

65-7013. Secretary; investigation and cleanup; liability; inspections. (a) The secretary is authorized to: (1) Develop a contract with a hazardous waste response contractor for joint use by the Kansas department of health and environment and the Kansas bureau of investigation to conduct investigation and clean up of chemicals, chemical-contaminated materials, soil, or groundwater resulting from an illegal drug manufacturing site or from an arrest made pursuant to the provisions of this act;

(2) authorize any person to carry out any clean up action in accordance with the directions or requirements of the secretary, if the secretary determines that the person will commence and complete the clean up properly and in a timely manner;

(3) undertake directly or by contract any cleanup action necessary at an alleged illegal drug manufacturing site including the cleanup, storage and disposal of chemicals and chemical contaminated materials located at an alleged illegal drug manufacturing site;

(4) to abate any imminent and substantial danger to the public health, safety or the environment related to a release from an illegal drug manufacturing site;

(5) direct or authorize a person responsible for creating an illegal drug manufacturing site as defined in subsection (b) to conduct a clean up or perform any related actions;

(6) recover moneys expended by the state responding to alleged illegal drug manufacturing sites from persons responsible for creating such sites;

(7) examine and copy records and other information;

(8) enter into any agreements with the director necessary to carry out the provisions of this act; and

(9) request the attorney general to bring an action in any district court to seize property contaminated with chemicals for purposes of clean up, disposal or to enforce any other provision of this act.

(b) The following persons shall be considered responsible for creating an alleged illegal drug manufacturing site and shall be jointly and severally liable for those cleanup costs incurred by the state and for damages for injury to or destruction of any natural resources caused by chemicals at the site: (1) Any person operating an alleged illegal drug manufacturing site;

(2) any owner or operator of an alleged illegal drug manufacturing site who obtained actual knowledge of the alleged illegal drug manufacturing site or damages caused by the site who failed to contact appropriate federal, state or local law enforcement authorities regarding the presence of the site; and

(3) any person who, by any acts or omissions, caused or contributed to the alleged illegal drug manufacturing site, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(c) Except as otherwise provided in subsection (d), the following persons shall not be considered responsible for creating an alleged illegal drug manufacturing site and shall not be liable for those cleanup costs incurred by the state: (1) Any owner or operator who became the owner or operator after the creation of the alleged illegal drug manufacturing site who did not know and reasonably should not have known of the damages when the person first became the owner or operator;

(2) a unit of state or local government that acquired ownership or control of a site by virtue of tax delinquency, abandonment, exercise of eminent domain authority, forfeiture, purchase or condemnation;

(3) any person who is not otherwise responsible under subsection (b) who acquired a site by inheritance or bequest;

(4) a local government as a result of actions taken in response to an emergency created by the chemicals at or generated by or from an alleged illegal drug manufacturing site owned by another person; and

(5) manufacturers, distributors, and retailers who are registered with the state board of pharmacy and acted or failed to act without knowledge of the existence of an illegal drug manufacturing site or without the intent to furnish supplies to an illegal drug manufacturing site.

(d) Notwithstanding the exclusions provided in subsection (c) of this section, such persons shall be liable for cleanup costs incurred by the state to the extent that the person's acts or omissions constituted gross negligence or intentional misconduct.

(e) If any person who is liable under subsection (b) of this section fails without sufficient cause to conduct a cleanup action as required by an order of the secretary, the person shall be liable for the state's cleanup costs.

(f) A local health officer, upon notification by the department or the bureau of the existence of an alleged illegal drug manufacturing site, is authorized to cause an inspection of the property to be conducted to determine the extent of contamination. In those cases where the local health officer does not have the resources or expertise to conduct such an inspection, the secretary is authorized to conduct the inspection.

(g) If the local health officer or the secretary determines that the property where the alleged illegal drug manufacturing site exists is unfit for use due to the extent of contamination, the local health officer or the secretary is empowered to post an order prohibiting use of all or portions of the property. The posting shall be in a conspicuous place on the property.

(h) In those cases where a person responsible for creating an alleged illegal drug manufacturing site fails to conduct a clean up of the site within 60 days of discovery of the site by federal, state or local law enforcement officials, the secretary is authorized to record, in accordance with Kansas law, a notice with the county register of deeds where the property is located that the land has been used to manufacture illegal drugs and that the property contains chemical contamination that may be harmful to the public health, safety or the environment. A notice of release shall be filed upon a showing to the department that the property is no longer harmful to the public health, safety and the environment.

(i) Notwithstanding any other provision of law, the State of Kansas, the department of health and environment and the Kansas bureau of investigation and their officers, employees and agents shall not be liable to a person possessing or owning chemicals located at an alleged illegal drug manufacturing site for any claims or actions arising from the identification, cleanup, storage or disposal of such chemicals by the department.

(j) Upon request of the law enforcement agency in charge after determination of the existence of an alleged illegal drug manufacturing site, any authorized officer, employee or agent of the department or any person under contract with the department may enter onto the premises of any alleged illegal drug manufacturing site, at reasonable times to review information, inspect, examine or gather data, conduct investigations, take remedial or other action where the secretary determines that such action is necessary to protect the public health or the environment.

History: L. 1999, ch. 170, § 19; July 1.