

**353.564 When owner or prior owner deemed to have waived certain rights -- Cabinet's authority to recover actual and necessary expenses incurred in implementing KRS 353.561 to 353.564 -- Cabinet's powers when seeking cost-efficiency or public benefit -- Administrative regulations.**

- (1) (a) Any prior owner or the surface owner shall be deemed to have waived any right to any equipment or product remaining at the site of an orphan well or abandoned storage tank facility at the time of plugging, removal, or reclamation by the cabinet or its contractors pursuant to this section or KRS 353.561, 353.562, or 353.563 because of the abandonment or neglect of the facility being plugged, removed, or reclaimed with public moneys from the Kentucky abandoned storage tank and orphan well reclamation fund established in KRS 353.562.
- (b) Pursuant to paragraph (a) of this subsection, the cabinet or its agents may include as part of the plugging, removal, reclamation or remediation contract all equipment or products removed from that orphan well or abandoned storage tank facility for sale, recycling, or disposal.
- (2) The cabinet shall have the authority to recover actual and necessary expenditures, including administrative costs, reasonably incurred in carrying out the duties of this section and KRS 353.561, 353.562, and 353.563 from:
  - (a) The last owner or operator of record of the abandoned storage tank facility where fund moneys were expended; and
  - (b) Any other party legally responsible for causing or contributing to a threat to human health, safety, and the environment that the Commonwealth incurred as costs or expenses under this section and KRS 353.561, 353.562, and 353.563.
- (3) The cabinet may initiate an action for reimbursement of costs in any court of competent jurisdiction. The recovery of any costs under this section and KRS 353.563 shall be credited to the Kentucky abandoned storage tank and orphan well reclamation fund except for recovered administrative costs which shall be retained by the cabinet.
- (4) The cabinet may not seek reimbursement from the landowner for costs incurred under this section and KRS 353.563 unless the landowner qualifies as the last known owner or operator under subsection (2)(a) of this section or caused or contributed to a threat under subsection (2)(b) of this section.
- (5) (a) Expenditures of moneys from the fund for the purposes established in KRS 353.562(5) and (6) shall be prioritized in the following order:
  1. Eligible wells and abandoned storage tank facilities that are an imminent threat to human health, safety, or the environment;
  2. Abandoned storage tank facilities and orphan wells that could pose a threat to human health, safety, or the environment as evidenced by the proximity to structures, streams, rivers, water bodies, or other sensitive areas; and
  3. Abandoned storage tank facilities and orphan wells that could pose a

potential threat to human health, safety, or the environment.

- (b) The cabinet may address any abandoned storage tank facility or eligible well, regardless of priority, if doing so would be cost-efficient or otherwise create a demonstrable benefit for the public at large.
- (c) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A in order to provide further detail related to the ranking of wells and abandoned storage tank facilities for plugging, removal, remediation, and reclamation.

**Effective:** June 27, 2019

**History:** Amended 2019 Ky. Acts ch. 21, sec. 4, effective June 27, 2019. -- Created 2015 Ky. Acts ch. 21, sec. 4, effective June 24, 2015.