§ 27-1327. Recovery of response costs and natural resource damages.

1. Each responsible person shall be strictly liable, jointly and severally, for all response costs and for all natural resource damages resulting from the disposal of hazardous waste at an inactive hazardous waste disposal site. The commissioner may request the attorney general commence an action in a court of competent jurisdiction to recover the response costs and/or natural resource damages. The commissioner shall prioritize recovering response costs and natural resource damages at sites placed in classification 1 or 2, as described in clauses (i) and (ii) of subparagraph one of paragraph b of subdivision two of section 27-1305 of this title, that are located in disadvantaged communities.

2. A determination or assessment of natural resource damages for the purposes of this section made or adopted by the commissioner in accordance with any applicable regulations promulgated under section 27-1315 of this title or under section 9651(c) of title 42 of the United States Code shall have the force and effect of a rebuttable presumption on behalf of the commissioner in any judicial proceeding.

3. In an action to recover response costs and/or natural resource damages, the commissioner may also seek civil penalties under section 71-2705 of this chapter.

4. All amounts received to satisfy liability for natural resource damages shall be credited to the department's natural resource damages fund to be used exclusively to reimburse the reasonable costs of assessing injury, destruction, and/or loss resulting from the disposal of hazardous waste at the site for which the natural resource damages were recovered and for the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources. Provided that any such restoration, rehabilitation, replacement and/or acquisition shall prioritize, to the maximum extent practicable, the natural resources of the site for which the damages were recovered.

5. The state shall have an environmental lien for all response costs incurred by the state and for all natural resource damages for which a

judicial determination of liability has been made upon such real property located within the state:

(a) owned by a person liable to the state for such response costs and/or natural resource damages under this title at the time a notice of environmental lien is filed; and

(b) upon which the disposal of hazardous wastes occurred.

6. An environmental lien shall attach when:

(a) response costs are incurred by the state and/or a judicial judgment of liability for natural resource damages is entered;

(b) the responsible person fails to pay such costs within ninety days after a written demand therefor by the department is mailed by certified or registered mail, return receipt requested, and/or fails to pay such natural resource damages within ninety days after entry of judgment; and

(c) a notice of environmental lien is filed by the department as provided in paragraph (a) of subdivision ten of this section; provided, however, that a copy of the notice of environmental lien is served upon the owner of the real property subject to the environmental lien within thirty days of such filing in accordance with the provisions of section eleven of the lien law.

7. (a) An environmental lien shall continue against the real property until:

(i) the claim or judgment against the person referred to in subdivision one of this section for response costs and/or natural resource damages is satisfied or becomes unenforceable;

(ii) the lien is released by the commissioner pursuant to this subdivision;

(iii) the lien is discharged by payment of monies into court; or

(iv) the lien is otherwise vacated by court order.

(b) Upon the occurrence of any event under subparagraphs (i) through (iv) of paragraph (a) of this subdivision, except where the lien is vacated by court order, the commissioner shall execute the release of an environmental lien and file the release as provided in subdivision ten of this section. The commissioner may release an environmental lien where:

(i) a legally enforceable agreement satisfactory to the commissioner

has been executed relating to the response costs and/or natural resource damages that are the subject of the lien; or reimbursing the state for such response costs and/or natural resource damages; or an owner or operator of the site subject to the lien agrees to perform remedial work, site management, or other in-kind services of sufficient value to the commissioner; or

(ii) the attachment or enforcement of the environmental lien is determined by the commissioner not to be in the public interest.

8. An environmental lien is subject to the rights of any other person, including an owner, purchaser, holder of a mortgage or security interest, or judgment lien creditor, whose interest is perfected before a lien notice has been filed as provided in subdivision ten of this section.

9. A notice of environmental lien shall state:

(a) that the lienor is the state of New York;

(b) the name of the record owner of the real property on which the environmental lien has attached;

(c) the real property subject to the lien, with a description thereof sufficient for identification;

(d) that the real property described in the notice is the property upon which a disposal of hazardous wastes occurred and that response costs have been incurred by the lienor and/or that natural resource damages have been judicially determined to be due to the lienor as a result of such disposal;

(e) that the owner is potentially liable for response costs and/or subject to a judgment for natural resource damages pursuant to this title; and

(f) that an environmental lien has attached to the described real property.

10. (a) A notice of environmental lien shall be filed in the clerk's office of the county where the property is situated. If such property is situated in two or more counties, the notice of environmental lien shall be filed in the office of the clerk of each of such counties. The notice of lien shall be indexed by the county clerk in accordance with the

provisions of section ten of the lien law. The notice of lien shall be served upon the owner of the real property subject to the lien in accordance with the provisions of section eleven of the lien law.

(b) A release of an environmental lien shall be filed in the clerk's office of each county where the notice of environmental lien was filed and shall be indexed in the manner prescribed for indexing environmental liens.

11. An environmental lien may be enforced against the property specified in the notice of environmental lien, and an environmental lien may be vacated or discharged, as prescribed in article three of the lien law; provided, however, that nothing in this article or in article three of the lien law shall affect the right of the state to bring an action to recover response costs and/or natural resource damages under section one hundred seven of the federal comprehensive environmental response, compensation, and liability act (42 U.S.C. § 9607 et seq).

12. Amounts received by the commissioner to satisfy all or part of an environmental lien for response costs shall be deposited in the department's hazardous waste remedial fund and amounts received to satisfy all or part of an environmental lien for natural resource damages shall be deposited in the department's natural resource damages fund.

13. Environmental windfall liens. (a) A bona fide prospective purchaser whose liability under this title and/or 42 U.S.C. § 9607 et seq. arises solely from being considered an owner or operator of such site shall not be subject to this subdivision as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

(b) If there are unrecovered response costs incurred by the department at an inactive hazardous waste disposal site for which an owner or operator of the site is not liable by reason of paragraph (a) of this subdivision, and if each of the conditions described in paragraph (c) of this subdivision are met, the department shall have an environmental windfall lien on the facility, or may by agreement with the owner or operator, obtain from the owner or operator a lien on any other property

or other assurance of payment satisfactory to the department, for the unrecovered response costs.

(c) The conditions referred to in paragraph (b) of this subdivision are the following:

(i) A response action for which there are unrecovered costs of the department is carried out at the inactive hazardous waste disposal site.

(ii) The response action increases the fair market value of the site above the fair market value of the site before the response action was initiated.

(d) An environmental windfall lien under paragraph (b) of this subdivision:

(i) shall be in an amount not to exceed the lesser of:

(A) the incremental increase in fair market value of the property, above the fair market value before the response action was initiated, attributable to the response action at the time of a sale or other disposition of the property; or

(B) any unrecovered response costs not subject to an environmental lien attached to the property pursuant to subdivision five of this section;

(ii) shall arise at the time at which costs are first incurred by the department with respect to a response action at the site; and

(iii) shall be subject to the requirements of subdivisions seven, eight, nine, ten, eleven, and twelve of this section.

14. (a) Contribution. Any person may seek contribution from any other person who is liable or potentially liable under this title during or following any civil action under this section. Such claims shall be brought in accordance with this section and the civil practice law and rules, and shall be governed by New York state law. In resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate. Nothing in this subdivision shall diminish the right of any person to bring an action for contribution in the absence of a civil action under this section.

(b) Settlement. A person who has resolved its liability to the state in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the

settlement. Such settlement does not discharge any of the other potentially liable persons unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

(c) Persons not party to settlement. (i) If the state has obtained less than complete relief from a person who has resolved its liability to the state in an administrative or judicially approved settlement, the state may bring an action against any person who has not so resolved its liability.

(ii) A person who has resolved its liability to the state for some or all of a response action or for some or all of the costs of such action in an administrative or judicially approved settlement may seek contribution from any person who is not party to a settlement referred to in paragraph (b) of this subdivision.

(iii) In any action under this paragraph, the rights of any person who has resolved its liability to the state shall be subordinate to the rights of the state.

15. (a) Limitation on claims. No new action under this title may be commenced for natural resource damages or response costs for an inactive hazardous waste site that was the subject of any previous action commenced prior to the effective date of the chapter of the laws of two thousand twenty-five which added this subdivision, regardless of: the venue in which such previous action was commenced; the statutory or common law source of such action, including settlement agreements; the completeness or totality of permissible recovery of such action; or the finality of any such action.

(b) Actions for natural resource damages. Except as provided in paragraphs (d) and (e) of this subdivision, an initial action under this title for natural resource damages that occurs after the effective date of the chapter of the laws of two thousand twenty-five which added this subdivision, shall be commenced within three years after the later of the following:

(i) the date of the discovery of the loss and its connection with the release in question; or

(ii) for any facility listed on the federal National Priorities List, any site listed on the New York state registry of inactive hazardous waste disposal sites, or any site at which a remedial action under this

chapter is otherwise scheduled: the date of completion of the remedial action, excluding operation and maintenance activities.

(c) Actions for response costs. An initial action for recovery of response costs that occurs after the effective date of the chapter of the laws of two thousand twenty-five which added this subdivision shall be commenced:

(i) for a removal action, as defined by the department in regulation, within three years after completion of the removal action, except that such cost recovery action shall be commenced within six years after a determination that continued response action is otherwise appropriate and consistent with the remedial action to be taken for continued response action; and

(ii) for a remedial action, as defined by the department in regulation, within six years after initiation of physical on-site construction of the remedial action, except that, if the remedial action is initiated within three years after the completion of the removal action, costs incurred in the removal action may be recovered in the cost recovery action brought under this subparagraph.

(d) Declaratory judgment. In any such action described in this subdivision, the court shall enter a declaratory judgment on liability for response costs or natural resource damages that will be binding on any subsequent action or actions under this title to recover further response costs or damages. A subsequent action or actions under this section for further response costs at the facility or site may be maintained at any time during the response action, but must be commenced no later than three years after the date of completion of all response action. Except as otherwise provided in this paragraph, an action may be commenced under this section for recovery of costs at any time after such costs have been incurred.

(e) Limitations on actions. No action for contribution for any response costs or natural resource damages may be commenced more than three years after:

(i) the date of judgment in any action under this section for recovery of such costs or damages; or

(ii) the date of a judicially approved settlement with respect to such costs or damages.