

Environmental Citizens Suit Provisions

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Administrative Procedures Act (APA) Chapter 5

APA 5 USC § 702 Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

APA 5 USC § 704 Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to

review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

APA 5 USC § 705 Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

Clean Air Act (CAA) §304

CAA 42 USC § 7604 Citizen suits

42 U.S.C.A. § 7604 United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

▣ [Chapter 85.](#) Air Pollution Prevention and Control

▣ [Subchapter III.](#) General Provisions

▣ [§ 7604.](#) Citizen suits

(a) Authority to bring civil action; jurisdiction Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf--

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in [section 7607\(b\)](#) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under [section 7607\(b\)](#) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection

(b)(1)(A) of this section shall be provided 180 days before commencing such action. (b) Notice No action may be commenced--

(1) under subsection (a)(1) of this section--

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of [section 7412\(i\)\(3\)\(A\)](#) or [\(f\)\(4\)](#) of this title or an order issued by the Administrator pursuant to [section 7413\(a\)](#) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. (c) Venue; intervention by Administrator; service of complaint; consent judgment **(1)** Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located. **(2)** In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States. **(3)** Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right. (d) Award of costs; security The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure. (e) Nonrestriction of other rights Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from--

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see [section 7418](#) of this title. (f) "Emission

standard or limitation under this chapter" definedFor purposes of this section, the term "emission standard or limitation under this chapter" means--

- (1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,
- (2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or [\[FN1\]](#)
- (3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment),, [\[FN2\]](#) [section 7419](#) of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, [section 7545\(e\)](#) and [\(f\)](#) of this title (relating to fuels and fuel additives), [section 7491](#) of this title (relating to visibility protection), any condition or requirement under subchapter VI of this chapter (relating to ozone protection), or any requirement under [section 7411](#) or [7412](#) of this title (without regard to whether such requirement is expressed as an emission standard or otherwise); [\[FN3\]](#) or
- (4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations. [\[FN4\]](#)

which is in effect under this chapter (including a requirement applicable by reason of [section 7418](#) of this title) or under an applicable implementation plan.(g) Penalty fund(1) Penalties received under subsection (a) of this section shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.(2) Notwithstanding paragraph (1) the court in any action under this subsection to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed \$100,000.

Clean Water Act (Federal Water Pollution Control Act (FWPCA) §505)

FWPCA 33 USC § 1365 Citizen suits

33 U.S.C.A. § 1365United States Code Annotated [Currentness](#)

Title 33. Navigation and Navigable Waters ([Refs & Annos](#))

▣ [Chapter 26. Water Pollution Prevention and Control](#) ([Refs & Annos](#))

▣ [Subchapter V. General Provisions](#)

➡ **§ 1365. Citizen suits**

(a) Authorization; jurisdictionExcept as provided in subsection (b) of this section and [section 1319\(g\)\(6\)](#) of this title, any citizen may commence a civil action on his own behalf--

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under [section 1319\(d\)](#) of this title. (b) Notice No action may be commenced--

(1) under subsection (a)(1) of this section--

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of [sections 1316](#) and [1317\(a\)](#) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. (c) Venue; intervention by Administrator; United States interests protected **(1)** Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located. **(2)** In such action under this section, the Administrator, if not a party, may intervene as a matter of right. **(3) Protection of interests of United States** Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator. (d) Litigation costs The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. The court may, if a temporary

restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure. (e) Statutory or common law rights not restricted Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). (f) Effluent standard or limitation For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under [subsection \(a\) of section 1311](#) of this title; (2) an effluent limitation or other limitation under [section 1311](#) or [1312](#) of this title; (3) standard of performance under [section 1316](#) of this title; (4) prohibition, effluent standard or pretreatment standards under [section 1317](#) of this title; (5) certification under [section 1341](#) of this title; (6) a permit or condition thereof issued under [section 1342](#) of this title, which is in effect under this chapter (including a requirement applicable by reason of [section 1323](#) of this title); or (7) a regulation under [section 1345\(d\)](#) of this title. ^[FN1] (g) "Citizen" defined For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected. (h) Civil action by State Governors A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 310

CERCLA 42 USC § 9659 (a) Citizen suits

42 U.S.C.A. § 9659 United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

▣ [Chapter 103. Comprehensive Environmental Response, Compensation, and Liability \(Refs & Annos\)](#)

▣ [Subchapter III. Miscellaneous Provisions](#)

▣ [§ 9659. Citizens suits](#)

(a) Authority to bring civil actions Except as provided in subsections (d) and (e) of this section and in [section 9613\(h\)](#) of this title (relating to timing of judicial review), any person may commence a civil action on his own behalf--

(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, or order which has become effective pursuant to this chapter (including any provision of an agreement under [section 9620](#) of this title, relating to Federal facilities); or

(2) against the President or any other officer of the United States (including the Administrator of the Environmental Protection Agency and the Administrator of the ATSDR) where there is alleged a failure of the President or of such other officer to perform any act or duty under this chapter, including

an act or duty under [section 9620](#) of this title (relating to Federal facilities), which is not discretionary with the President or such other officer.

Paragraph (2) shall not apply to any act or duty under the provisions of [section 9660](#) of this title (relating to research, development, and demonstration). (b) Venue

(1) Actions under subsection (a)(1)

Any action under subsection (a)(1) of this section shall be brought in the district court for the district in which the alleged violation occurred.

(2) Actions under subsection (a)(2)

Any action brought under subsection (a)(2) of this section may be brought in the United States District Court for the District of Columbia.

(c) Relief The district court shall have jurisdiction in actions brought under subsection (a)(1) of this section to enforce the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under [section 9620](#) of this title), to order such action as may be necessary to correct the violation, and to impose any civil penalty provided for the violation. The district court shall have jurisdiction in actions brought under subsection (a)(2) of this section to order the President or other officer to perform the act or duty concerned. (d) Rules applicable to subsection (a)(1) actions

(1) Notice

No action may be commenced under subsection (a)(1) of this section before 60 days after the plaintiff has given notice of the violation to each of the following:

- (A) The President.
- (B) The State in which the alleged violation occurs.
- (C) Any alleged violator of the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under [section 9620](#) of this title).

Notice under this paragraph shall be given in such manner as the President shall prescribe by regulation.

(2) Diligent prosecution

No action may be commenced under paragraph (1) of subsection (a) of this section if the President has commenced and is diligently prosecuting an action under this chapter, or under the Solid Waste Disposal Act [[42 U.S.C.A. § 6901](#) et seq.] to require compliance with the standard, regulation, condition, requirement, or order concerned (including any provision of an agreement under [section 9620](#) of this title).

(e) Rules applicable to subsection (a)(2) actions No action may be commenced under paragraph (2) of subsection (a) of this section before the 60th day following the date on which the plaintiff gives notice to the Administrator or other department, agency, or instrumentality that the plaintiff will commence such action. Notice under this subsection shall be given in such manner as the President shall prescribe by regulation. (f) Costs The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure. (g) Intervention In any action under this section, the United States or the State, or both, if not a party may intervene as a matter of right. For other provisions regarding intervention, see [section 9613](#) of this title. (h) Other rights This chapter does not affect or otherwise impair the rights of any person under Federal, State, or common law, except with respect to the timing of review as provided in [section 9613\(h\)](#) of this title or as otherwise provided in [section 9658](#) of this title (relating to actions under State law). (i) Definitions The terms used in this section shall have the same meanings as when used in subchapter I of this chapter.

Endangered Species Act (ESA) § 11(g)

ESA 16 USC § 1540 (g) Citizen suits

(g) Citizen suits **(1)** Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf--

(A) to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any provision of this chapter or regulation issued under the authority thereof; or

(B) to compel the Secretary to apply, pursuant to [section 1535\(g\)\(2\)\(B\)\(ii\)](#) of this title, the prohibitions set forth in or authorized pursuant to [section 1533\(d\)](#) or [1538\(a\)\(1\)\(B\)](#) of this title with respect to the taking of any resident endangered species or threatened species within any State; or

(C) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under [section 1533](#) of this title which is not discretionary with the Secretary.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, or to order the Secretary to perform such act or duty, as the case may be. In any civil suit commenced under subparagraph (B) the district court shall compel the Secretary to apply the prohibition sought if the court finds that the allegation that an emergency exists is supported by substantial evidence. **(2) (A)** No action may be commenced under subparagraph (1)(A) of this section--

(i) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(ii) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(iii) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(B) No action may be commenced under subparagraph (1)(B) of this section--

(i) prior to sixty days after written notice has been given to the Secretary setting forth the reasons why an emergency is thought to exist with respect to an endangered species or a threatened species in the State concerned; or

(ii) if the Secretary has commenced and is diligently prosecuting action under [section 1535\(g\)\(2\)\(B\)\(ii\)](#) of this title to determine whether any such emergency exists.

(C) No action may be commenced under subparagraph (1) (C) of this section prior to sixty days after written notice has been given to the Secretary; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any species of fish or wildlife or plants. (3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs. (B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right. (4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. (5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

Resource Conservation and Recovery Act (Solid Waste Disposal (SWDA) §7002)

RCRA 42 USC § 6972 Citizen suits

42 U.S.C.A. § 6972 United States Code Annotated [Currentness](#)

Title 42. The Public Health and Welfare

▣ [Chapter 82.](#) Solid Waste Disposal ([Refs & Annos](#))

▣ [Subchapter VII.](#) Miscellaneous Provisions

▣ **§ 6972. Citizen suits**

(a) In general Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf--

(1)(A) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under [section 6928\(a\)](#) and [\(g\)](#) of this title. (b) Actions prohibited **(1)** No action may be commenced under subsection (a)(1)(A) of this section--

(A) prior to 60 days after the plaintiff has given notice of the violation to--

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right. **(2) (A)** No action may be commenced

under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to--

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter. **(B)** No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment--

(i) has commenced and is diligently prosecuting an action under [section 6973](#) of this title or under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [[42 U.S.C.A. § 9606](#)], [[FN1](#)]

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [[42 U.S.C.A. § 9604](#)];

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [[42 U.S.C.A. § 9604](#)] and is diligently proceeding with a remedial action under that Act [[42 U.S.C.A. § 9601](#) et seq.]; or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 980 [[FN2](#)] [[42 U.S.C.A. § 9606](#)] or [section 6973](#) of this title pursuant to which a responsible party is diligently conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv). **(C)** No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment--

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [[42 U.S.C.A. § 9604](#)]; or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [[42 U.S.C.A. § 9604](#)] and is diligently proceeding with a remedial action under that Act [[42 U.S.C.A. § 9601](#) et seq.].

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility. (E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties. (F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator. (c) Notice No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs. (d) Intervention In any action under this section the Administrator, if not a party, may intervene as a matter of right. (e) Costs The court, in issuing any final order in any action brought pursuant to this section or [section 6976](#) of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure. (f) Other rights preserved Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency). (g) Transporters A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

Toxic Substances Control Act (TSCA) §20

TSCA 15 USC § 2619 Citizens' civil actions

15 U.S.C.A. § 2619 United States Code Annotated [Currentness](#)

Title 15. Commerce and Trade

[Chapter 53](#). Toxic Substances Control ([Refs & Annos](#))

↖ [Subchapter I. Control of Toxic Substances \(Refs & Annos\)](#)

➔ **§ 2619. Citizens' civil actions**

(a) In general Except as provided in subsection (b) of this section, any person may commence a civil action--

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of this chapter or any rule promulgated under [section 2603](#), [2604](#), or [2605](#) of this title, or subchapter II or IV of this chapter, or order issued under [section 2604](#) of this title or subchapter II or IV of this chapter to restrain such violation, or

(2) against the Administrator to compel the Administrator to perform any act or duty under this chapter which is not discretionary.

Any civil action under paragraph (1) shall be brought in the United States district court for the district in which the alleged violation occurred or in which the defendant resides or in which the defendant's principal place of business is located. Any action brought under paragraph (2) shall be brought in the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the plaintiff is domiciled. The district courts of the United States shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties. In any civil action under this subsection process may be served on a defendant in any judicial district in which the defendant resides or may be found and subpoenas for witnesses may be served in any judicial district. (b)

Limitation No civil action may be commenced--

(1) under subsection (a)(1) of this section to restrain a violation of this chapter or rule or order under this chapter--

(A) before the expiration of 60 days after the plaintiff has given notice of such violation (i) to the Administrator, and (ii) to the person who is alleged to have committed such violation, or

(B) if the Administrator has commenced and is diligently prosecuting a proceeding for the issuance of an order under [section 2615\(a\)\(2\)](#) of this title to require compliance with this chapter or with such rule or order or if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with this chapter or with such rule or order, but if such proceeding or civil action is commenced after the giving of notice, any person giving such notice may intervene as a matter of right in such proceeding or action; or

(2) under subsection (a)(2) of this section before the expiration of 60 days after the plaintiff has given notice to the Administrator of the alleged failure of the Administrator to perform an act or duty which is the basis for such action or, in the case of an action under such subsection for the failure of the Administrator to file an action under [section 2606](#) of this title, before the expiration of ten days after such notification.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule. (c) General **(1)** In any action under this section, the Administrator, if not a party, may intervene as a matter of right. **(2)** The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of suit and reasonable fees for attorneys and expert witnesses if the court determines that such an award is appropriate. Any court, in issuing its decision in an action brought to review such an order, may award costs of suit and reasonable fees for attorneys if the court determines that such an award is appropriate. **(3)** Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this chapter or any rule or order under this chapter or to seek any other relief. (d) Consolidation When two or more civil actions brought under subsection (a) of this section involving the same defendant and the same issues or violations are pending in two or more judicial districts, such pending actions, upon application of such defendants to such actions which is made to a court in which any such action is brought, may, if such court in its discretion so decides, be consolidated for trial by order (issued after giving all parties reasonable notice and opportunity to be heard) of such court and tried in--

(1) any district which is selected by such defendant and in which one of such actions is pending,

(2) a district which is agreed upon by stipulation between all the parties to such actions and in which one of such actions is pending, or

(3) a district which is selected by the court and in which one of such actions is pending.

The court issuing such an order shall give prompt notification of the order to the other courts in which the civil actions consolidated under the order are pending.

Natural Resources and Environmental Protection Act (NREPA)
MCL 324.

Part 17. Michigan Environmental Protection Act (MEPA)

Part 17 324.1701

M.C.L.A. 324.1701 Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act ([Refs & Annos](#))

▣ [Article I.](#) General Provisions

▣ [Part 17.](#) Michigan Environmental Protection Act ([Refs & Annos](#))

▣ **324.1701. Actions for declaratory and equitable relief; parties; standards for pollution or anti-pollution devices or procedure**

Sec. 1701. (1) The attorney general or any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction. (2) In granting relief provided by subsection (1), if there is a standard for pollution or for an antipollution device or procedure, fixed by rule or otherwise, by the state or an instrumentality, agency, or political subdivision of the state, the court may: (a) Determine the validity, applicability, and reasonableness of the

standard.(b) If a court finds a standard to be deficient, direct the adoption of a standard approved and specified by the court.

Part 18 Uniform Transboundary Pollution Reciprocal Access

Part 18 324.1802 Actions or proceedings

M.C.L.A. 324.1802Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act ([Refs & Annos](#))

▣[Article I.](#) General Provisions

▣[Part 18.](#) Uniform Transboundary Pollution Reciprocal Access ([Refs & Annos](#))

▣**324.1802. Actions or proceedings**

Sec. 1802. An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by pollution originating, or that may originate, in this state may be brought in this state.

Part 111 Hazardous Waste Management

Part 111 324.11151

M.C.L.A. 324.11151Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act ([Refs & Annos](#))

Article II. Pollution Control

▣[Chapter 3.](#) Waste Management

▣[Part 111.](#) Hazardous Waste Management ([Refs & Annos](#))

▣**324.11151. Violations; order to comply, civil action for appropriate relief, fines and penalties; state of mind; knowingly placing another in danger of death or serious bodily injury; affirmative defense; serious bodily injury defined; action for value of damage to natural resources and costs of surveillance and enforcement; costs**

Sec. 11151. (1) If the department finds that a person is in violation of a permit, license, rule promulgated under this part, or requirement of this part including a corrective action requirement of this part, the department may issue an order requiring the person to comply with the permit, license, rule, or requirement of this part including a corrective action requirement of this part. The attorney general or a person may commence a civil action against a person, the department, or a health department certified under section 11145 for appropriate relief, including injunctive relief for a violation of this part including a corrective action requirement of this part, or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance. In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance. A fine collected under this subsection shall be

deposited in the general fund of the state.(2) A person who transports, treats, stores, disposes, or generates hazardous waste in violation of this part, or contrary to a permit, license, order, or rule issued or promulgated under this part, or who makes a false statement, representation, or certification in an application for, or form pertaining to, a permit, license, or order or in a notice or report required by the terms and conditions of an issued permit, license, or order, or a person who violates section 11144(5), is guilty of a misdemeanor punishable by a fine of not more than \$25,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, the person is guilty of a misdemeanor punishable by a fine of not more than \$50,000.00 for each instance of violation and, if the violation is continuous, for each day of violation, or by imprisonment for not more than 2 years, or both. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.(3) Any person who knowingly stores, treats, transports, or disposes of any hazardous waste in violation of subsection (2) and who knows at that time that he or she thereby places another person in imminent danger of death or serious bodily injury, and if his or her conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or if his or her conduct in the circumstances manifests an extreme indifference for human life, upon conviction, is subject to a fine of not more than \$250,000.00 or imprisonment for not more than 2 years, or both, except that any person whose actions constitute an extreme indifference for human life, upon conviction, is subject to a fine of not more than \$250,000.00 or imprisonment for not more than 5 years, or both. A defendant that is not an individual and not a governmental entity, upon conviction, is subject to a fine of not more than \$1,000,000.00. Additionally, a person who is convicted of a violation under this subsection shall be ordered to pay all costs of corrective action associated with the violation.(4) For the purposes of subsection (3), a person's state of mind is knowing with respect to: (a) His or her conduct, if he or she is aware of the nature of his or her conduct.(b) An existing circumstance, if he or she is aware or believes that the circumstance exists.(c) A result of his or her conduct, if he or she is aware or believes that his or her conduct is substantially certain to cause danger of death or serious bodily injury.(5) For purposes of subsection (3), in determining whether a defendant who is an individual knew that his or her conduct placed another person in imminent danger of death or serious bodily injury, both of the following apply: (a) The person is responsible only for actual awareness or actual belief that he or she possessed.(b) Knowledge possessed by a person other than the defendant but not by the defendant himself or herself may not be attributed to the defendant. However, in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.(6) It is an affirmative defense to a prosecution under this part that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following: (a) An occupation, a business, or a profession.(b) Medical treatment or professionally approved methods and the other person had been made aware of the risks involved prior to giving consent.(7) The defendant may establish an affirmative defense under subsection (6) by a preponderance of the evidence.(8) For purposes of subsection (3), "serious bodily injury" means each of the following: (a) Bodily injury that involves a substantial risk of death.(b) Unconsciousness.(c) Extreme physical pain.(d) Protracted and obvious disfigurement.(e) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.(9) In addition to a fine, the attorney general may bring an action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources of this state and the costs of surveillance and enforcement by the state resulting from the violation. The damages and cost collected under this subsection shall be deposited in the general fund if the damages or costs result from impairment or destruction of the fish, wildlife, or other natural resources of the state and shall be used to restore, rehabilitate, or mitigate the damage to those resources in the affected area, and for the specific resource to which the damages occurred.(10) The

court, in issuing a final order in an action brought under this part, may award costs of litigation, including reasonable attorney and expert witness fees to a party, if the court determines that the award is appropriate.(11) A person who has an interest that is or may be affected by a civil or administrative action commenced under this part has a right to intervene in that action.

Part 121 Liquid Industrial Wastes

Part 121 324.12115

M.C.L.A. 324.12115Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act ([Refs & Annos](#))

Article II. Pollution Control

▣ [Chapter 3.](#) Waste Management

▣ [Part 121.](#) Liquid Industrial Wastes ([Refs & Annos](#))

➡ **324.12115. Civil actions; damages; court costs and expenses**

<Text of section effective unless constitutional amendment proposed by H.J.R. Z of 2004 is approved at 2006 general election>

Sec. 12115. (1) The attorney general or a person may bring a civil action in a court of competent jurisdiction to recover the full value of the damage done to the natural resources that are damaged or destroyed as a result of a violation of this part. The damages collected under this section shall be deposited in the general fund. However, if the damages result from the impairment or destruction of the fish, wildlife, or other natural resources of the state, the damages shall be deposited in the game and fish protection fund created in part 435. [\[FN1\]](#) The attorney general may, in addition, recover expenses incurred by the department to address and remedy a violation of this part that the department reasonably considered an imminent and substantial threat to the public health, safety, or welfare, or to the environment.(2) The court may award court costs and other expenses of litigation including attorney fees to a party who successfully brings an action pursuant to this section or to a person who successfully defends against an action brought under this section that the court determines is frivolous.

Part 201 Environmental Remediation

Part 201 324.20135

M.C.L.A. 324.20135Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act ([Refs & Annos](#))

Article II. Pollution Control

▣ [Chapter 7.](#) Remediation

▣ [Part 201.](#) Environmental Remediation ([Refs & Annos](#))

➡ **324.20135. Civil actions, injunctive relief; jurisdiction; conditions of actions; notice; final order, costs; impairment of rights; venue**

Sec. 20135. (1) Except as otherwise provided in this part, a person, including a local unit of government on behalf of its citizens, whose health or enjoyment of the environment is or may be adversely affected by a release from a facility or threat of release from a facility, other than a permitted release or a release in compliance with applicable federal, state, and local air pollution control laws, by a violation of this part or a rule promulgated or order issued under this part, or by the failure of the directors to perform a nondiscretionary act or duty under this part, may commence a civil action against any of the following: (a) An owner or operator who is liable under section 20126 [\[FN1\]](#) for injunctive relief necessary to prevent irreparable harm to the public health, safety, or welfare, or the environment from a release or threatened release in relation to that facility. (b) A person who is liable under section 20126 for a violation of this part or a rule promulgated under this part or an order issued under this part in relation to that facility. (c) One or more of the directors if it is alleged that 1 or more of the directors failed to perform a nondiscretionary act or duty under this part. (2) The circuit court has jurisdiction in actions brought under subsection (1)(a) to grant injunctive relief necessary to protect the public health, safety, or welfare, or the environment from a release or threatened release. The circuit court has jurisdiction in actions brought under subsection (1)(b) to enforce this part or a rule promulgated or order issued under this part by ordering such action as may be necessary to correct the violation and to impose any civil fine provided for in this part for the violation. A civil fine recovered under this section shall be deposited in the fund. The circuit court has jurisdiction in actions brought under subsection (1)(c) to order 1 or more of the directors to perform the nondiscretionary act or duty concerned. (3) An action shall not be filed under subsection (1)(a) or (b) unless all of the following conditions exist: (a) The plaintiff has given at least 60 days' notice in writing of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested to each of the following: (i) The department. (ii) The attorney general. (iii) The proposed defendants. (b) The state has not commenced and is not diligently prosecuting an action under this part or under other appropriate legal authority to obtain injunctive relief concerning the facility or to require compliance with this part or a rule or an order under this part. (4) An action shall not be filed under subsection (1)(c) until the plaintiff has given in writing at least 60 days' notice to the directors of the plaintiff's intent to sue, the basis for the suit, and the relief to be requested. (5) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including reasonable attorney and expert witness fees to the prevailing or substantially prevailing party if the court determines that an award is appropriate. (6) This section does not affect or otherwise impair the rights of any person under federal, state, or common law. (7) An action under subsection (1)(a) or (b) shall be brought in the circuit court for the circuit in which the alleged release, threatened release, or other violation occurred. An action under subsection (1)(c) shall be brought in the circuit court for Ingham county.

Part 633 Mineral Mining

Part 633 324.63306 Suits by lessees

M.C.L.A. 324.63306 Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act [\(Refs & Annos\)](#)

Article III. Natural Resources Management

Chapter 3. Management of Nonrenewable Resources

[Subchapter 4. Mineral Mining](#)

[Part 633. Mineral Mining](#)

➡324.63306. Suits by lessees

Sec. 63306. If a person or persons holding not less than a 3/4 interest in the land has or have executed a mineral lease or leases to any person, the lessee or lessees may institute and maintain or defend any suit provided for by this part, either in the name of the lessee or in the name of his or her lessor.

Part 635 Surface and Underground Coal Mine Reclamation

Part 633 324.63538

M.C.L.A. 324.63538 Michigan Compiled Laws Annotated [Currentness](#)

Chapter 324. Natural Resources and Environmental Protection Act

Natural Resources and Environmental Protection Act ([Refs & Annos](#))

Article III. Natural Resources Management

Chapter 3. Management of Nonrenewable Resources

Subchapter 4. Mineral Mining

↗ [Part 635](#). Surface and Underground Coal Mine Reclamation

↗ [Subpart 8](#). Fines and Penalties ([Refs & Annos](#))

➡324.63538. Actions to compel compliance with act; notice; costs; bond

Sec. 63538. (1) Except as provided in subsections (2) and (3), a person having an interest that is or may be adversely affected by an operation not in compliance with a permit or this part may commence a civil action in circuit court or federal district court, whichever has jurisdiction, on his or her own behalf to compel compliance against any of the following: (a) The department or other state agency if there is alleged a failure of the department or other state agency to perform any act or duty under this part that is not discretionary with the department or other state regulatory authority. (b) Any governmental instrumentality or agency of the United States that is alleged to be in violation of this part or of any rule, order, or permit issued pursuant to this part or any other person who is alleged to be in violation of any rule, order, or permit issued pursuant to this part. (2) An action shall not be commenced under subsection (1)(a) until 20 days after the person intending to bring the action has given notice in writing of the intent to commence a civil action to the department or other state regulatory authority in the manner as the department shall by rule prescribe, except that the action may be brought immediately after the notification if the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff. (3) An action shall not be commenced under subsection (1)(b) until 20 days after the person intending to bring the action has given notice in writing of the violation to the department and to any alleged violator. However, if this state has commenced and is diligently prosecuting a civil action in a court of this state or the United States to require compliance with the provisions of this part, or any rule, order, or permit issued pursuant to this part, an action shall not be commenced pursuant to subsection (1)(b). In a civil action brought under this section, the department or federal regulatory agency, if not a party, may intervene as a matter of right. (4) The circuit court, in an action brought pursuant to this section, may award costs of litigation, including attorney and expert witness fees to a party. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security. (5) This section shall not be construed to restrict any right that a person or class of persons has under any statute or common law to seek enforcement of this part and the rules

promulgated under this part, or to seek any other relief, including relief against the department.