

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

***** 324.21304c THIS SECTION IS AMENDED EFFECTIVE MARCH 29, 2017: See 324.21304c.amended

324.21304c Duty of owner or operator of property; basis; liability for corrective action activity costs and natural resource damages; applicability of subsection (1)(a) to (c) to state or local unit of government.

Sec. 21304c. (1) A person that owns or operates property that the person has knowledge is contaminated shall do all of the following with respect to regulated substances at the property:

(a) Undertake measures as are necessary to prevent exacerbation.

(b) Exercise due care by undertaking corrective action necessary to mitigate unacceptable exposure to regulated substances, mitigate fire and explosion hazards due to regulated substances, and allow for the intended use of the property in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

(d) Provide reasonable cooperation, assistance, and access to the persons that are authorized to conduct corrective action activities at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial corrective action activity at the property. Nothing in this subdivision shall be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or a court order, or to preclude access allowed pursuant to a voluntary agreement.

(e) Comply with any land use or resources use restrictions established or relied on in connection with the corrective action activities at the property.

(f) Not impede the effectiveness or integrity of any land use or resource use restriction employed at the property in connection with corrective action activities.

(2) A person's obligations under this section shall be based upon the applicable RBSL or SSTL.

(3) A person that violates subsection (1) that is not otherwise liable under this part for the release at the property is liable for corrective action activity costs and natural resource damages attributable to any exacerbation and any fines or penalties imposed under this part resulting from the violation of subsection (1) but is not liable for performance of additional corrective action activities unless the person is otherwise liable under this part for performance of additional corrective action activities. The burden of proof in a dispute as to what constitutes exacerbation shall be borne by the party seeking relief.

(4) Compliance with this section does not satisfy a person's obligation to perform corrective action activities as otherwise required under this part.

(5) Subsection (1)(a) to (c) does not apply to the state or to a local unit of government that is not liable under section 21323a(3)(a), (b), (c), or (e) or to the state or local unit of government that acquired property by purchase, gift, transfer, or condemnation or to a person that is exempt from liability under section 21323a(4)(b). However, if the state or local unit of government, other than those exempt from liability under section 21323a(4)(b), acting as the operator of a parcel of property that the state or local unit of government has knowledge is contaminated by a release from an underground storage tank system, offers access to that parcel on a regular or continuous basis pursuant to an express public purpose and invites the general public to use that property for the express public purpose, the state or local unit of government is subject to this section but only with respect to that portion of the property that is opened to and used by the general public for that express purpose, and not the entire property. Express public purpose includes, but is not limited to, activities such as a public park, municipal office building, or municipal public works operation. Express public purpose does not include activities surrounding the acquisition or compilation of parcels for the purpose of future development.

(6) Subsection (1)(a) to (c) does not apply to a person that is exempt from liability under section 21323a(3)(c) or (d) except with regard to that person's activities at the property.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012;—Am. 2012, Act 446, Imd. Eff. Dec. 27, 2012.

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