

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

324.20133 Redevelopment or reuse of facility; covenant not to sue; conditions; demonstration; limitation; reservation of right to assert claims; irrevocable right of entry; monitoring compliance.

Sec. 20133.

(1) The state may provide a person who proposes to redevelop or reuse a facility, including a vacant manufacturing or abandoned industrial site, with a covenant not to sue concerning liability under section 20126 and 20107a, 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 response activity.
- (c) The covenant not to sue would, when appropriate, expedite response activity consistent with the rules promulgated under this part.
- (d) Based upon available information, the department determines that the redevelopment or reuse of the facility 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 response activities.
 - (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 facility.

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

(2) A person who 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 facility in accordance with the covenant not to sue.

(b) That the person is not affiliated in any way with any person who is liable under section 20126 for a release or threat of release at the facility.

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

(a) The release or threat of release of any hazardous substance resulting from the redevelopment or reuse of the facility 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 response activities approved by the department.

(c) Failure to comply with section 20107a.

(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 response activity related to the release or threat of release addressed by the covenant not to sue for the purposes listed in section 20117(3)(a) through (e) and for monitoring compliance with the covenant not to sue.

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Popular Name: Act 451

Popular Name: Environmental Remediation

Popular Name: Environmental Response Act

Popular Name: NREPA