

353.563 Cabinet's authority to enter property for removal or reclamation of abandoned storage tank facility.

- (1) The cabinet and its authorized representatives, agents, and contractors shall have the right and authority to enter upon property threatened by an abandoned storage tank facility and to access any other property for the purpose of removal and reclamation of the abandoned storage tank facility if the cabinet makes a finding of fact that:
 - (a) An abandoned storage tank facility poses a threat to human health, safety, and the environment under KRS 353.562(4)(b) and is eligible to be enrolled in the Kentucky Abandoned Storage Tank Reclamation Program;
 - (b) The cabinet determines that action in the public interest should be taken to dispose of the abandoned storage tank facilities and to reclaim the lands threatened by the abandoned storage tank facilities; and
 - (c)
 1. The owner or owners of the property are not known or are not readily available; or
 2. The owner or owners will not give permission for the Commonwealth, political subdivisions, or their agents, employees, or contractors to enter upon the property.
- (2) Prior to entry on the land for the purpose of conducting remediation, the cabinet shall give notice by mail to the all owners of the property, if known. If the owners are unknown, then the cabinet shall post notice upon the premises and shall advertise once in a newspaper of general circulation in the municipality or county in which the land where the abandoned storage tank facilities are located.
- (3) Additionally, the cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon any property for the purpose of conducting field inspections or investigations to determine the existence and status of abandoned storage tank facilities and to determine the feasibility of removal and reclamation of the abandoned storage tank facility.
- (4) Entry upon the land under this section shall be construed as an exercise of the Commonwealth's police power for the protection of the public health, safety, and general welfare. Entry shall not be construed as an act of condemnation of property or of trespass thereon.
- (5) The cabinet may initiate, in addition to any other remedies provided in KRS Chapter 353, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work authorized under this section and KRS 353.561, 353.562, and 353.564.
- (6) Any person who intends to remove an abandoned storage tank facility shall:
 - (a) Notify the cabinet before undertaking the removal;
 - (b) Do so at his or her own risk and expense; and
 - (c) Bear sole responsibility for complying with all applicable local, state, and federal laws and regulations during the removal, disposal, and reclamation of the site.

- (7) Nothing in this section shall be construed as an additional grant of authority for any person or entity other than the cabinet or the cabinet's agents to take action under this section and KRS 353.561, 353.562, and 353.564.

Effective: June 24, 2015

History: Created 2015 Ky. Acts ch. 21, sec. 3, effective June 24, 2015.