§ 56-0509. Liability limitation.

1. (a) Notwithstanding any other provision of law and except as provided in subdivision two of this section and in paragraph (h) of subdivision two of section 56-0503 of this title, the following shall not be liable to the state upon any statutory or common law cause of action, or to any person upon any statutory cause of action arising out of the presence of any contamination in or on property at any time before the effective date of a contract entered into pursuant to this title or written agreement pursuant to subdivision three of section 56-0503 of this title:

(i) a municipality receiving state assistance under this title to undertake, or under written agreement pursuant to subdivision three of section 56-0503 of this title for the state to undertake an environmental restoration project and complying with the terms and conditions of the contract or written agreement pursuant to subdivision three of section 56-0503 of this title providing such assistance; and

(ii) a successor in title to the real property subject to an environmental restoration project; any lessee of such property; and any person that provides financing to such party relative to the remediation, restoration, or redevelopment of such property; provided that such successor in title, lessee, or lender did not generate, arrange for, transport, or dispose, and did not cause the generation, arrangement for, transportation, or disposal of any contamination located at such property, and did not own such property.

(b) Notwithstanding any other provision of this title, any person seeking the benefit of this subdivision shall bear the burden of proving that a cause of action, or any part thereof, is attributable solely to contamination present in or on such parcel before the effective date of such contract.

2. Subdivisions one and three of this section shall not apply to relieve any municipality, successor in title, lessee, or lender from liability arising from:

(a) failing to implement such project to the department's satisfaction or failing to comply with the terms and conditions of the contract;

(b) fraudulently demonstrating that the cleanup levels identified in

or to be identified in accordance with such project were reached;

(c) causing the release or threat of release at the property subject to such project of any contamination after the effective date of such contract; or

(d) changing such property's use from the intended use as identified in the contract pursuant to section 56-0503 of this title to a use requiring a lower level of residual contamination unless the additional remedial activities are undertaken which shall meet the same standard for protection of public health and the environment that applies to remedial actions undertaken pursuant to 27-1313 of this chapter so that such use can be implemented with sufficient protection of public health and the environment.

3. The state shall indemnify and save harmless any municipality, successor in title, lessee, or lender identified in paragraph (a) of subdivision one of this section in the amount of any judgment or settlement, obtained against such municipality, successor in title, lessee, or lender in any court for any common law cause of action arising out of the presence of any contamination in or on property at anytime before the effective date of a contract entered into pursuant to this title. Such municipality, successor in title, lessee, or lender shall be entitled to representation by the attorney general, unless the attorney general determines, or a court of competent jurisdiction determines, that such representation would constitute a conflict of interest, in which case the attorney general shall certify to the comptroller that such party is entitled to private counsel of its choice, and reasonable attorneys' fees and expenses shall be reimbursed by the state. Any settlement of such an action shall be subject to the approval of the attorney general as to form and amount, and this subdivision shall not apply to any settlement of any such action which has not received such approval.

4. A municipality receiving state assistance and any successor in title shall implement a department-approved environmental sampling program and, in the event that conditions on such property are not sufficiently protective of human health for its current use due to environmental conditions related to the property subject to such project

that were unknown to the department as of the effective date of such contract or due to information received in whole or in part after the department's approval of such project's final engineering report and certification, take such emergency measures that are necessary to maintain sufficient protection of human health for such property's current use until such conditions are addressed; and the department shall take such measures as it may determine are necessary to return such property to a condition sufficiently protective of human health using monies from the environmental restoration project account of the hazardous waste remedial fund established under section ninety-seven-b of the state finance law.

5. In addition to any other powers the department may have, including, but not limited to, the powers set forth in section 56-0515 of this title, the department shall have the authority to periodically inspect property to ensure that the use of the property complies with the terms and conditions of the contract and any engineering and/or institutional controls placed on the property.