§ 27-1321. Protection against liability.

1. Notwithstanding any other provision of law to the contrary, any person who is, by professional training or experience and attainment, qualified to analyze and interpret matters pertaining to the treatment, storage, disposal, or transport of hazardous materials or hazardous wastes, and who voluntarily and without expectation of monetary compensation provides assistance or advice in mitigating the effects of an accidental or threatened discharge of any hazardous materials or hazardous wastes, or in preventing, cleaning up, or disposing of any such discharge, shall not be subject to a penalty or to civil liability for damages or injuries alleged to have been sustained by any person or entity by reason of an act or omission in the giving of such assistance or advice. For the purposes of this section, the term "hazardous materials" shall have the same meaning as that term is defined in regulations promulgated by the commissioner of transportation pursuant to section fourteen-f of the transportation law, and the term "hazardous wastes" shall mean those wastes identified or listed pursuant to section 27-0903 of this article and any rules and regulations promulgated thereunder.

2. Nothing in subdivision one of this section shall be deemed or construed to relieve from liability for damages or injuries any person who: (a) is alleged to have caused said damages or injuries as the result of gross negligence, or reckless, wanton or intentional misconduct, or (b) is under a legal duty to respond to the incident, or (c) receives compensation other than reimbursement for out-of-pocket expenses for services in rendering assistance or advice.

3. Notwithstanding any other provision of law to the contrary, the liability of any person designing, implementing or otherwise performing services related to an inactive hazardous waste disposal site remedial program or related to cleanup or restorative work which is conducted pursuant to a contract with the department or pursuant to an order of the department, the department of health 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 relieve from liability, including liability for the costs of cleanup, the owner or any person who is a person responsible for the disposal of hazardous wastes at the site, pursuant to section 27-1313 of this article.