

65-3419. Violations of act; penalties; procedure; injunctions. (a) Any person who violates any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$5,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) of K.S.A. 65-3409, and amendments thereto, may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to a hearing before the secretary of health and environment. Any such person may, within 15 days after service of the order, make written request to the secretary for a hearing thereon. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c) is subject to review in accordance with the Kansas judicial review act.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage, transportation, processing, treatment or disposal of any waste may present a substantial hazard to the health of persons or to the environment or for a threatened or actual violation of this act or rules and regulations adopted pursuant thereto, or any orders issued pursuant thereto, or any permit conditions required thereby, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but not be limited to:

(1) Issuing an order directing the owner, generator, transporter or the operator of the processing, treatment or disposal facility or site, or the custodian of the waste, which constitutes such hazard or threatened or actual violation, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Commencing an action to enjoin acts or practices specified in paragraph (1) or requesting that the attorney general or appropriate district or county attorney commence an action to enjoin those acts or practices or threatened acts or practices. Upon a showing by the secretary that a person has engaged in those acts or practices or intends to engage in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this paragraph (2) shall have precedence over other cases in respect to order of trial.

(3) Applying to the district court in the county in which an order of the secretary under paragraph (1) will take effect, in whole or in part, for an order of that court directing compliance with the order of the secretary. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this paragraph (3) for a court order shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction or permanent injunction shall issue without such allegations and without such proof.

History: L. 1977, ch. 221, § 7; L. 1986, ch. 318, § 100; L. 1988, ch. 356, § 204; L. 1989, ch. 186, § 31; L. 1992, ch. 316, § 7; L. 2010, ch. 17, § 146; July 1.