



Ohio Revised Code

Section 3746.23 Civil action for recovering costs of conducting voluntary action.

Effective: September 28, 1994

Legislation: Senate Bill 221 - 120th General Assembly

(A) As used in this section, "costs of conducting the voluntary action" means the costs incurred for performing a voluntary action that are cost effective and reasonably necessary to protect public health and safety and the environment, including, without limitation, the costs for all of the following:

- (1) Identifying potential sources of contamination of the property by hazardous substances where a voluntary action is being or was undertaken under this chapter and rules adopted under it;
- (2) Investigating the nature and extent of contamination of the property by hazardous substances in order to screen and select remedial alternatives;
- (3) Preparing a remedial plan for the property;
- (4) Conducting the remedial activities, including, without limitation, the future operation and maintenance costs of any engineering controls installed to contain or control the release of hazardous substances at or from the property;
- (5) The preparation and submission of a no further action letter by a certified professional in connection with the voluntary action;
- (6) Any oversight costs paid to the environmental protection agency;
- (7) Reasonable attorney's fees, court costs, and other expenses in connection with the action brought under this section.

"Costs of conducting the voluntary action" does not include the costs of any work performed at the property to render it suitable for a higher use than its current use or its most recent demonstrable use that is in addition to the work that is cost effective and reasonably necessary to protect public health



and safety and the environment.

(B) Any person who, at the time when any of the hazardous substances identified and addressed by a voluntary action conducted under this chapter and rules adopted under it were released at or upon the property that is the subject of the voluntary action, was the owner or operator of the property, and any other person who caused or contributed to a release of hazardous substances at or upon the property, is liable to the person who conducted the voluntary action for the costs of conducting the voluntary action. If the person who conducted the voluntary action did not cause or contribute to any release of hazardous substances at or upon the property that were identified and addressed by the voluntary action, he may recover in a civil action the costs of conducting the voluntary action from the owners or operators of the property at the time when those releases occurred and the other persons who caused or contributed to the releases. If the person who conducted the voluntary action caused or contributed to any release of hazardous substances at or upon the property that were identified and addressed by the voluntary action, he may recover in a civil action from the owners and operators of the property when those releases occurred and the other persons who caused or contributed to the releases the costs of conducting the voluntary action that are attributable to the releases that those owners, operators, and others caused or contributed to.

If two or more persons are found to have caused or contributed to a release of hazardous substances at or upon the property, the costs of conducting the voluntary action shall be apportioned among each such person on the basis of his respective degree of responsibility for the costs.

(C) A civil action authorized by this section shall be commenced in the court of common pleas of the county in which is located the property at which the voluntary action is conducted. The person conducting the voluntary action may commence the civil action at any time after the person has commenced the conduct of the voluntary action. Notwithstanding section 2305.09 of the Revised Code, a civil action shall be commenced under this section within three years after the applicable notice of release letter was submitted to the director of environmental protection under section 3746.11 of the Revised Code in connection with the voluntary action.

(D) All of the owners and operators of the property when the releases of hazardous substances identified and addressed by the voluntary action occurred, and the other persons who caused or contributed to those releases, shall be joined as defendants in a civil action commenced under this



section. The liability of those owners, operators, and others for the costs of conducting the voluntary action shall be based upon their respective degrees of responsibility for the costs. When determining the respective degrees of responsibility for the costs of those owners, operators, and others, the jury or, in a nonjury action, the court may consider the nature and amount of hazardous substances stored, treated, disposed of, used, and released by each person; the length of time that each person owned or operated the property; each person's history of compliance with applicable federal and state environmental laws and rules in the use and operation of the property; and any other factors that the jury or court considers to be appropriate.

(E) This section shall allow the filing of claims for recovery of the costs of conducting a voluntary action that identifies and addresses releases of hazardous substances that occurred prior to, on, or after the effective date of this section.

(F) The existence of a claim for relief under this section does not preclude persons from allocating the costs of conducting a voluntary action among themselves by contract. Contractual allocations of those costs do not affect the rights, liabilities, or obligations to this state of the parties to the contractual allocation.

(G) This section does not create a claim for relief to recover the costs of conducting a voluntary action against any of the following:

(1) A person who neither caused nor contributed to in any material respect a release of hazardous substances on, in, or under the property that was identified and addressed by the voluntary action nor who expressly undertook contractual liability for conducting the voluntary action;

(2) Notwithstanding a landlord's rights against a tenant, a landlord if the landlord did not know, and could not reasonably have known, of the acts or omissions of a tenant that caused or contributed to, or were likely to have caused or contributed to, a release of a hazardous substance that resulted in the conduct of the voluntary action at the property;

(3) This state or a political subdivision of this state if it involuntarily acquires ownership or control of property by virtue of its function as a sovereign through such means as escheat, bankruptcy, tax delinquency, or abandonment;



(4) This state or a political subdivision of this state if it voluntarily acquires ownership or control of property through purchase, appropriation in accordance with Chapter 163. of the Revised Code, or other means;

(5) An owner or operator or any other person who caused or contributed to a release of petroleum at or upon property that was identified and addressed by a voluntary action for that portion of the costs of conducting a voluntary action arising from the petroleum release. If a petroleum release became mixed with a release of a hazardous substance on or upon the property, the owner or operator or other person who caused or contributed to the release of petroleum is not liable for that increment of the costs of conducting a voluntary action that is attributable to the presence of the petroleum release;

(6) A holder who is in compliance with the requirements of section 3746.26 of the Revised Code;

(7) A fiduciary or trustee who is in compliance with the requirements of section 3734.27 of the Revised Code.

(H) Division (G)(5) of this section does not affect any other liability to which any person described in that division otherwise is subject under state or federal law.