

**§1367-B. Limited exemptions from liability**

**1. Limited exemption from liability for state or local governmental entities.** Liability under section 1367 does not apply to the State or a political subdivision that acquired ownership or control of an uncontrolled hazardous substance site through tax delinquency proceedings pursuant to Title 36, or through any similar statutorily created procedure for the collection of governmental taxes, assessments, expenses or charges, or involuntarily through abandonment, or in circumstances in which the State or a political subdivision involuntarily acquired ownership or control by virtue of its function as a sovereign. The exemption from liability provided under this subsection does not apply to the State or a political subdivision that has caused, contributed to or exacerbated a release or threatened release of a hazardous substance on or from the uncontrolled site.

[PL 2021, c. 117, §4 (AMD).]

**1-A. Limited exemption from liability for publicly owned treatment works.** A publicly owned treatment works is exempt from liability under section 1367 as a responsible party under section 1362, subsection 2, paragraph C based on the contribution by the publicly owned treatment works of effluent or sewage sludge to an uncontrolled site, except that the exemption does not apply if the commissioner determines that the publicly owned treatment works:

A. Has failed to follow applicable requirements under this Title and the rules adopted pursuant to this Title for the disposal or use of effluent or sewage sludge; [PL 2021, c. 117, §4 (NEW).]

B. Has failed to comply with an information request or administrative subpoena issued by the department under this chapter; or [PL 2021, c. 117, §4 (NEW).]

C. Has impeded or is impeding, through action or inaction, the performance of a response action or natural resources restoration at the uncontrolled site. [PL 2021, c. 117, §4 (NEW).]

[PL 2021, c. 117, §4 (NEW).]

**1-B. Limited exemption from liability for public water systems.** A public water system is exempt from liability under section 1367 as a responsible party under section 1362, subsection 2, paragraph C based on the contribution by the public water system of water treatment residuals to an uncontrolled site, except that the exemption does not apply if the commissioner determines that the public water system:

A. Has failed to follow applicable requirements under this Title and the rules adopted pursuant to this Title for the disposal or use of water treatment residuals; [PL 2021, c. 117, §4 (NEW).]

B. Has failed to comply with an information request or administrative subpoena issued by the department under this chapter; or [PL 2021, c. 117, §4 (NEW).]

C. Has impeded or is impeding, through action or inaction, the performance of a response action or natural resources restoration at the uncontrolled site. [PL 2021, c. 117, §4 (NEW).]

For the purposes of this subsection, "public water system" has the same meaning as in the federal Safe Drinking Water Act Amendments of 1996, 42 United States Code, Section 300f.

[PL 2021, c. 117, §4 (NEW).]

**1-C. Limited exemption from liability for department-licensed land application of sludge or sludge-derived products.** A person is exempt from liability under section 1367 as a responsible party for contamination of an uncontrolled site with perfluoroalkyl and polyfluoroalkyl substances if the person establishes to the satisfaction of the commissioner that the source of the contamination was primarily caused by department-licensed land application of sludge or sludge-derived products performed by a 3rd party that is not that person's employee or agent.

A. The exemption from liability provided by this subsection is not available to a person if the commissioner determines that:

(1) The 3rd party that performed the land application of sludge or sludge-derived products has failed to follow applicable requirements of the department license for land application of sludge or sludge-derived products. For the purposes of this subparagraph, the land application of sludge or sludge-derived products is presumed to have been performed in accordance with the applicable requirements of the department license unless the commissioner can establish that the land application did not comply with the license requirements;

(2) The person has failed to comply with an information request or administrative subpoena issued by the department under this chapter; or

(3) The person has impeded or is impeding, through action or inaction, the performance of a response action, natural resources restoration or department investigation at the uncontrolled site. [PL 2023, c. 510, §3 (NEW).]

B. The commissioner may condition the exemption from liability provided by this subsection upon any of the following terms that the commissioner may determine to be necessary:

(1) To provide access to the property to the commissioner and the commissioner's authorized representatives;

(2) To allow the commissioner or the commissioner's authorized representatives to undertake activities at the property including placement of borings, wells, equipment and structures on the property; or

(3) To the extent the person has title to the property, to grant easements or other interests in the property to the department for any of the purposes provided in subparagraph (1) or (2). An agreement to grant an easement or other interest under this subparagraph must apply to and be binding upon the successors and assigns of the owner. To the extent the person has title to the property, the person shall record the agreement or a memorandum approved by the commissioner that summarizes the agreement in the registry of deeds for the county where the property is located. [PL 2023, c. 510, §3 (NEW).]

[PL 2023, c. 510, §3 (NEW).]

**2. Reimbursement for department expenses.** Notwithstanding the exemption from liability provided in subsection 1, the State or a political subdivision that acquires or has acquired ownership of property that encompasses an uncontrolled hazardous substance site pursuant to any of the proceedings referred to in subsection 1 is liable for any costs incurred by the department pursuant to this chapter during the period in which the State or political subdivision had ownership of the property, up to the amount of the proceeds from the sale or disposition of the property minus the out-of-pocket costs of the sale or disposition.

[PL 2021, c. 117, §4 (AMD).]

#### SECTION HISTORY

PL 1991, c. 811, §4 (NEW). PL 1991, c. 811, §7 (AFF). PL 2021, c. 117, §4 (AMD). PL 2023, c. 510, §3 (AMD).

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