

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.21323h Proposal to redevelop or reuse contaminated property; covenant not to sue; conditions; assertion of claims; irrevocable right of entry to department, its contractors, or other persons performing corrective action.

Sec. 21323h. (1) The state may provide a person that proposes to redevelop or reuse property contaminated by a release from an underground storage tank system, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 21323a, if all of the following conditions are met:

- (a) The covenant not to sue is in the public interest.
- (b) The covenant not to sue will yield new resources to facilitate implementation of corrective action.
- (c) The covenant not to sue would, when appropriate, expedite corrective action consistent with the rules promulgated under this part.
- (d) Based upon available information, the department determines that the redevelopment or reuse of the property is not likely to do any of the following:
 - (i) Exacerbate or contribute to the existing release or threat of release.
 - (ii) Interfere with the implementation of corrective action.
 - (iii) Pose health risks related to the release or threat of release to persons who may be present at or in the vicinity of the property.

- (e) The proposal to redevelop or reuse the property has economic development potential.

(2) A person that requests a covenant not to sue under subsection (1) shall demonstrate to the satisfaction of the state all of the following:

- (a) That the person is financially capable of redeveloping and reusing the property in accordance with the covenant not to sue.
- (b) That the person is not affiliated in any way with any person that is liable under section 21323a for a release or threat of release at the property.
- (c) Compliance with section 21304c.

(3) A covenant not to sue issued under this section shall address only past releases or threats of release at a property and shall expressly reserve the right of the state to assert all other claims against the person that proposes to redevelop or reuse the property, including, but not limited to, those claims arising from any of the following:

- (a) The release or threat of release of any regulated substance resulting from the redevelopment or reuse of the property to the extent such claims otherwise arise under this part.
- (b) Interference with or failure to cooperate with the department, its contractors, or other persons conducting corrective action.

(4) A covenant not to sue issued under this section shall provide for an irrevocable right of entry to the department, its contractors, or other persons performing corrective action related to the release or threat of release addressed by the covenant not to sue and for monitoring compliance with the covenant not to sue.

History: Add. 2012, Act 108, Imd. Eff. May 1, 2012.

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