

455B.418 Enforcement.

1. If the director has substantial evidence that a person has violated or is violating a provision of sections 455B.411 to 455B.421, or of a rule or standard established or permit issued pursuant to sections 455B.411 to 455B.421:

a. The director may issue an order directing the person to desist in the practice that constitutes the violation or to take corrective action as necessary to ensure that the violation will cease. The person to whom the order is issued may commence a contested case within the meaning of chapter 17A by filing with the director within thirty days of receipt of the order a notice of appeal to the commission. On appeal, the commission may affirm, modify or vacate the order of the director.

b. If it is determined by the director that an emergency exists, the director may issue without notice or hearing an order necessary to terminate the emergency. The order shall be binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a court. "*Emergency*" as used in this subsection means a situation where the handling, storage, treatment, transportation or disposal of a hazardous waste is presenting an imminent and substantial threat to human health or the environment.

c. When the director determines that a disposal site contains hazardous waste in an amount and under conditions that cause an imminent threat to human health and that the person responsible for the site will not properly and promptly remove the waste or eliminate the threat, the director may take action as necessary to remove the waste or permanently alleviate or eliminate the threat to human health. The costs of removing the waste or alleviating or eliminating the threat shall be recovered from the person responsible for the disposal site.

d. The director with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to subsection 2 of this section.

2. The attorney general shall, at the request of the director pursuant to paragraph "*d*" of subsection 1 of this section, institute legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of sections 455B.411 to 455B.421 or to obtain compliance with said sections or a rule promulgated or a condition of a permit or order issued under said sections.

3. In a case arising from the violation of an order issued under subsection 1, paragraph "*a*" of this section, the burden of proof shall be on the state to show that the time specified in the order within which the individual must take corrective action is reasonable.

4. For the purpose of determining violations under this section and section 455B.417, the term "*person*" does not include a person who holds indicia of ownership in the hazardous waste or hazardous substance disposal site which contains a hazardous waste or hazardous substance, or where hazardous substances or wastes are treated, stored, or disposed of, if such person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the disposal site, whether or not the director has determined that such disposal site constitutes a hazardous condition site.

[C81, § 455B.137; 81 Acts, ch 151, § 911]

C83, § 455B.418

86 Acts, ch 1245, § 1899; 93 Acts, ch 42, §4

Footnotes

Partial suspension; applicability; 2000

Acts, ch 1073, § 1