from any person who is not a party to the consent order described in subsection (5).

(9) In an action for contribution under this section, the rights of any person who has resolved his or her liability to the state is subordinate to the rights of the state, if the state files an action under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 71, Imd. Eff. June 5, 1995;—Am. 2010, Act 230, Imd. Eff. Dec. 14, 2010.

Popular name: Act 451

Popular name: Environmental Remediation

Popular name: Environmental Response Act

Popular name: NREPA