

Access to Property

324.XXXXX Access to public or private property; purposes; duties of person entering public or private property; copies of sample analyses, photographs, or videotapes; completion of inspections and investigations; transfer of interest in property; refusing entry; administrative penalty; power of attorney general; injunction; civil fine; action by court.

- (1) The directors or their authorized representatives have the right to enter at all reasonable times any public or private property for any of the following purposes:
 - (a) Investigating the existence, origin, nature, or extent of environmental contamination.
 - (b) Identifying and investigating a release, suspected release, threat of release, or a facility.
 - (c) Inspecting, testing, taking photographs or videotapes, or sampling of any of the following: soils, air, surface water, groundwater, suspected hazardous substances, or the contents of any containers or labels of suspected hazardous substances.
 - (d) Requiring, supervising or conducting the testing of a container, including its associated equipment, or the contents of the container.
 - (e) Determining the need for or selecting any response activity.
 - (f) Taking or monitoring implementation of any response activity.
 - (g) Inspecting or copying any information required to be furnished pursuant to section xxxxx [*Document Retention/Access to Information*].
 - (h) Assessing the quality control and quality assurance procedures of all laboratories utilized by a person conducting response activity under this part, including but not limited to inspecting or copying all information relating to analysis of quality control and quality assurance samples collected at the property.
- (2) A person that enters public or private property pursuant to subsection (1) shall present credentials; make a reasonable effort to contact the person in charge at the property; describe the nature of the activities authorized under subsection (1) to be undertaken; and inform the person that is in charge at the property that he or she is entitled to participate in the collection of split samples, and is entitled to a copy of the results of any analysis of samples and a copy of any photograph or videotape taken. The person in charge or his or her agent may accompany the directors or their authorized representatives during the activities authorized under subsection (1) that take place and may participate in the collection of any split samples on the property. The absence or unavailability of a person in charge at that property or that person's agent shall not delay or limit the authority of the directors or their authorized representatives to enter the property or proceed with the activities authorized under subsection (1).
- (3) If the directors or their authorized representatives obtain any samples, before leaving the property they shall give to the person in charge at the property from which the samples were obtained a receipt describing the sample. A copy of the results of any analysis of the samples shall, upon request, be furnished promptly to the owner or operator of the property. A copy of any photograph or videotape taken pursuant to subsection (1)(c) shall upon request be furnished promptly to the person in charge.
- (4) All inspections and investigations undertaken by the directors or their authorized representatives under this section shall be completed with reasonable promptness.

- (5) Access to property by the directors or their authorized representatives in conformance with this section, shall not constitute a cause of action, either civil or criminal, for trespass, compensation for access, or damages, except for damages for the lost use of the property or the loss, injury or deterioration of the property or appurtenances to the property, which directly result from the access and are not reasonably repaired upon completion of the activities necessitating the access.
- (6) Prior to expiration or transfer of an interest in real property upon which a facility is located, a person who is liable under this part shall secure and maintain, or petition the court for a legal right to access the property in a form that runs with the land, for purposes of conducting the response activity required under this part subsequent to the transfer of interest.
- (7) Beginning on the effective date of the part, the department may impose a penalty pursuant to section xxxxx [*Administrative Actions – State; Penalties*] on any person who refuses to allow entry under subsection (1) or fails to satisfy the obligations under subsection (6).
- (8) If the directors or their authorized representatives are refused entry under subsection (1), for the purposes of enforcing the entry authority provided in this section, the attorney general, on behalf of the state, may do either of the following:
 - (a) Petition the court of appropriate jurisdiction for a warrant authorizing access to any private or public property pursuant to this section.
 - (b) Commence a civil action to compel compliance with a request for entry pursuant to this section, to authorize entry provided for in this section, and to enjoin interference with the exercise of the authority provided in this section.
- (9) In a civil action brought pursuant to subsection (8), if there is a reasonable basis to believe there may be a release, threatened release, suspected release, or existence of a facility, the court shall in the case of interference or noncompliance with entry requests pursuant to subsection (1), enjoin interference with and direct compliance with the requests unless the defendant establishes that, under the circumstances of the case, the request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.
- (10) In a civil action brought pursuant to subsection (8), if there is a reasonable basis to believe there may be a release, threatened release, suspected release, potential for release or existence of a facility, the court may assess a civil fine not to exceed \$25,000.00 for each day of noncompliance against a person that unreasonably fails to comply with subsection (1).
- (11) A person other than the directors seeking access to property to conduct response activity under this part may file a petition in the circuit court of the county in which the property is located. If the court grants access to property under this section, the court may do any of the following:
 - (a) Provide equitable compensation to the property owner or operator for the loss or diminution in property use or value and damages for the incidental or consequential injury to the property or improvements on the property resulting from the granting of access to the property.
 - (b) Enjoin interference with the response activities.
 - (c) Grant any other appropriate relief determined by the court to be equitable.

- (12) In determining appropriate compensation under subsection (11), the court shall consider the property owner's obligations under this part.
- (13) If a court grants access to property under subsection (11), the owner or operator of the property to which access is granted is not liable for either of the following:
- (a) A release caused by the response activity for which access is granted unless the owner or operator is otherwise liable under this part.
 - (b) Conditions attributable to the response activity conducted by the person to whom access was granted.
- (14) A person who seeks access under subsection (11) shall not be presumed to be liable solely on the basis of seeking access.