

2021 Kansas Statutes

65-171v. **Responsibility of cleanup operations for water or soil pollutants; definitions; duties of secretary; recovery of costs by attorney general and disposition thereof; penalties.** (a) As used in this section:

(1) "Cleanup" means all actions necessary to contain, collect, control, identify, analyze, treat, disperse, remove or dispose of a pollutant necessary to restore the environment to the extent practicable and minimize the harmful effects from the release;

(2) "cleanup costs" means all costs incurred by the state during a cleanup of a release of a pollutant, including costs necessary for regulator oversight of the cleanup;

(3) "emergency" means any release that poses an imminent risk to public health or the environment;

(4) "person" means any individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency;

(5) "pollutant" means any substance that alters the natural physical, chemical or biological properties of any waters or soils of the state so as to render such waters or soils harmful, detrimental or injurious to public health, or to the plant, animal or aquatic life of the state or to other designated uses. "Pollutant" does not include any animal or crop waste or manure on an agricultural operation or in an agricultural facility; and

(6) "release" means any threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, escape or dumping of a pollutant into or onto the waters or soil of the state, except when done in compliance with the conditions of a federal or state permit or in accordance with the product label or as part of normal agricultural activities.

(b) For the purpose of preventing water and soil pollution detrimental to public health or the environment, the secretary of health and environment shall:

(1) Adopt rules and regulations that, in the secretary's judgment, are necessary to respond to and report the release of a pollutant;

(2) designate a 24-hour statewide telephone number whereby the notice of any release of a pollutant may be made;

(3) provide minimum reportable quantities;

(4) order a person responsible for the release of a pollutant to perform a cleanup of the release; and

(5) take necessary action to perform a cleanup of a release if the person responsible for the release cannot be identified within a reasonable period of time.

(c) The secretary may:

(1) Provide technical guidance, oversight and assistance to other state agencies, political subdivisions of the state and other persons for the cleanup of and response to the release of a pollutant;

(2) take necessary action to perform a cleanup of a release of a pollutant if a person responsible for the release fails to take reasonable actions required by the secretary to perform a cleanup of the release; and

(3) perform a cleanup of a release of a pollutant if the release poses an emergency.

(d) (1) Whenever a pollutant is released intentionally, accidentally or inadvertently, the person responsible for the release shall be responsible for the cleanup of the release.

(2) The person responsible for the release of any pollutant, regardless of phase or physical state, shall give notice to the department of health and environment when the release exceeds reportable quantities.

(3) The person responsible for the release shall be responsible for repayment of the cleanup costs incurred by the department upon reasonably detailed notice by the secretary

or the secretary's designee. If the responsible party fails to submit payment for costs of the cleanup operations promptly after giving notice, repayment costs shall be recoverable in an action brought by the attorney general in the district court of the county where such costs were incurred.

(e) (1) Upon a finding that a person has violated any provision of this section or rules and regulations or orders adopted hereunder, the secretary may impose a penalty not to exceed \$5,000. In the case of a continuing violation, the maximum penalty shall not exceed \$15,000.

(2) Any moneys recovered under this section shall be remitted to the state treasurer in accordance with K.S.A. 75-4215, and amendments thereto. Upon each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the emergency response activities account in the natural resources damages trust fund established pursuant to K.S.A. 75-5672(f), and amendments thereto.

(3) No penalty shall be imposed except after notice of the violation and an opportunity for a hearing upon the written order of the secretary issued to the person who committed the violation. The order shall state the violation, the penalty to be imposed and the right to request a hearing. The request for a hearing shall be in writing, directed to the secretary and filed with the secretary within 15 calendar days after service of such order. Hearings under this subsection shall be conducted in accordance with the Kansas administrative procedure act.

History: L. 1979, ch. 269, § 2; L. 2001, ch. 5, § 213; L. 2021, ch. 32, § 1; July 1.