

HOUSE BILL No. 5819

February 16, 2010, Introduced by Rep. Meadows and referred to the Committee on Judiciary.

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
8 promulgated or order issued under this part, or by the failure of

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

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

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

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

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

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

27 (a) The plaintiff has given at least 60 days' notice in

1 writing of the plaintiff's intent to sue, the basis for the suit,
2 and the relief to be requested to each of the following:

3 (i) The department.

4 (ii) The attorney general.

5 (iii) The proposed defendants.

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

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

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

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

22 (7) An action under subsection (1)(a) or (b) shall be brought
23 in the circuit court for the circuit in which the alleged release,
24 threatened release, or other violation occurred. An action under
25 subsection (1)(c) shall be brought in the circuit court for Ingham
26 county.