

19-6-423 Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.

- (1)
 - (a) The director may authorize payments from the fund to a responsible party if the responsible party receives actual or constructive notice:
 - (i) of a release likely to give rise to a claim; or
 - (ii) that in connection with a release a:
 - (A) suit has been filed; or
 - (B) claim has been made against the responsible party for:
 - (I) bodily injury; or
 - (II) property damage.
 - (b) A responsible party described in Subsection (1)(a) shall:
 - (i) inform the state risk manager immediately of a release, suit, or claim described in Subsection (1)(a);
 - (ii) allow the state risk manager and the state risk manager's legal counsel to participate with the responsible party and the responsible party's legal counsel in:
 - (A) the defense of a suit;
 - (B) determination of legal strategy;
 - (C) other decisions affecting the defense of a suit; and
 - (D) settlement negotiations; and
 - (iii) conduct the defense of a suit or claim in good faith.
- (2) The director may authorize payment of fund money for a judgment or award to third parties if the state risk manager:
 - (a) is allowed to participate in the defense of the suit as required under Subsection (1)(b); and
 - (b) approves the settlement.
- (3) The director may make a payment from the fund to a third party pursuant to Section 19-6-421 or fund a corrective action plan pursuant to Section 19-6-420 if the payment or funding does not impose a liability or make a payment for:
 - (a) an obligation of a responsible party for:
 - (i) workers' compensation benefits;
 - (ii) disability benefits;
 - (iii) unemployment compensation; or
 - (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);
 - (b) a bodily injury award to:
 - (i) a responsible party's employee arising from and in the course of the employee's employment; or
 - (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of the employee described in Subsection (3)(b)(i);
 - (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of an aircraft, motor vehicle, or watercraft;
 - (d) property damage to a property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of a responsible party except to the extent necessary to complete a corrective action plan;
 - (e) bodily injury or property damage for which a responsible party is obligated to pay damages by reason of the assumption of liability in a contract or agreement unless the responsible party entered into the contract or agreement to meet the financial responsibility requirements of:
 - (i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c et seq., or regulations issued under this act; or

- (ii) this part, or rules made under this part;
- (f) bodily injury or property damage for which a responsible party is liable to a third party solely on account of personal injury to the third party's spouse;
- (g) bodily injury, property damage, or the cost of corrective action caused by releases reported before May 11, 2010 that are covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:
 - (i) \$990,000 for a single release; and
 - (ii) for all releases by a responsible party in a fiscal year:
 - (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and
 - (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks; and
- (h) bodily injury, property damage, or the cost of corrective action caused by releases reported on or after May 11, 2010, covered by the fund if the total amount previously paid by the director to compensate third parties and fund corrective action plans for the releases equals:
 - (i) \$1,990,000 for a single release; and
 - (ii) for all releases by a responsible party in a fiscal year:
 - (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks; and
 - (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

Amended by Chapter 360, 2012 General Session