

Administrative Actions - Written Demands and Administrative Orders

324.XXXXX Administrative Actions - Written Demands and Administrative Orders

- (1) If the department determines that there is reason to believe that there has been a release, threat of release, suspected release, or existence of a facility and that response activity required by this part have not been undertaken in accordance with this part, the department may request that one or more person who is liable undertake response activity.
- (2) In addition to requesting the performance of response activity, the department may issue:
 - (a) A written demand requiring that a person perform response activity or take any other action required by this part. A written demand issued under this section shall state, with reasonable specificity, the basis for issuance of the demand; and specify a reasonable time for compliance, and the process that the person may use to challenge the demand. [631 appeal or pre-enforcement provisions.]
 - (b) An administrative order to a person identified by the department as a person who is liable under sections xxxxx [*Owner/Operator Causation, Arranger/Transporter Liability*] and xxxxx [*Liability - Failure to Conduct Inquiry*] requiring that person to perform response activity relating to a facility for which that person is liable or to take any other action required by this part. An order issued under this section shall state with reasonable specificity the basis for issuance of the order; and specify a reasonable time for compliance, and the process that the person may take to challenge the demand. [631 appeal or pre-enforcement provisions.]
- (3) Failure to comply with a written demand or an order subjects the liable party to the provisions of sections xxxxx [*Claims – General*] and xxxxx [*Civil Action – State*].
- (4) An appeal of a written demand or order not subject to the provisions of section xxxxx (*Civil Actions – State - Pre-enforcement bar*), or an administrative penalty imposed under this part may be appealed pursuant to section 631 of the revised judicature act of 1961, 1961 PA 236, Michigan Compiled Laws (MCL) 600.631. Appeals under this part are limited to the administrative record. If the court finds that the record is incomplete or inadequate, the court may consider supplemental material in the action. In considering objections raised in a judicial action under this part, the court shall uphold the state's decision in selecting a response activity unless the objecting party can demonstrate based on the administrative record that the decision was arbitrary and capricious or otherwise not in accordance with law. In reviewing alleged procedural errors, the court may disallow costs or damages only to the extent the errors were so serious and related to matters of such central importance that the activity would have been significantly changed had the errors not been made.
- (5) Within 30 days after issuance of a written demand or an administrative order under this section, unless the exigencies of the situation require a different response time, a person to which the order was issued shall indicate in writing whether the person intends to comply with the written demand or administrative order.
- (6) A person who, without sufficient cause, violates or fails to properly comply with a demand or administrative order issued under this section is liable for a civil fine for each day in

which the violation occurs or the failure to comply continues for either subsection (7)(a) or (b) and (c):

- (a) A written demand, not more than \$10,000 per day.
 - (b) An administrative order, not more than \$25,000 per day.
 - (c) Exemplary damages in an amount at least equal to the amount of any costs of response activity incurred by the state as a result of a failure to comply with an administrative order but not more than 3 times the amount of these costs.
- (7) A person, to which a written demand or an administrative order was issued under this section and that complied with the terms of the order, who believes that the order was arbitrary and capricious or unlawful, may petition the department, within 60 days after completion of the required action, for reimbursement from the fund for the reasonable costs of the action plus interest at the rate described in section xxxxx (*Claims – General*), and other necessary and reasonable costs incurred in seeking reimbursement under this subsection. If the department refuses to grant all or part of the petition, the petitioner may, within 30 days of receipt of the refusal, file an action against the department in the court of claims seeking this relief. A failure by the department, either to grant or deny all or any part of a petition within 120 days of receipt, constitutes a denial of that part of the petition, which denial is reviewable as final agency action in the court of claims. To obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that the petitioner is not liable, or that the action ordered was arbitrary and capricious or unlawful; and, in either instance, that costs for which the petitioner seeks reimbursement are reasonable in light of the action required by and undertaken pursuant to the relevant order.
- (8) A person may undertake response activity without prior approval by the department unless that response activity is being done pursuant to an administrative order or agreement or judicial decree which requires prior department approval. Any such action shall not relieve any person of liability for further response activity as may be required by the department.
- (9) This section does not do either of the following:
- (a) Limit the authority of the department to take or conduct response activities pursuant to this part.
 - (b) Limit the liability of a person who is liable.