

65-3453. Authority of secretary concerning clean-up activities. (a) The secretary shall have the power to: (1) Determine that the clean up of a site is necessary to protect the public health or the environment;

- (2) expend and authorize the expenditure of moneys from the environmental response fund;
- (3) issue clean-up orders to persons responsible for the health or environmental hazard created by the hazardous substance;
- (4) recover moneys from persons responsible for the health or environmental hazard created by the hazardous substance;
- (5) assign personnel and equipment necessary to carry out the purpose of this act;
- (6) enter into contracts or agreements with any person or company to conduct the necessary clean-up operations.

(b) Any authorized officer, employee or agent of the department or any person under contract with the department may enter onto any property or premises, at reasonable times and upon written notice to the owner or occupant, to gather data, conduct investigations, or take remedial action where the secretary determines that such action is necessary to protect the public health or environment:

(1) If consent is not granted by the person in control of a site or suspected site regarding any request made by any employee or agent of the secretary 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;

(2) The secretary may ask the attorney general to commence a civil action to compel compliance with a request or order referred to in paragraph (1). Where there is a reasonable basis to believe there may be pollution, the court shall take the following actions:

(A) In the case of interference with entry or investigation, the court shall enjoin such interference or direct compliance with orders to prohibit interference with entry or investigation unless under circumstances of the case the demand for entry or investigation is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) In the case of information or document requests or orders, the court shall enjoin interference with such information or document requests or orders or direct compliance with the requests or orders to provide such information or documents unless under the circumstances of the case the demand for information or documents is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law;

(3) All orders issued hereunder shall be subject to the provisions of K.S.A. 65-3456a and amendments thereto.

(c) The secretary is hereby authorized to adopt any rules and regulations necessary to carry out the provisions of this act.

History: L. 1984, ch. 219, § 2; L. 1988, ch. 256, § 3; July 1.