

353.455 Noncompliance with, or failure to abate violations of, KRS 353.411 to 353.459 -- Penalties -- Orders -- Actions -- Venue.

- (1)
 - (a) If a person or operator fails to comply with the requirements of KRS 353.411 to 353.459 or any administrative regulation or order promulgated or issued thereunder, the cabinet shall issue a notice of noncompliance to the person or operator and serve the notice in accordance with subsection (5) of this section. The notice shall specify the nature of the violation, the remedial action required to abate the violation, and the period of time set by the cabinet for abatement of the violation.
 - (b) If a person or operator fails to abate the violation within the time prescribed in the notice, the cabinet shall issue a failure to abate cessation order to the person or operator and serve the notice in accordance with subsection (5) of this section. The order shall:
 1. Require the person or operator to immediately complete remedial actions to abate the violation described in the notice and to cease any underground injection activity at the sequestration facility or site where the violation is occurring; and
 2. Remain in effect until the violation has been abated or the order is vacated or terminated in writing by the cabinet.
 - (c) The cabinet shall issue a forfeiture order and order the financial responsibility instruments covering the sequestration facility be forfeited to the cabinet if:
 1. An agreement has not been reached with the cabinet regarding the alleged failure to comply with the notice to abate the violation; and
 2. The director determines the operator has not complied with the requirements set forth in the notice of noncompliance or the failure to abate cessation order.
 - (d) The forfeiture order shall become effective thirty (30) days after the cabinet gives the operator notice of the order, unless a petition has been filed pursuant to KRS 353.700, in which case the forfeiture order shall become effective only upon a final determination of the secretary affirming the forfeiture order following the conclusion of the petition process.
- (2)
 - (a) In addition to a notice of noncompliance or failure to abate cessation order issued pursuant to subsection (1) of this section, the cabinet may issue a closure order to any person or operator where:
 1. A sequestration facility is in violation of KRS 353.411 to 353.459 or any administrative regulation or order promulgated or issued thereunder, and the violation creates an imminent danger to the health or safety of the public or is causing or can be reasonably expected to cause significant imminent environmental harm; or
 2. A sequestration facility is in operation by any person without first posting financial responsibility and obtaining written approval of the cabinet.
 - (b) The closure order shall be affixed by a red tag marker at the conspicuous location at the facility with a letter of violation and a copy of the closure order

mailed to the address of record for the responsible person or operator, if an address is on file with the cabinet. The letter of violation and closure order shall notify the person or operator to immediately:

1. Cease operation of the sequestration facility; and
 2. Abate the violation.
- (c) Any person operating a sequestration facility under the circumstances described in paragraph (a)2. of this subsection may be ordered to either submit financial responsibility and obtain transfer of the facility or complete final reclamation and site closure for the facility, but the order does not relieve any prior obligation owed by the current operator of record. The closure order may be appealed pursuant to KRS 353.700 within thirty (30) days of issuance. Any person or operator that fails to comply with a closure order issued pursuant to this section shall be subject to a civil and criminal penalty under KRS 353.990.
- (3) (a) A copy of:
1. All enforcement documents under this section shall be served on the surface and pore space owner, if they are different from the property owner, where the violation occurred; and
 2. The notice, at the time of issuance, shall be delivered to the complaining party if he or she is different from the operator, and if the enforcement document arises out of a citizen complaint.
- (b) Resolution of the enforcement action issued under this section shall require reimbursement of costs incurred by the cabinet.
- (4) When it appears that any person is violating or threatening to violate any provision of KRS 353.411 to 353.459 or any rule, administrative regulation, or order promulgated or issued thereunder, the cabinet may bring suit to restrain the person from continuing the violation or from carrying out the threatened violation. A suit brought under this subsection shall:
- (a) Be filed in the:
1. Franklin Circuit Court;
 2. Circuit Court of the county in which the violation occurred or is threatened; or
 3. Circuit Court of the county in which the defendant resides or in which any defendant resides if there is more than one (1) defendant; and
- (b) Give the court jurisdiction to grant without bond or other undertaking the prohibitory or mandatory injunction, as the facts may warrant, including a temporary restraining order or injunction.
- (5) (a) Service of any notice or order issued under this section shall be:
1. Handed to the person in charge of the sequestration facility;
 2. Sent by certified mail, return receipt requested, addressed to the permanent address shown on the application for a permit;
 3. Sent by electronic mail to the address shown on the permit application or to an address provided to the cabinet voluntarily; or

4. Sent by certified or electronic mail to the address known to the cabinet, if no address is shown on the application for a permit or the address is no longer valid.
 - (b) Service in accordance with paragraph (a)3. or 4. of this subsection shall be effective upon delivery of the notice or the order to the recipient's inbox by email and verification sent to the cabinet by an electronic registered receipt.
- (6) The commencement of a proceeding pursuant to KRS 353.700 shall not operate as a stay of a notice or order, including a notice or order that contains the requirement to complete all remedial measures to abate the cited violation, issued under this section. A party served with a notice or order under this section may request a stay of the notice or order by filing a written petition for temporary relief with the cabinet's Office of Administrative Hearings. A hearing on the petition shall occur within ten (10) days of the office's receipt of the petition for temporary relief unless the petitioner waives this requirement. The hearing officer shall render a decision on the petition for temporary relief within three (3) working days of the hearing. A party aggrieved by the decision of the hearing officer may file a written request for review by the secretary. Temporary relief may be granted from a notice or order issued under this section if:
 - (a) The person requesting relief shows that there is substantial likelihood that the findings on the merits in an administrative hearing conducted by the cabinet will be favorable to the person; and
 - (b) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.
- (7)
 - (a) If the cabinet fails to bring suit to enjoin a violation or threatened violation of any provision of KRS 353.411 to 353.459 or any rule, administrative regulation, or order promulgated or issued thereunder within ten (10) days after receipt of a written request to do so by any person who is or will be adversely affected by the violation, the person making the request may bring suit to restrain the violation or threatened violation in any court in which the cabinet might have brought suit.
 - (b) The cabinet shall be made a party defendant in the suit in addition to the person allegedly violating or threatening to violate a provision of KRS 353.411 to 353.459, or any rule, administrative regulation, or order promulgated or issued thereunder.

Effective: July 15, 2026

History: Created 2026 Ky. Acts ch. 152, sec. 23, effective July 15, 2026.