

65-34,118. Corrective action; duties of owners and operators; duties of secretary; consent agreement, contents. (a) Whenever the secretary has reason to believe that there is or has been a release into the environment from a petroleum storage tank and has reason to believe that such release poses a danger to human health or the environment, the secretary shall obtain corrective action for such release from the owner or operator, or both, or from any past owner or operator who has contributed to such release. Such corrective action shall be performed in accordance with a plan approved by the secretary. Upon approval of such plan, the owner or operator shall obtain and submit to the secretary at least three bids from persons qualified to perform the corrective action except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders.

(b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner or operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Costs incurred by the secretary in taking a corrective action, including administrative and legal expenses, are recoverable from the owner or operator and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of a corrective action.

(c) An owner or operator shall be liable for all costs of corrective action incurred by the state of Kansas as a result of a release from a petroleum storage tank, unless the owner or operator, or both, enter into a consent agreement with the secretary in the name of the state within a reasonable period of time, which time period may be specified by rule and regulation. At a minimum, the owner or operator, or both, must agree that:

(1) The owner or operator shall be liable for the appropriate amounts pursuant to K.S.A. 65-34,119 and amendments thereto;

(2) the state of Kansas and the respective fund are relieved of all liability to an owner or operator for any loss of business, damages and taking of property associated with the corrective action;

(3) the department or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to monitor and provide oversight for the necessary corrective action to protect human health and the environment;

(4) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof shall not be reimbursable from the respective fund;

(5) the owner or operator shall effectuate corrective action according to a plan approved by the secretary pursuant to subsection (a);

(6) the liability of the state and the respective fund shall not exceed \$1,000,000, less the deductible amount, for any release from a petroleum storage tank; and

(7) such other provisions as are deemed appropriate by the secretary to ensure adequate protection of human health and the environment.

(d) For purposes of this act, corrective action costs shall include the actual costs incurred for the following:

(1) Removal of petroleum products from petroleum storage tanks, surface waters, groundwater or soil;

(2) investigation and assessment of contamination caused by a release from a petroleum storage tank;

(3) preparation of corrective action plans approved by the secretary;

(4) removal of contaminated soils;

(5) soil treatment and disposal;

(6) environmental monitoring;

(7) lease, purchase and maintenance of corrective action equipment;

(8) restoration of a private or public potable water supply, where possible, or replacement thereof, if necessary; and

(9) other costs identified by the secretary as necessary for proper investigation, corrective action planning and corrective action activities to meet the requirements of this act.

History: L. 1989, ch. 186, § 19; L. 1992, ch. 311, § 14; July 1.