

**19-6-310 Apportionment of liability -- Liability agreements -- Legal remedies.**

- (1) The executive director may recover only the proportionate share of costs of any investigation and abatement performed under Section 19-6-309 and this section from each responsible party, as provided in this section.
- (2)
  - (a) In apportioning responsibility for the investigation and abatement, or liability for the costs of the investigation and abatement, in any administrative proceeding or judicial action, the following standards apply:
    - (i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release; and
    - (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous materials contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
  - (b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.
  - (c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.
  - (d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have contributed to the release unless the person takes actions which exacerbate the release.
  - (e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.
  - (f)
    - (i) The burden of proving proportionate contribution shall be borne by each responsible party.
    - (ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).
    - (iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.
  - (g) The court may not impose joint and several liability.
  - (h) Each responsible party is strictly liable solely for his proportionate share of investigation and abatement costs.
- (3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

- (4)
  - (a) Any party who incurs costs under Section 19-6-309 and this section in excess of his liability may seek contribution from any other party who is or may be liable under Section 19-6-309 and this section for the excess costs in the district court.
  - (b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).
- (5)
  - (a) A party who has resolved his liability in an agreement under Section 19-6-309 and this section is not liable for claims for contribution regarding matters addressed in the settlement.
  - (b)
    - (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.
    - (ii) An agreement made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement.
- (6)
  - (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Section 19-6-309 and this section, the executive director may bring an action against any party who has not resolved his liability in an agreement.
  - (b) In apportioning liability, the standards of Subsection (2) apply.
  - (c) A party who resolved his liability for some or all of the costs in an agreement under Section 19-6-309 and this section may seek contribution from any person who is not party to an agreement under Section 19-6-309 and this section.
- (7)
  - (a) An agreement made under Section 19-6-309 and this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.
  - (b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Section 19-6-309 and this section or any other applicable authority.
- (8)
  - (a) The executive director may not recover costs of any investigation performed under the authority of Subsection 19-6-309(2)(b) if the investigation does not confirm that a release presenting a direct and immediate threat to public health has occurred.
  - (b) This subsection takes precedence over any conflicting provision of this section regarding cost recovery.

Amended by Chapter 356, 2009 General Session