

**§ 9618. High priority for drinking water supplies**

For purposes of taking action under section 9604 or 9606 of this title and listing facilities on the National Priorities List, the President shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells or has contaminated a principal drinking water supply.

(Pub. L. 96-510, title I, §118, as added Pub. L. 99-499, title I, §118(a), Oct. 17, 1986, 100 Stat. 1655.)

**§ 9619. Response action contractors****(a) Liability of response action contractors****(1) Response action contractors**

A person who is a response action contractor with respect to any release or threatened release of a hazardous substance or pollutant or contaminant from a vessel or facility shall not be liable under this subchapter or under any other Federal law to any person for injuries, costs, damages, expenses, or other liability (including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to property or economic loss) which results from such release or threatened release.

**(2) Negligence, etc.**

Paragraph (1) shall not apply in the case of a release that is caused by conduct of the response action contractor which is negligent, grossly negligent, or which constitutes intentional misconduct.

**(3) Effect on warranties; employer liability**

Nothing in this subsection shall affect the liability of any person under any warranty under Federal, State, or common law. Nothing in this subsection shall affect the liability of an employer who is a response action contractor to any employee of such employer under any provision of law, including any provision of any law relating to worker's compensation.

**(4) Governmental employees**

A state employee or an employee of a political subdivision who provides services relating to response action while acting within the scope of his authority as a governmental employee shall have the same exemption from liability (subject to the other provisions of this section) as is provided to the response action contractor under this section.

**(b) Savings provisions****(1) Liability of other persons**

The defense provided by section 9607(b)(3) of this title shall not be available to any potentially responsible party with respect to any costs or damages caused by any act or omission of a response action contractor. Except as provided in subsection (a)(4) of this section and the preceding sentence, nothing in this section shall affect the liability under this chapter or under any other Federal or State law of any person, other than a response action contractor.

**(2) Burden of plaintiff**

Nothing in this section shall affect the plaintiff's burden of establishing liability under this subchapter.

**(c) Indemnification****(1) In general**

The President may agree to hold harmless and indemnify any response action contractor meeting the requirements of this subsection against any liability (including the expenses of litigation or settlement) for negligence arising out of the contractor's performance in carrying out response action activities under this subchapter, unless such liability was caused by conduct of the contractor which was grossly negligent or which constituted intentional misconduct.

**(2) Applicability**

This subsection shall apply only with respect to a response action carried out under written agreement with—

(A) the President;

(B) any Federal agency;

(C) a State or political subdivision which has entered into a contract or cooperative agreement in accordance with section 9604(d)(1) of this title; or

(D) any potentially responsible party carrying out any agreement under section 9622 of this title (relating to settlements) or section 9606 of this title (relating to abatement).

**(3) Source of funding**

This subsection shall not be subject to section 1301 or 1341 of title 31 or section 6301(a) and (b) of title 41 or to section 9662 of this title. For purposes of section 9611 of this title, amounts expended pursuant to this subsection for indemnification of any response action contractor (except with respect to federally owned or operated facilities) shall be considered governmental response costs incurred pursuant to section 9604 of this title. If sufficient funds are unavailable in the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26 to make payments pursuant to such indemnification or if the Fund is repealed, there are authorized to be appropriated such amounts as may be necessary to make such payments.

**(4) Requirements**

An indemnification agreement may be provided under this subsection only if the President determines that each of the following requirements are met:

(A) The liability covered by the indemnification agreement exceeds or is not covered by insurance available, at a fair and reasonable price, to the contractor at the time the contractor enters into the contract to provide response action, and adequate insurance to cover such liability is not generally available at the time the response action contract is entered into.

(B) The response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover such liability.