

Provisions of the "Kansas Emergency Management Act" [K.S.A. 48-929(d)], require each county to prepare and maintain an emergency plan for the area under its jurisdiction. Pursuant to provisions of K.S.A. 65-5703(f), the State Emergency Response Commission has designated each county as a planning district to fulfill the comprehensive emergency response planning requirements of SARA, Title III. Any knowing and willful violation of any provision of the "Kansas Emergency Management Act," including any rule or regulation of the Adjutant General or any order or proclamation issued under the act, shall constitute a Class A misdemeanor, as specified by K.S.A. 48-939.

Major General Tod M. Bunting
The Adjutant General

SARA

Title III

"Enforcement"



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State of Kansas
Division of Emergency Management
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ENFORCEMENT

Enforcement of the "Superfund Amendments and Reauthorization Act of 1986" (SARA), Title III, is complimented by Kansas statutes.

Sections 325 and 326 of the federal law authorize and prescribe enforcement procedures, including imposition of:

(a) civil, administrative and criminal penalties on facility owners/operators who fail to comply with emergency notification requirements (Section 304) when an accidental or unplanned release of a hazardous substance occurs; (b) criminal penalties on any person who knowingly and willfully fails to provide emergency notification pursuant to Section 304;

(c) civil penalties on facility owners or operators who fail to comply with emergency planning requirements (Section 303); (d) civil and administrative penalties on facility owners or operators who fail to comply with reporting requirements (Sections 311, 312 and 313); (e) civil and administrative penalties for trade secret claims that are ruled frivolous; and

(f) criminal penalties for disclosure of trade secret information.

Penalties

Depending on the nature of the violation, penalties may be imposed as fines or imprisonment, or both. Limits on fines

range from \$25,000 per day to \$75,000 per day for the duration of the violation. Limits on imprisonment range from two years to five years.

Authority of the Secretary of Health and Environment, the Adjutant General, the Attorney General or district court to enforce provisions of the federal act are specified in Kansas statute (K.S.A. 65-5708). The statute provides authority to: (a) order a facility owner or operator to comply with provisions of the planning process [Sections 302(c) or 303(d)] and assess a civil penalty for the initial day and each day the violation or failure to comply with the order continues; (b) assess a civil penalty for the initial day and each continuing day of violation of emergency notification provisions (Section 304);

(c) assess a civil penalty for the initial day and each continuing day of violation of reporting provisions (Sections 312 and 313) or denial of access to inspect premises and records for determining compliance with federal and State Law; and (d) assess a civil penalty for the initial day and each continuing day of violation of MSDS requirements (Sections 311 and 323(b)).

Kansas statute [K.S.A. 65-5708(e)] authorizes the Secretary of Health and Environment to impose a monetary penalty for late payment of fees

associated with reporting inventory of hazardous substances (Section 311).

Any health care professional entitled to information pursuant to Section 323 of the federal law may initiate action in state district court to order needed information to be made available [K.S.A. 65-5708(t)].

If the Secretary of Health and Environment, the Adjutant General or the Attorney General request a county or district attorney to initiate action to obtain a civil penalty authorized by K.S.A. 65-5708, one-half of any penalty recovered by such action shall be paid to the county treasurer for deposit in the county treasury and credit to the county general fund.

Kansas Statute (K.S.A. 65-5709) stipulates that violation of the emergency notification provisions of the federal law (Section 304) is a felony. This felony is punishable by a fine of not more than \$25,000 or imprisonment for not more than two years, or both, for the first conviction. The second and each subsequent conviction is punishable by a fine of not more than \$50,000 or imprisonment for not more than five years, or both.