

65-34,113. Civil penalties and remedies for violations. (a) Any person who violates any provisions of K.S.A. 65-34,109 or 65-34,110, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation, and in 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 K.S.A. 65-34,109 or 65-34,110, and amendments thereto, may impose a penalty within the limits provided in subsection (a), 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 the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c), (e)(1) or (e)(2) 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 or release of a regulated substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. Operating a storage tank without a permit issued pursuant to K.S.A. 65-34,106, and amendments thereto, shall be deemed to constitute such a hazard. The action the secretary may take shall include, but is not limited to:

(1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.

(3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged 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 subsection shall have precedence over other cases in respect to order of trial.

(4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the Kansas judicial review act. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection 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 be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. 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.

History: L. 1989, ch. 186, § 14; L. 1992, ch. 311, § 8; L. 2003, ch. 12, § 2; L. 2010, ch. 17, § 154; July 1.