GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

HOUSE BILL NO. 408

AS ENACTED

THURSDAY, MARCH 23, 2006

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to environmental protection.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 Section 1. KRS 224.20-300 is amended to read as follows:
2 For the purpose of adopting the Asbestos Hazard Emergency Response Act, called
3 AHERA, Public Law (99-519), as amended, the ***cabinet***~~[Department of Environmental~~
4 ~~Protection, Division for Air Quality,]~~ may develop, adopt, and maintain a comprehensive
5 statewide asbestos assessment and response program and an accreditation program that
6 shall replicate the federal environmental protection agency model plan issued April 30,
7 1987 and the provisions of Title 40 of the Code of Federal Regulations, Part 763, Subpart
8 E. The programs shall include, but not be limited to:
9 (1) Identifying and controlling asbestos hazards in public and private schools, grades K-
10 12;
11 (2) Providing for accreditation of asbestos inspectors, management planners, abatement
12 project designers, abatement contractors, supervisors, and abatement workers;
13 (3) Reviewing training courses to determine if they are approvable under the criteria
14 established in the April 30, 1987 model plan and any other criteria adopted by the
15 ***cabinet***~~[Division for Air Quality]~~; and
16 (4) Reviewing school asbestos management plans and inspecting school buildings for
17 compliance with this section.
18 Section 2. KRS 224.01-526 is amended to read as follows:
19 (1) Upon full performance of an approved corrective action plan, the applicant shall
20 submit for the cabinet's review, by the deadline agreed upon by the parties, a
21 corrective action completion report, and shall certify therein that the applicant has
22 successfully completed remediation in compliance with the approved corrective
23 action plan.
24 (2) The cabinet shall review the corrective action completion report in the same manner
25 as it reviewed the corrective action plan.

1 (3) The cabinet may conduct its own investigation, including, but not limited to, its
2 own characterization to verify that remediation has been completed in compliance
3 with the approved corrective action plan. The reasonable actual and necessary costs
4 of this verification shall be considered oversight costs reimbursable under KRS
5 224.01-518(2)(c). Any confirmatory sampling by the cabinet shall be completed
6 within the deadline agreed to by the parties.
7 (4) If the cabinet determines that no further remediation is required under the approved
8 corrective action plan, and upon the applicant's payment of the cabinet's costs for
9 review and oversight of the remediation, the cabinet shall issue the applicant a
10 covenant not to sue.
11 (5) With respect to the releases identified in the corrective action plan, the covenant not
12 to sue shall preclude ***any suit or claim by the Commonwealth for*** the[~~ cabinet's~~]
13 prosecution of civil or administrative enforcement action against the applicant for
14 failure to perform remediation under KRS 224.01-400, 224.01-405, any
15 administrative regulations promulgated under these statutes, or the Federal
16 Comprehensive Environmental Response Compensation and Liability Act as
17 amended, 42 U.S.C. sec. 9601 et seq., for injunctive relief, lien assertion,
18 reimbursement of costs, or civil penalties imposed under KRS 224.99-010 for
19 failure to perform remediation under KRS 224.01-400 or 224.01-405 and any
20 administrative regulations promulgated under these statutes.
21 (6) The covenant not to sue shall be in recordable form, and shall be recorded by the
22 applicant, along with all deed restrictions and institutional controls approved by the
23 cabinet, among the real estate records in the office of the county clerk where the
24 property is located, within thirty (30) days of issuance by the cabinet. The cabinet
25 shall have the authority and duty to enforce any restrictive covenants or institutional
26 controls with respect to the applicant and all subsequent landowners. The covenant
27 shall not be effective until it is recorded and a certified copy of the record

1 instrument is delivered to the cabinet. The covenant shall not be effective with
2 respect to any assignees, transferees, or successors until the requirements of the
3 agreed order and the corrective action plan are incorporated as restrictions in the
4 deed or other transfer instrument that is recorded and a certified copy of the record
5 instrument is delivered to the cabinet.
6 (7) The covenant not to sue shall not apply to:
7 (a) Releases other than those expressly identified in the corrective action plan;
8 (b) Claims based on the failure of the applicant, or the failure of any successive
9 landowner as applicable, to comply with a requirement of KRS 224.01-510 to
10 224.01-532, the agreed order, the approved corrective action plan, or the
11 approved corrective action completion report, including any required land use
12 restrictions and engineering or institutional controls;
13 (c) Liability resulting from the applicant's exacerbation of the releases identified
14 in the corrective action plan;
15 (d) Criminal liability;
16 (e) Petroleum storage tanks;
17 (f) Claims or liability based on or resulting from misrepresentations or intentional
18 omissions by the applicant;
19 (g) Liability for any conditions at the site that were not known to the cabinet when
20 the cabinet approved the corrective action plan or the corrective action
21 completion report, provided those conditions prevent the remediation from
22 being protective of human health, safety, and the environment;
23 (h) Claims based on changes in the development of scientific knowledge, as
24 reflected in published peer-reviewed health or environmental standards, that
25 indicate that the remediation is no longer protective of human health, safety,
26 and the environment;
27 (i) An environmental emergency as defined in KRS 224.01-400;

1 (j) Any cabinet action for damages for injury to, destruction of, or loss of natural
2 resources, including the reasonable costs of assessing such injury, destruction,
3 or loss resulting from such a release pursuant to the Federal Comprehensive
4 Environmental Response Compensation and Liability Act as amended, 42
5 U.S.C. sec. 9601 et seq.; and
6 (k) Any administrative or civil action by the cabinet not expressly identified in
7 subsection (5) of this section.
8 ***(8) Subject to subsection (7) of this section, the issuance of a covenant not to sue for***
9 ***a brownfield site, as defined in 42 U.S.C. sec. 9601(39), shall preclude any suit or***
10 ***claim under state law to compel the performance of remediation in excess of that***
11 ***required in the approved corrective action plan.***
12 ***(9) Subsection (8) of this section shall not be construed to limit:***
13 ***(a) Appeals of final cabinet orders and determinations as provided for in this***
14 ***chapter;***
15 ***(b) Actions against the cabinet to compel compliance with the terms of the***
16 ***corrective action plan; or***
17 ***(c) The availability of remedies to persons, other than the cabinet, for injury to***
18 ***property or person.***

Jody Richards
Speaker-House of Representatives

President of the Senate

Attest: Sean C. Durgin
Chief Clerk of House of Representatives

Approved Edwin Fletcher
Governor

Date 4/4/06