

65-34,148. Same; uses of moneys in fund; powers of department owner's liability, when; expenditure limit; deductible. (a) Whenever a release poses a threat to human health or the environment, the department, consistent with rules and regulations adopted by the secretary pursuant to subsections (d) and (e) of K.S.A. 65-34,143, and amendments thereto, shall expend moneys available in the fund to provide for:

(1) Investigation and assessment of a release from a drycleaning facility, including costs of investigations and assessments of contamination which may have moved off the drycleaning facility;

(2) necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;

(3) remediation of releases from drycleaning facilities, including contamination which may have moved off of the drycleaning facility, which remediation shall consist of clean up of affected soil, groundwater and surface waters, using the most cost effective alternative that is technologically feasible and reliable, provides adequate protection of human health and environment and to the extent practical minimizes environmental damage;

(4) operation and maintenance of corrective action;

(5) monitoring of releases from drycleaning facilities including contamination which may have moved off of the drycleaning facility;

(6) payment of reasonable costs incurred by the secretary in providing field and laboratory services;

(7) reasonable costs of restoring property, as nearly as practicable to the conditions that existed prior to activities associated with the investigation of a release or clean up or remediation activities;

(8) removal and proper disposal of wastes generated by a release of a drycleaning solvent; and

(9) payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan, provided, however, that reimbursement for corrective action costs incurred before the effective date of this act shall be limited to \$100,000 per site.

(b) Nothing in subsection (a) shall be construed to authorize the department to obligate moneys in the fund for payment of costs which are not integral to corrective action for a release of drycleaning solvents from a drycleaning facility. Moneys from the fund shall not be used: (1) For corrective action at sites that are contaminated by solvents normally used in drycleaning operations where the contamination did not result from the operation of a drycleaning facility; (2) for corrective action at sites, other than drycleaning facilities, that are contaminated by drycleaning solvents which were released while being transported to or from a drycleaning facility by a party other than the owner of such drycleaning facility or the owner's agents or employees; (3) to pay any costs associated with any fine or penalty brought against a drycleaning facility owner under state or federal law; or (4) to pay any costs related to corrective action at a drycleaning facility that has been included by the United States environmental protection agency on the national priorities list or at any facility which is a hazardous waste disposal facility, as defined in K.S.A. 65-3430 and amendments thereto.

(c) Nothing in this act shall be construed to restrict the department from:

(1) Modifying, in the discretion of the secretary, the priority status of a site where warranted under the system of priorities established pursuant to subsection (d) of K.S.A. 65-34,143 and amendments thereto; or

(2) temporarily postponing completion of corrective action for which moneys from the fund are being expended whenever such postponement is deemed necessary in order to make moneys available for corrective action at a site with a higher priority.

(d) At any multisource site, the secretary shall utilize the moneys in the fund to pay for the proportionate share of the liability for corrective action costs which is attributable to a release from one or more drycleaning facilities and for that proportionate share of the liability only.

(e) At any multisource site, the secretary is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of corrective action at a site, whether known or unknown. The secretary shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the secretary. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

(f) Any authorized officer, employee or agent of the department, or any person under order or contract with the department, may enter onto any property or premises, at reasonable times and upon written notice to the owner or occupant, to take corrective action where the secretary determines that such action is necessary to protect the public health or environment. If consent is not granted by the person in control of a site or suspected site regarding any request made by any officer, employee or agent of the department, or any person under order or contract with the department, under the provisions of this section, the secretary may issue an order directing compliance with the request. The order may be issued after such notice and opportunity for consultation as is reasonably appropriate under the circumstances.

(g) Notwithstanding the other provisions of this act, in the discretion of the secretary, an owner may be responsible for up to 100% of the costs of corrective action attributable to such owner if the secretary finds, after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act, that:

(1) Requiring the owner to bear such responsibility will not prejudice another owner or person who is eligible, under the provisions of this act, to have corrective action costs paid by the fund; and

(2) the owner:

(A) Caused a release by willful or wanton actions and such release was caused by operating practices contrary to those generally in use at the time of the release;

(B) is in arrears for moneys owed pursuant to this act, after notice and an opportunity to correct the arrearage;

(C) substantially obstructs the efforts of the department to carry out its obligations under this act, provided, however, that the exercise of legal rights shall not constitute a substantial obstruction;

(D) caused or allowed the release because of a material violation of the performance standards established in this act or the rules and regulations adopted by the secretary under this act; or

(E) has more than once failed to report or failed to take an immediate response to a release, knowing or having reason to know of such release.

For purposes of this subsection (g), unless a transfer is made solely to take advantage of this provision, purchasers of stock or other indicia of ownership and other successors in interest shall not be considered to be the

same owner or operator as the seller or transferor of such stock or indicia of ownership even though there may be no change in the legal identity of the owner or operator. To the extent that an owner is responsible for corrective action costs under this subsection, such owner shall not be entitled to the exemption set out in subsection (c) of K.S.A. 65-34,149 and amendments thereto.

(h) The fund shall not be liable for the payment of costs in excess of \$5,000,000 for corrective action at any contaminated drycleaning site. For purposes of this subsection, "contaminated drycleaning site" means the areal extent of soil or groundwater contamination with drycleaning solvents.

(i) There shall be a deductible of \$5,000 of corrective action costs incurred because of a release from a drycleaning facility. Nothing herein shall prohibit the department from taking corrective action because the department cannot obtain the deductible.

History: L. 1995, ch. 162, § 9; L. 1999, ch. 102, § 4; July 1.