

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

- (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 or improperly abandoned well and to access any other property for the purpose of plugging and reclaiming an improperly abandoned well or the removal and reclamation of the abandoned storage tank facility if the cabinet makes a determination that:
 - (a) An abandoned storage tank facility or improperly abandoned well poses an imminent threat to human health, safety, or the environment under KRS 353.562(5)(b)3.;
 - (b) Action should be taken in the public interest to dispose of the abandoned storage tank facilities or to properly plug and abandon the well and to reclaim the lands threatened by the abandoned storage tank facilities or the well; 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 plugging or remediation operations, the cabinet shall give notice by mail to the all owners of the surface 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 well or abandoned storage tank facilities are located. The advertisement shall occur at least seven (7) days prior to entry unless exigent circumstances exist necessitating the cabinet or its agents, employees, or contractors to enter upon the property as soon as possible in order to mitigate or prevent an imminent threat to human health, safety or the environment.
- (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:
 - (a) Existence and status of eligible wells and abandoned storage tank facilities; and
 - (b) Feasibility of plugging, remediation, removal, and reclamation of the eligible well or 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 27, 2019

History: Amended 2019 Ky. Acts ch. 21, sec. 3, effective June 27, 2019. -- Created 2015 Ky. Acts ch. 21, sec. 3, effective June 24, 2015.