§ 27-0916. Department authority for cleanups.

1. The department shall have authority to clean up or return to its original state any area where hazardous wastes were disposed, possessed or dealt in unlawfully in violation of section 27-0914 of this article. For the purpose of this section "the original state of the area" shall mean the reasonably ascertainable condition of the property immediately prior to the unlawful act or if impracticable to determine such condition, the cleanup or restoration shall be done in a manner to restore the area to a reasonably sound environmental condition.

2. The department shall have the authority to contract with the environmental facilities corporation or any other person to perform necessary work in connection with such cleanup or restoration.

3. Notwithstanding any other provision of law to the contrary, the liability of any person designing, implementing or otherwise performing services related to cleanup or restoration work pursuant to a contract with the department, or an order of the department or a court for any injury to a person or property caused by or related to such services, shall be limited to acts or omissions of the person during the course of performing such services which are shown to have been the result of negligence, gross negligence or reckless, wanton or intentional misconduct. Notwithstanding any other provision of law, when (i) a verdict or decision in an action or claim for injury to a person or property caused by or related to such services is determined in favor of a claimant in an action involving a person performing such services and any other person or persons jointly liable, and (ii) the liability of the person performing such services is found to be fifty percent or less of the total liability assigned to all persons liable, and (iii) the liability of the person performing such services is not based on a finding of reckless disregard for the safety of others, or intentional misconduct, then the liability of the person performing such services to the claimant for loss relating to injury to property and for non-economic loss relating to injury to a person shall not exceed the equitable share of the person performing such services determined in accordance with the relative culpability of each person causing or

contributing to the total liability for such losses; provided, however, that the culpable conduct of any person not a party to the action shall not be considered in determining any equitable share herein if the claimant proves that with due diligence the claimant was unable to obtain jurisdiction over such person in said action. As used in this section, the term "non-economic loss" includes but is not limited to pain and suffering, mental anguish, loss of consortium or other damages for non-economic loss. However, nothing in this subdivision shall be deemed to alter, modify or abrogate the liability of any person performing such services for breach of any express warranty, limited or otherwise, or an express or implied warranty under the uniform commercial code, or to an employee of such person pursuant to the workers' compensation law, or to relieve from any liability any person who possessed, disposed of or dealt in hazardous wastes in violation of section 27-0914 of this article.

4. Section eight of the court of claims act or any other provisions of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the exercise of the department's authority pursuant to this section; provided, however, that this subdivision shall not limit any liability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, or other officers, employees or agents.

5. Moneys for actions taken by the department pursuant to this section including any sampling of wastes, soils, air, surface water and groundwater done by or on behalf of the department and any administrative expenses related thereto, shall be payable from the hazardous waste remedial fund directly to the department pursuant to section ninety-seven-b of the state finance law.