

REMEDIATION STATUTES RELATED TO FINANCIAL ASSURANCE

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68-212-206. Powers and duties of commissioner.

(a) In order to effectuate the purposes of this part, the commissioner is authorized to:

(1) Request any liable or potentially liable party to investigate and identify possible inactive hazardous substance sites, and furnish information relating to possible hazardous substances;

(2) Issue an order to any liable or potentially liable party requiring such party to investigate and identify inactive hazardous substance sites;

(3) Issue an order to any liable or potentially liable party requiring such party to contain, clean up, monitor and maintain inactive hazardous substance sites;

(4) Inspect and copy at reasonable times any records, reports, test results, or other information relating to inactive hazardous substance sites;

(5) Enter, pursuant to § 68-212-216, any place where hazardous substance or substances which the commissioner has reason to believe may be hazardous, are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled;

(6) Inspect and obtain samples of any substance which the commissioner has reason to believe may be hazardous, samples of any containers or labeling for such hazardous substance, and samples of ambient air, waters, or soil at the hazardous substance site or at any other property which must be entered in order to reach the hazardous substance site;

(7) Perform or cause to be performed all other actions necessary to carry out this part; and

(8) Delegate to the director of the division of superfund any of the powers, duties, and responsibilities of the commissioner under this part.

(b) In the event that any identified liable party or parties are unable or unwilling to provide for the investigation, identification, or for the reasonable and safe containment and clean up, including monitoring and maintenance, pursuant to an order issued under this section, or no such liable party can reasonably be identified by the commissioner, the commissioner may provide for such actions whether or not the site has been listed pursuant to subsection (e).

(c) If, at any time, the commissioner, after investigation, finds that an inactive hazardous waste substance site constitutes an imminent, substantial danger to the public health, safety or environment, the commissioner may undertake such actions as are necessary to abate the

imminent and substantial danger. Such actions may be taken whether or not the site has been listed pursuant to subsection (e).

(d) (1) In selecting containment and clean up actions, including monitoring and maintenance, under this section, the commissioner shall evaluate reasonable alternatives and select those actions which the commissioner determines are necessary to protect public health, safety, and the environment. The goal of any such action shall be clean up and containment of the site through the elimination of the threat to the public health, safety, and the environment posed by the hazardous substance. In choosing the necessary actions at each site, the commissioner shall consider the following factors:

(A) The technological feasibility of each alternative;

(B) The cost-effectiveness of each alternative;

(C) The nature of the danger to the public health, safety, and the environment posed by the hazardous substance at the site; and

(D) The extent to which each alternative would achieve the goal of this subsection (d).

(2) To the extent practicable, any such containment and clean up, including monitoring and maintenance, shall be consistent with the national contingency plan promulgated pursuant to § 105 of Public Law 96-510, 42 U.S.C. § 9605.

(e) Whenever necessary to protect the public health, safety, or the environment, but at least annually, the commissioner shall propose and the board shall promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, any necessary revisions to the list of those inactive hazardous substance sites within the state that are eligible for investigation, identification, containment, and clean up, including monitoring and maintenance, and that pose or may reasonably be anticipated to pose a danger to public health, safety or the environment. An inactive hazardous substance site which has been identified as a solid waste management unit and is subjected to a requirement for investigation and/or for corrective action pursuant to § 3004(u) of the Resource Conservation and Recovery Act (RCRA), codified in 42 U.S.C. § 6924(u), and which requirements are included in a facility permit issued pursuant to RCRA shall not be proposed by the commissioner for addition to the list of sites eligible for investigation, identification, containment and clean up under this part. An inactive hazardous substance site listed under this part which subsequently becomes subject to a requirement, as previously described under § 3004(u), codified in 42 U.S.C. § 6924(u), shall be removed from the list by the board pursuant to a proposal which shall be made by the commissioner.

(f) A program of waste reduction and pollution prevention is established in the office of the commissioner to encourage hazardous waste generators to reduce the volume and toxicity of hazardous waste generated in Tennessee. The commissioner is authorized to carry out the functions of § 68-212-205(d).

68-212-215. Enforcement.

(a) The commissioner shall exercise general supervision over the administration and enforcement of this part.

(b) The commissioner is authorized in administering this part, to utilize enumerated powers in chapter 211 of this title and part 1 of this chapter, to investigate, identify, and provide for reasonable and safe containment and clean up, including monitoring and maintenance, of inactive hazardous substance sites.

(c) If any provision of this part is not being carried out, or if effective measures are not being taken to comply with provisions of this part, the commissioner may issue an order for correction to the appropriate person, and this order shall be complied with within the time limit specified in the order. Such order shall be made by personal service or shall be sent by registered mail. Additionally, an order requiring the filing of land use restrictions, issued pursuant to § 68-212-225, may be constructively served on unidentified or unknown owners by publication of a notice of the order in a newspaper in general circulation in the county in which the property subject to the order is located.

(d) Any person against whom an order is issued may secure a review in accordance with § 68-212-113 and the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3. Any person failing, neglecting, or refusing to comply with any order of the commissioner or the board shall be subject to the civil and criminal penalties provided in § 68-212-213.

(e) In addition to any other enumerated powers in chapter 211 of this title and part 1 of this chapter, the board is empowered to adopt and enforce rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement this part, to hear appeals from orders or assessments issued by the commissioner pursuant to this part, and to issue orders for enforcement of this part.

(f) (1) Whenever any order or assessment under this section has become final, a notarized copy of the order or assessment may be filed in the office of the clerk of the chancery court of Davidson County.

(2) When filed in accordance with subdivision (f)(1), a final order or assessment shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited therein. Such judgment shall be promptly entered by the court. Except as otherwise provided in this section, the procedure for entry of the judgment and the effect thereof shall be the same as provided in title 26, chapter 6.

(3) (A) A judgment under subdivision (f)(2) shall become final on the date of entry, if the final order or assessment resulting in the judgment is from the board.

(B) If the final order or assessment resulting in the judgment under subdivision (f)(2) is from the commissioner, within forty-five (45) days after entry of the judgment, any citizen shall have

the right to intervene on the ground that the penalties or remedies provided are inadequate or are based on erroneous findings of facts. Upon receipt of a timely motion for intervention, the court shall determine whether it is duplicitous or frivolous, and shall notify the movant and the parties of its determination. If the motion is determined not to be duplicitous or frivolous, all parties shall be considered to have sought review of the final order or assessment, and the court shall proceed in accordance with § 4-5-322. If no timely motion for intervention is filed, or if any such motion is determined to be duplicitous or frivolous, the judgment shall become final forty-five (45) days after the date of entry.

(4) A final judgment under this subsection (f) has the same effect, is subject to the same procedures, and may be enforced or satisfied in the same manner, as any other judgment of a court of record of this state.