§ 27-1313. Remedial programs.

1. a. The department shall be responsible, as provided in this section, for inactive hazardous waste disposal site remedial programs except as provided in section one thousand three hundred eighty-nine-b of the public health law.

b. The department shall have the authority to require the development and implementation of a department-approved inactive hazardous waste disposal site remedial program.

c. Section eight of the court of claims act or any other provision of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the discharge of the department's aforesaid responsibility pursuant to this section; provided, however, that this paragraph shall not limit the liability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, or their officers, employees or agents; or for the ownership or responsibility for the disposal of hazardous waste, including the cost of cleanup, pursuant to this section.

2. The department shall have the authority (a) to delegate such responsibility for a specific site to the municipality in which such site is located and (b) to contract with the environmental facilities corporation and any other person to perform necessary work in connection with such sites.

3. a. Whenever the commissioner finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order. Provided, however, that in the event the commissioner of health shall issue an order pursuant to subdivision three of section one

thousand three hundred eighty-nine-b of the public health law, such order of the commissioner of health shall supersede any order issued hereunder.

b. Whenever the commissioner, after investigation, finds:

(i) that hazardous wastes at an inactive hazardous waste disposal site constitutes a significant threat to the environment; and

(ii) that such threat is causing or presents an imminent danger of causing irreversible or irreparable damage to the environment; and

(iii) the threat makes it prejudicial to the public interest to delay action until a hearing can be held pursuant to this title, the department may, pursuant to paragraph c of subdivision five of this section and within the funds available to the department, develop and implement an inactive hazardous waste disposal site remedial program for such site. Findings required pursuant to this paragraph shall be in writing and may be made by the commissioner on an ex parte basis subject to judicial review.

4. Any order issued pursuant to subdivision three of this section shall be issued only after notice and the opportunity for a hearing is provided to persons who may be the subject of such order. The commissioner shall determine which persons are responsible pursuant to said subdivision according to applicable principles of statutory or common law liability. Such persons shall be entitled to raise any statutory or common law defense at any such hearing and such defenses shall have the same force and effect at such hearings as they would have in a court of law. In the event a hearing is held, no order shall be issued by the commissioner under subdivision three of this section until a final decision has been rendered. Any such order shall be reviewable pursuant to article seventy-eight of the civil practice law and rules within thirty days after service of such order. The commissioner may request the participation of the attorney general in such hearings.

5. a. Whenever a person ordered to eliminate a threat to the environment pursuant to paragraph a of subdivision three of this section has failed to do so within the time limits specified in the order, the department may develop and implement an inactive hazardous waste

disposal site remedial program for such site. The reasonable expenses of developing and implementing such remedial program by the department shall be paid by the person to whom the order was issued and the state may seek to recover such reasonable expenses in any court of appropriate jurisdiction.

b. In the event that the commissioner has found that hazardous wastes at a site constitute a significant threat to the environment, but after a reasonable attempt to determine who may be responsible is either unable to determine who may be responsible, or is unable to locate a person who may be responsible, the department may develop and implement an inactive hazardous waste disposal site remedial program for such site. The department shall prioritize implementation of remedial programs in accordance with subdivision five of section 27-1305 of this title. The commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title, to secure appropriate relief from any person subsequently identified or located who is responsible for the disposal of hazardous waste at such site, including, but not limited to response costs, natural resource damages and penalties.

c. (i) Whenever the commissioner has made findings pursuant to paragraph b of subdivision three of this section or the commissioner of health has made a declaration and finding pursuant to paragraph (b) of subdivision three of section one thousand three hundred eighty-nine-b of the public health law, the department may develop and implement an inactive hazardous waste disposal site remedial program to contain, alleviate or end the threat to life or health or to the environment. The costs incurred by the department in developing and implementing such a program shall be in an amount commensurate with the actions the department deems necessary to eliminate such danger. In determining the scope, nature and content of such program, the department shall consider among others, the following factors:

(A) the technological feasibility of all actions;

(B) the nature of the danger to human health and the environment which the actions are designed to address; and

(C) the extent to which the actions would reduce such danger to human

health or the environment or would otherwise benefit human health or the environment, including if the actions would benefit a disadvantaged community.

(ii) In implementing this title, the department shall consult with appropriate representatives of Indian nations on environmental and cultural resource issues related to this title of concern to either the department or Indian nations.

d. Notwithstanding the provisions of subdivision c of this section, the department shall be authorized to develop and implement an inactive hazardous waste disposal site remedial program at the site pursuant to this subdivision if, in the discretion of the department, it is cost-effective for the department to develop and implement such a remedial program. The goal of any such remedial program shall be a complete cleanup of the site through the elimination of the significant threat to the environment posed by the disposal of hazardous wastes at the site and of the imminent danger of irreversible or irreparable damage to the environment caused by such disposal. The factors to be considered by the department in determining whether it is cost-effective to develop and implement an inactive hazardous waste disposal site remedial program at a site pursuant to this subdivision shall include, among others:

(i) the ability of the department to determine, through the exercise of its scientific judgment, whether the elimination of the imminent danger of irreversible or irreparable damage to the environment can be achieved through limited actions;

(ii) the ability of the department to identify the owner of the site and/or any person responsible for the disposal of hazardous wastes at such site with sufficient financial resources to develop and implement an inactive hazardous waste disposal site remedial program at such site;

(iii) the nature of the danger to human health and the environment which the actions are designed to address; and

(iv) the extent to which the actions would reduce such danger to human health or the environment or would otherwise benefit human health or the environment.

e. Whenever the commissioner of health makes a declaration and finding

pursuant to paragraph b of subdivision three of section one thousand three hundred eighty-nine-b of the public health law, the department may implement an inactive hazardous waste site remedial program in the same manner as specified in paragraphs c and d of this subdivision.

f. The commissioner shall make every effort, in accordance with the requirements for notice, hearing and review provided for in this title to secure appropriate relief from the owner or operator of such site and/or any person responsible for the disposal of hazardous wastes at such site, including, but not limited to, response costs, natural resource damages, and penalties.

g. When a municipality develops and implements pursuant to an agreement with the department an inactive hazardous waste disposal site remedial program as approved by the department for a site which is owned or has been operated by such municipality or when the department, pursuant to an agreement with a municipality, develops and implements such a remedial program, the commissioner shall, in the name of the state, agree in such agreement to provide from the hazardous waste remedial fund, within the limitations of appropriations therefor, seventy-five percent of the eligible design and construction costs of such remedial program for which such municipality is liable solely because of its ownership and/or operation of such site and which are not recovered from or reimbursed or paid by a responsible party or the federal government.

6. Nothing contained within this section shall be construed as impairing or in any manner affecting the right or jurisdiction of the attorney general to seek appropriate relief pursuant to his statutory or common law authority.

7. Moneys for actions taken or to be taken by the department, the department of health or any other state agency in connection with the elimination of conditions dangerous to life or health pursuant to subdivision five of section thirteen hundred eighty-nine-b of the public health law or with the elimination of a significant threat to the environment pursuant to this section shall be payable directly to such

agencies from the hazardous waste remedial fund pursuant to section ninety-seven-b of the state finance law. This includes any inspection or sampling of wastes, soils, air, surface water, groundwater, or other natural resources, done on behalf of a state agency whether or not such action is taken prior to the issuance of a declaration pursuant to subdivision two of section thirteen hundred eighty-nine-b of the public health law or a finding pursuant to subdivision three of this section and any administrative expenses related thereto.

8. Any duly designated officer or employee of the department or any other state agency, and any agent, consultant, contractor, or other person, including an employee, agent, consultant, or contractor of a responsible person acting at the direction of the department, so authorized in writing by the commissioner, may enter any inactive hazardous waste disposal site and areas near such site to implement an inactive hazardous waste disposal site remedial program for such site, provided the commissioner has sent a written notice to the owners of record or any known occupants of such site or nearby areas of the intended entry and work at least ten days prior to such initial entry.

9. Nothing herein contained shall be construed to limit or in any manner affect the power of the commissioner to issue an order according to the provisions of section 71-2727 of this chapter.

10. The department, by and through the commissioner, shall be authorized to exempt a person from the requirement to obtain any state or local permit or other authorization for any activity needed to implement an inactive hazardous waste disposal site remedial program pursuant to this title; provided, that the activity is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.