§ 27-1329. Abatement actions.

1. (a) Maintenance, jurisdiction, etc. When the commissioner, after investigation, determines that there may be an imminent danger to the health or welfare of the people of the state or the environment, or an actual or threatened release of hazardous waste from an inactive hazardous waste disposal site, as defined in clauses (i) and (ii), respectively, of subparagraph one of paragraph b of subdivision two of section 27-1305 of this title, is resulting in or is likely to result in irreversible or irreparable damage to natural resources, the commissioner may request the attorney general to secure such relief as may be necessary to abate such danger or threat and to grant such relief as the public interest and the equities of the case may require. The commissioner may issue such orders as may be necessary to protect public health and welfare and the environment, provided the commissioner has a reasonable belief that persons responsible for implementing such orders have adequate financial resources to comply, there is evidence sufficient to support liability of such person, and the department has made all reasonable efforts to secure voluntary agreement of such person to abate the imminent danger or threat.

(b) Any such person may request a meeting with the department to discuss reconsideration of an order, within five business days of receiving such order, if such person believes they are not liable. Such request shall include a description of the reason why such person believes they are not liable and any supporting documentation. The department shall make all practicable efforts to hold such meeting within five business days of receiving such request and shall consider its evidence of such person's liability in light of any information and documentation provided.

(c) Any such order issued by the commissioner shall be a final determination of the department and subject to challenge pursuant to article seventy-eight of the civil practice law and rules.

(d) No action may be taken under paragraph (a) of this subdivision against a bona fide prospective purchaser, as defined in subdivision five of section 27-1323 of this title.

2. Fines; reimbursement. (a) Any person who, without sufficient cause,

fails or refuses to comply with any order of the commissioner under subdivision one of this section may, in an action brought in the appropriate court of competent jurisdiction to enforce such order, be fined not more than thirty-seven thousand five hundred dollars for each day in which such violation occurs or such failure to comply continues.

(b) (i) Any person who receives and complies with the terms of any order issued under subdivision one of this section may, within sixty days after completion of the required action, petition the commissioner for reimbursement from the hazardous waste remedial fund pursuant to section ninety-seven-b of the state finance law for the reasonable costs of such action, plus interest. Any interest payable under this subparagraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the hazardous substance superfund established under subchapter A of chapter 98 of title 26 of the federal comprehensive environmental response, compensation, and liability act.

(ii) If the commissioner refuses to grant all or part of a petition made under this paragraph, the petitioner may within thirty days of receipt of such refusal file an action against the department pursuant to article seventy-eight of the civil practice law and rules.

(iii) Except as provided in subparagraph (iv) of this paragraph, to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that such petitioner is not liable for response costs under section 27-1313 of this title and that costs for which such petitioner seeks reimbursement are reasonable in light of the action required by the relevant order.

(iv) A petitioner under subparagraph (i) of this paragraph may also recover its reasonable costs of response to the extent that such petitioner can demonstrate, on the administrative record, that the commissioner's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(v) Reimbursement awarded by a court under subparagraph (iii) or (iv) of this paragraph may include appropriate costs, fees, and other

expenses in accordance with section eighty-six hundred one of the civil practice law and rules.

3. The commissioner shall provide notice of the provisions of this section to known responsible persons at sites listed in clauses (i) and (ii) of subparagraph one of paragraph b of subdivision two of section 27-1305 of this title, within six months of the effective date of the chapter of the laws of two thousand twenty-five which added this section, if the commissioner intends to issue an order to such responsible persons. No such orders shall be issued within a one-year period after the effective date of the chapter of the laws of two thousand twenty-five which added this section.