

224.1-526 Corrective action plan completion report -- Review by cabinet -- Issuance and effect of covenant not to sue.

- (1) Upon full performance of an approved corrective action plan, the applicant shall submit for the cabinet's review, by the deadline agreed upon by the parties, a corrective action completion report, and shall certify therein that the applicant has successfully completed remediation in compliance with the approved corrective action plan.
- (2) The cabinet shall review the corrective action completion report in the same manner as it reviewed the corrective action plan.
- (3) The cabinet may conduct its own investigation including but not limited to its own characterization to verify that remediation has been completed in compliance with the approved corrective action plan. The reasonable actual and necessary costs of this verification shall be considered oversight costs reimbursable under KRS 224.1-518(2)(c). Any confirmatory sampling by the cabinet shall be completed within the deadline agreed to by the parties.
- (4) If the cabinet determines that no further remediation is required under the approved corrective action plan, and upon the applicant's payment of the cabinet's costs for review and oversight of the remediation, the cabinet shall issue the applicant a covenant not to sue.
- (5) With respect to the releases identified in the corrective action plan, the covenant not to sue shall preclude any suit or claim by the Commonwealth for the prosecution of civil or administrative enforcement action against the applicant for failure to perform remediation under KRS 224.1-400, 224.1-405, any administrative regulations promulgated under these statutes, or the Federal Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. sec. 9601 et seq., for injunctive relief, lien assertion, reimbursement of costs, or civil penalties imposed under KRS 224.99-010 for failure to perform remediation under KRS 224.1-400 or 224.1-405 and any administrative regulations promulgated under these statutes.
- (6) The covenant not to sue shall be in recordable form, and shall be recorded by the applicant, along with all deed restrictions and institutional controls approved by the cabinet, among the real estate records in the office of the county clerk where the property is located, within thirty (30) days of issuance by the cabinet. The cabinet shall have the authority and duty to enforce any restrictive covenants or institutional controls with respect to the applicant and all subsequent landowners. The covenant shall not be effective until it is recorded and a certified copy of the record instrument is delivered to the cabinet. The covenant shall not be effective with respect to any assignees, transferees, or successors until the requirements of the agreed order and the corrective action plan are incorporated as restrictions in the deed or other transfer instrument that is recorded and a certified copy of the record instrument is delivered to the cabinet.
- (7) The covenant not to sue shall not apply to:
 - (a) Releases other than those expressly identified in the corrective action plan;

- (b) Claims based on the failure of the applicant, or the failure of any successive landowner as applicable, to comply with a requirement of KRS 224.1-510 to 224.1-532, the agreed order, the approved corrective action plan, or the approved corrective action completion report, including any required land use restrictions and engineering or institutional controls;
 - (c) Liability resulting from the applicant's exacerbation of the releases identified in the corrective action plan;
 - (d) Criminal liability;
 - (e) Petroleum storage tanks;
 - (f) Claims or liability based on or resulting from misrepresentations or intentional omissions by the applicant;
 - (g) Liability for any conditions at the site that were not known to the cabinet when the cabinet approved the corrective action plan or the corrective action completion report, provided those conditions prevent the remediation from being protective of human health, safety, and the environment;
 - (h) Claims based on changes in the development of scientific knowledge, as reflected in published peer-reviewed health or environmental standards, that indicate that the remediation is no longer protective of human health, safety, and the environment;
 - (i) An environmental emergency as defined in KRS 224.1-400;
 - (j) Any cabinet action for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release pursuant to the Federal Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. sec. 9601 et seq.; and
 - (k) Any administrative or civil action by the cabinet not expressly identified in subsection (5) of this section.
- (8) Subject to subsection (7) of this section, the issuance of a covenant not to sue for a brownfield site, as defined in 42 U.S.C. sec. 9601(39), shall preclude any suit or claim under state law to compel the performance of remediation in excess of that required in the approved corrective action plan.
- (9) Subsection (8) of this section shall not be construed to limit:
- (a) Appeals of final cabinet orders and determinations as provided for in this chapter;
 - (b) Actions against the cabinet to compel compliance with the terms of the corrective action plan; or
 - (c) The availability of remedies to persons, other than the cabinet, for injury to property or person.

Effective: July 12, 2006

History: Amended 2006 Ky. Acts ch. 125, sec. 2, effective July 12, 2006. -- Created 2001 Ky. Acts ch. 128, sec. 9, effective June 21, 2001.

Formerly codified as KRS 224.01-526.