

Sec. 1. 10 V.S.A. § 6615 is amended to read:

§ 6615. LIABILITY

(a) Subject only to the defenses set forth in subsections (d) and (e) of this section, the following persons shall be liable for abating a release or threatened release of hazardous material; and the costs of investigation, removal, and remedial actions incurred by the State which are necessary to protect the public health or the environment:

(1) the owner or operator of a facility, or both;

(2) any person who at the time of release or threatened release of any hazardous material owned or operated any facility at which such hazardous materials were disposed of;

(3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous materials owned or possessed by such person, by any other person or entity, at any facility owned or operated by another person or entity and containing such hazardous materials; and

(4) any person who accepts or accepted any hazardous materials for transport to disposal or treatment facilities selected by such persons, from which there is a release, or a threatened release of hazardous materials; and ~~shall be liable for:~~

~~(A) abating such release or threatened release; and~~

~~(B) costs of investigation, removal, and remedial actions incurred by the State which are necessary to protect the public health or the environment.~~

(5) any person who formulated, manufactured, or produced a hazardous material and who knew or should have known that the material presented a threat of harm to human health or the natural environment.

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(d)(1) There shall be no liability under this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of hazardous material and the resulting damages were caused solely by any of the following:

(A) An act of God.

(B) An act of war.

(C) An act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant. If the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail, for purposes of this section, there shall be considered to be no contractual relationship at all. This subdivision (d)(1)(C) shall only serve as a defense if the defendant establishes by a preponderance of the evidence:

(i) that the defendant exercised due care with respect to the hazardous material concerned, taking into consideration the characteristics of that hazardous material, in light of all relevant facts and circumstances; and

(ii) that the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions.

(D) Any combination of subdivisions (A)-(C) of this subdivision (1).

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(5) A person shall not be liable under subdivision (a)(5) of this section provided that the person (i) demonstrates that he or she provided an adequate warning of the harm posed by the hazardous material known or which should have been known at the time the hazardous material was formulated, manufactured, or produced.

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Sec. 2. APPLICATION OF LIABILITY

Notwithstanding any contrary provision of 1 V.S.A. § 214, the amendment contained in 10 V.S.A. § 6615(a)(5) shall apply to any relevant release of a hazardous material regardless of the date of the relevant release, including releases that occurred prior to the effective date of 10 V.S.A. § 6615(a)(5).