

SUBSTITUTE FOR  
HOUSE BILL NO. 5819

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 20135 (MCL 324.20135), as amended by 1995 PA  
71.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 20135. (1) Except as otherwise provided in this part, a  
2 person, including a local unit of government on behalf of its  
3 citizens, whose health or enjoyment of the environment is or may be  
4 adversely affected by a release from a facility or threat of  
5 release from a facility, other than a permitted release or a  
6 release in compliance with applicable federal, state, and local air  
7 pollution control laws, by a violation of this part or a rule

1 promulgated or order issued under this part, or by the failure of  
2 the directors to perform a nondiscretionary act or duty under this  
3 part, may commence a civil action against any of the following:

4 (a) An owner or operator who is liable under section 20126 for  
5 injunctive relief necessary to prevent irreparable harm to the  
6 public health, safety, or welfare, or the environment from a  
7 release or threatened release in relation to that facility.

8 (b) A person who is liable under section 20126 for a violation  
9 of this part or a rule promulgated under this part or an order  
10 issued under this part in relation to that facility.

11 (c) One or more of the directors if it is alleged that 1 or  
12 more of the directors failed to perform a nondiscretionary act or  
13 duty under this part.

14 (2) The circuit court has jurisdiction in actions brought  
15 under subsection (1)(a) to grant injunctive relief necessary to  
16 protect the public health, safety, or welfare, or the environment  
17 from a release or threatened release. The circuit court has  
18 jurisdiction in actions brought under subsection (1)(b) to enforce  
19 this part or a rule promulgated or order issued under this part by  
20 ordering such action as may be necessary to correct the violation  
21 and to impose any civil fine provided for in this part for the  
22 violation. A civil fine recovered under this section shall be  
23 deposited in the fund. The circuit court has jurisdiction in  
24 actions brought under subsection (1)(c) to order 1 or more of the  
25 directors to perform the nondiscretionary act or duty concerned.

26 (3) An action shall not be filed under subsection (1)(a) or  
27 (b) unless all of the following conditions exist:

1 (a) The plaintiff has given at least 60 days' notice in  
2 writing of the plaintiff's intent to sue, the basis for the suit,  
3 and the relief to be requested to each of the following:

4 (i) The department.

5 (ii) The attorney general.

6 (iii) The proposed defendants.

7 (b) **BOTH OF THE FOLLOWING APPLY:**

8 (i) The state has not commenced ~~and~~ **OR** is not diligently  
9 prosecuting ~~an~~ **A JUDICIAL** action under this part or under other  
10 appropriate legal authority to obtain injunctive relief concerning  
11 the facility or to require compliance with this part or a rule or  
12 an order under this part.

13 (ii) **THE STATE HAS NOT ENTERED INTO OR IS NOT DILIGENTLY**  
14 **ENFORCING AN ADMINISTRATIVE ORDER OR OTHER LEGALLY ENFORCEABLE**  
15 **AGREEMENT UNDER THIS PART CONCERNING THE FACILITY.**

16 (4) An action shall not be filed under subsection (1)(c) until  
17 the plaintiff has given in writing at least 60 days' notice to the  
18 directors of the plaintiff's intent to sue, the basis for the suit,  
19 and the relief to be requested.

20 (5) In issuing a final order in an action brought pursuant to  
21 this section, the court may award costs of litigation, including  
22 reasonable attorney and expert witness fees to the prevailing or  
23 substantially prevailing party if the court determines that an  
24 award is appropriate.

25 (6) This section does not affect or otherwise impair the  
26 rights of any person under federal, state, or common law.

27 (7) An action under subsection (1)(a) or (b) shall be brought

1 in the circuit court for the circuit in which the alleged release,  
2 threatened release, or other violation occurred. An action under  
3 subsection (1)(c) shall be brought in the circuit court for Ingham  
4 county.