

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

324.21323d Basis for division of harm; action for contribution; reallocation of uncollectible amount; effect of consent order.

Sec. 21323d.

(1) If 2 or more persons acting independently are liable under section 21323a 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 that person's 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 21323a for an indivisible harm, each person is subject to liability for the entire harm.

(3) A person may seek contribution from any other person that is liable under section 21323a 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 corrective action 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 regulated 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 that has resolved that person's 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 21323a 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 that is not liable under this part, including a person that was issued a written determination under former section 20129a affirming that the person meets the criteria for an exemption from liability, and that is otherwise in compliance with section 21304c, shall be considered to have resolved that person's liability to the state in an administratively approved settlement under the applicable federal law and shall by operation of law be granted contribution protection under federal law 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 that has resolved that person's 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 21323a that has not resolved that person's liability.

(8) A person that has resolved that person's liability to the state for some or all of a corrective action in an administrative or judicially approved consent order may seek contribution from any person that 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 that has resolved that person's liability to the state is subordinate to the rights of the state, if the state files an action under this part.

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