§ 27-1421. Liability limitation.

1. Notwithstanding any other provision of law and except as provided in subdivision two of this section, after the department has issued a certificate of completion for a brownfield site, the applicant shall not be liable to the state upon any statutory or common law cause of action, arising out of the presence of any contamination in, on or emanating from the brownfield site that was the subject of such certificate at any time before the effective date of a brownfield site cleanup agreement entered into pursuant to this title, except that a participant shall not receive a release for natural resource damages that may be available under law.

2. (a) The state nonetheless shall reserve all of its rights concerning, and such liability limitation shall not extend to, any further investigation and/or remediation the department deems necessary due to:

(i) environmental contamination at, on, under, or emanating from the brownfield site if, in light of such conditions, the site is no longer protective of public health or the environment; or

(ii) non-compliance with the terms of the agreement, the remedial work plan and the certificate of completion required by this title; or

(iii) fraud committed by the applicant in its application for or participation in this program; or

(iv) a written finding by the department that a change in an environmental standard, factor, or criterion upon which the remedial work plan or no further action determination was based, renders the brownfield site remedial program implemented at the site no longer protective of public health or the environment; or

(v) a change in the brownfield site's use subsequent to the department's issuance of the certificate of completion unless additional remediation is undertaken which shall meet the standard for protection of public health and the environment that applies under this title; or

(vi) following the certificate of completion the failure of an applicant to make substantial progress toward completion of its proposed development of the site within five years, or the applicant engages in unreasonable delay and fails to complete its proposed development of the

site within a reasonable time, considering the size, scope and nature of the development. Provided however, that this subparagraph shall not apply in the case where a Track 1 - unrestricted use as provided in section 27-1415 of this title is achieved.

(b) In the case of a volunteer, subparagraph (v) of paragraph (a) of this subdivision shall not apply if Track 1-unrestricted use as provided in section 27-1415 of this title is achieved.

3. The liability limitation provided pursuant to this section shall run with the land, extending to the applicant's successors or assigns through acquisition of title to the brownfield site and to a person who develops or otherwise occupies the brownfield site; provided that such persons act with due care and in good faith to adhere to the requirements of the brownfield site cleanup agreement and certificate of completion. However, such liability limitation does not extend, and cannot be transferred, to a person who is responsible for the disposal or the discharge of contaminants on such site according to applicable principles of statutory or common law liability as of the effective date of the certification of completion issued pursuant to this title, unless that person was party to the brownfield site cleanup agreement for the brownfield site pursuant to this article.

4. The provisions of this title shall not affect an action or a claim, including a statutory or common law claim for contribution or indemnification, that an applicant has or may have against a third party.

5. Nothing in this section shall be construed to affect either the liability of any person with respect to any costs, damages, or investigative or remedial activities that are not included in the brownfield site cleanup agreement or remedial investigation work plan and/or remedial work plan for the brownfield site or the state's authority to maintain an action or proceeding against any person who is not subject to the brownfield site cleanup agreement.

6. A person who has received a liability limitation under this subdivision shall not be liable for claims for contribution regarding

matters addressed in the brownfield site cleanup agreement except nothing in this section shall effect the liability of the person responsible for such person's own acts or omissions causing wrongful death or personal injury. Such liability limitation does not discharge any of the persons responsible under law to investigate and remediate the contamination, but it reduces the potential liability of the others by the amount of the value associated with the remediation activities described in the final engineering report.

7. Nothing in this section shall be construed to affect the authority of the department to reach settlement with other persons consistent with its authority under applicable law.

8. Nothing in this section shall affect the liability of any person with respect to any civil action brought by a party other than the state.

9. In addition to any other powers the department may have, the department shall have the authority to periodically inspect each brownfield site to ensure that the use of the property complies with the terms and conditions of the brownfield site cleanup agreement.