

455H.304 Limitation of liability.

1. As used in this section, unless the context requires otherwise:

a. “*Environmental claim*” means a civil action for damages for environmental harm and includes a civil action under this chapter for recovery of the costs of conducting a response action, but does not include a civil action for damages for a breach of contract or another agreement between persons or for a breach of a warranty that exists pursuant to the Code or common law of this state.

b. “*Environmental harm*” means injury, death, loss, or threatened loss to a person or property caused by exposure to or the release of a hazardous substance.

2. Except as may be required in accordance with obligations incurred pursuant to participation in the land recycling program established in this chapter, all of the following, or any officer or employee thereof, are relieved of any further liability for any environmental claim resulting from the presence of hazardous substances at, or the release of hazardous substances from, an enrolled site where a response action is being or has been conducted under this chapter, unless an action or omission of the person, state agency, political subdivision, or public utility, or an officer or employee thereof, constitutes willful or wanton misconduct or intentionally tortious conduct:

a. A contractor working for another person in conducting any response action under this chapter.

b. A state agency or political subdivision that is conducting a voluntary response action or a maintenance activity on lands, easements, or rights-of-way owned, leased, or otherwise held by the state agency or political subdivision.

c. A state agency when an officer or employee of the state agency provides technical assistance to a participant undertaking a response action under this chapter or rules adopted pursuant to this chapter, or to a contractor, officer, or employee of the agency, in connection with the response action.

d. A public utility, as defined in section 476.1, which is performing work in any of the following:

(1) An easement or right-of-way of a public utility across an affected area where a response action is being or has been conducted and where the public utility is constructing or has main or distribution lines above or below the surface of the ground for purposes of maintaining the easement or right-of-way for construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

(2) An affected area where a response action is being conducted that is necessary to establish or maintain utility service to the property, including, without limitation, the construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

3. This section does not create, and shall not be construed to create, a new cause of action against or substantive legal right against a person, state agency, political subdivision, or public utility, or an officer or employee thereof.

4. This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Code or available at common law, to which a person, state agency, political subdivision, or public utility, or officer or employee thereof, may be entitled under circumstances not covered by this section.

97 Acts, ch 127, §18