

Claims – General

324.XXXXX Claims - General

- (1) The department, as a regulatory agency, may seek the following from a person who is liable under this part.
 - (a) A declaratory judgment on liability, including future response costs and damages.
 - (b) Performance of all response activities and any other obligations required by this part.
 - (c) All costs of response activity lawfully incurred by the state.
 - (d) Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destructions, or loss resulting from the release pursuant to subsection (7).
 - (e) Damages as provided for in section xxxxx (*Civil Actions – State*), including treble damages as provided for in section xxxxx (*Administrative Actions – Written Demands and Administrative Orders*).
 - (f) Interest on costs and damages.
 - (h) Fines and penalties authorized by this part.
- (2) A person, including a state agency that is liable, may seek the following from a person who is liable under this part.
 - (a) A declaratory judgment on liability for future response costs and damages.
 - (b) Performance of all response activities and any other obligations required by this part.
 - (c) All costs of response activity incurred by that person in accordance with this part.
 - (e) Damages as allowed under section xxxxx (*Civil Actions - Non-State*)
 - (f) Interest on costs and damages.
 - (g) Fines and penalties.
 - (h) Premiums pursuant to subsections (8) – (9) of this section.
- (3) A person may also seek, in accordance with section xxxxx (*Civil Actions - Non-State*) to compel compliance with a demand, administrative order, consent order, or order of the court issued or entered pursuant to this part.
- (4) A person may seek an administrative or civil fine of \$25,000.00 per day for each release that occurs after the effective date of this part from a person who is liable under this part for the release, if the liable person is not in compliance with this part. For purposes of this subsection, a fine shall not be imposed against the liable person if they demonstrate a good faith effort to prevent the release, or if the penalty has been imposed under another part of the act for the same release.
- (5) A person who is liable may bring a claim for contribution (section xxxxx [*Liable Party Claims*], and section xxxxx [*Contribution and Contribution Protection*]) under section xxxxx [*Civil Action - Non-state*].
- (6) Interest payable under this part accrues from the date payment is demanded in writing, or the date of the expenditure or damage, whichever is later. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the rate specified in section 6013(8) of the revised judicature act of 1961, 1961 PA 236, as amended, Michigan Compiled Laws (MCL) 600.6013(8) of the (NOTE: Variable rate instead of current fixed rate of 12%).

- (7) In the case of injury to, destruction of, or loss of natural resources under subsection (1)(d), liability shall be to the state for natural resources belonging to, managed by, controlled by, appertaining to, or held in trust by the state or a local unit of government. Sums recovered by the state under this part for natural resource damages shall be retained by the department, for use only to restore, repair, replace, or acquire the equivalent of the natural resources injured or acquire substitute or alternative resources. There shall be no double recovery under this part for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition, for the same release and natural resource.
- (8) A person who is awarded response activity costs shall receive a premium in accordance with this section if the party from whom the response activity costs were awarded is liable pursuant to section xxxxx (*Causation Liability and Failing to Conduct Inquiry*) for the facility and is not, at the time the recovered response activity costs are incurred, in compliance with section xxxxx [*Remedial Obligations - Controlled Risk*]. The premium shall not apply to response activity costs paid from the fund or by tax increment financing response activities.
- (9) The premium awarded pursuant to subsection (8) shall be calculated as a percentage of the response activity costs awarded pursuant to subsection (2)(c) and shall be awarded in accordance with the following schedule as applicable:
- (a) If sought by a person liable under this part:
 - (i) A premium of twenty percent on all response activity costs.
 - (ii) In addition to subsection (9)(a)(i), an additional ten percent if the response activity costs awarded includes costs of source removal performed pursuant to section xxxxx [*Remedial Obligations – Uncontrolled Risks*] of this part.
 - (iii) In addition to (9)(a)(i) and (9)(a)(ii), an additional ten percent if the response activity costs awarded includes costs to associated with the achievement of a controlled risk category 3, 4, or 5, pursuant to section xxxxx [*Remedial Obligations – Controlled Risks*] or generic residential criteria pursuant to this part; and the category or criteria was achieved within 3 years of the date provided under subdivision (c) of this subsection.
 - (b) If sought by a person who is not liable:
 - (i) A premium of thirty percent on all response activity costs.
 - (ii) In addition to (9)(b)(i), an additional ten percent if the response activity costs awarded include costs of source removal performed pursuant to subsection xxxxxx(1) or (2) [*Remedial Obligations – Uncontrolled Risks*] of this part or both, as applicable.
 - (iii) In addition to (9)(b)(i) and (9)(b)(ii), an additional ten percent if the response activity costs awarded includes costs associated with the achievement of a controlled risk category 3, 4, or 5, pursuant to section xxxxx [*Remedial Obligations – Controlled Risk*] or generic residential criteria pursuant to this part; and the category or criteria was achieved within 3 years of the date provided under subsection (c).
 - (c) For purposes of determining compliance with the time frames identified in subdivisions (a)(iii) and (b)(iii), the period shall begin as follows:
 - (i) For a person who is liable and performed the facility determination required under section xxxxx [*Facility Determination and Notification or Facility Determination and Facility Notification*], the period shall begin on the date of the determination.

- (ii) For persons who are not liable or for persons who are liable but did not perform the facility determination required under section xxxxx [*Facility Determination and Notification*], the period shall begin on the date that the person provides notice under section xxxxx [*Identification and Notice Requirements Prior to Expenditure*] or in the absence of the notice, on the date on-site response activities commence.
- (10) Except for section xxxxx [*Release from Parts 111 and 115 Facilities*], recovery sought by any person, including the department, for response activity costs or damages resulting from a permitted release shall be pursuant to other applicable law, in lieu of this part. With respect to a permitted release, this subsection does not affect or modify the obligations or liability of any person under any other state law, including common law, for damages, injury, or loss resulting from a release of a hazardous substance or for response activity or the costs of response activity.
- (11) Except as provided in section xxxxx [*Exacerbation*], a person who has complied with the requirements of this part is not subject to a claim in law or equity for the performance of response activity under part 17 and part 31, of the act; or common law. This provision does not obviate a person's obligation to obtain and comply with all necessary permits except as provided under this part.
- (12) This part does not bar tort claims for any of the following:
- (a) Relief other than additional response activities.
 - (b) Damages which result from response activities.
 - (c) Claims related to the exercise or failure to exercise responsibilities under section xxxxx [*Due Care Obligations*].
- (13) For the purpose of this part, a failure to comply with individual requirements of this part shall constitute a separate and distinct violation. A new violation occurs each day until the violation and its effect are abated and shall be considered a separate, new claim for purposes of establishing the date from which the limitation period will begin to run.
- (14) The provisions of Michigan Court Rule 2.203(A) [*Claim Splitting*] shall not apply to an action taken pursuant to this part, including an action to enforce an order of the court issued pursuant to Section 631 of the RJA, MCL 600.631, if the claim which is the subject of the action arises from one or more of the following sections of this part:
- (a) Document retention and access to information.
 - (b) Access to property.
 - (c) Notices and Disclosures.
 - (d) Liability.
 - (e) Inquiry.
 - (f) Due care.
 - (g) Immediate Response.
 - (h) Exacerbation.
 - (i) Cost Recovery.
 - (j) Fines and Penalties.