

*Wanda Coleman*      *4/4/16*

Sec. 7. 10 V.S.A. § 6615c is added to read:

§ 6615c. INFORMATION REQUESTS

(a) When the Secretary has reasonable cause to believe that the Secretary has identified a person who may be subject to liability for a release or threat of release, as detailed in section 6615 of this chapter, the Secretary, upon reasonable notice, may require such person to furnish information related to:

- (1) The type, nature, and quantity of any commercial chemical product or hazardous material that has been or is being used, generated, treated, stored, or disposed of at a facility or transported to a facility.
- (2) The nature or extent of a release or threatened release of a hazardous material from a facility.
- (3) Financial information related to the ability of a person to pay for or to perform a cleanup or information surrounding the corporate structure, if any, of such person who may be subject to liability for a release or threat of release, as detailed in section 6615 of this chapter.

(b)(1) A person who has received a request under subsection (a) of this section shall, at the discretion of the Secretary, either:

(A) grant the Secretary access, at reasonable times, to any facility, establishment, place, property, or location to inspect and copy all documents or records relating to information that was related to the request; or

(B) copy and furnish to the Secretary all such information, at the option and expense of the person or provide a written explanation that the information has already been provided to the Secretary and reference to the matter in the Secretary's possession that contains the information.

(2) A person responding to a request under subsection (a) of this section may assert any statutory or common law privilege recognized in the State of Vermont, including the attorney-client privilege, to limit access to such information. This subdivision shall not apply to privileges related to business confidentiality, including trade secrets. Any information that is privileged shall be provided to the Secretary with the privileged material redacted. The Secretary may require that a person asserting a privilege under this section provide an index of all privileged information.

(c) The Secretary may require any person who has or may have knowledge of any information listed in subdivisions (a)(1) through (3) of this section to appear at the offices of the Secretary and may take testimony and require the production of records that relate to a release or threatened release of a hazardous material.

(d) Any request for information under this section shall be served personally or by certified mail. A person served with an information request shall respond in 10 days from the receipt of the request or in a longer timeframe established by the Secretary in the request.

(e) A response to a request under this section shall be personally certified by the person responding to the request that the response is accurate and truthful.

(f) Trade secret information and confidential business information submitted under this section shall be exempt from public inspection and copying under 1 V.S.A. § 317(c)(9). Financial information submitted under this section shall be exempt from public inspection and copying in a manner consistent with 5 U.S.C. § 552(b)(4). The Secretary shall adopt rules to ensure that the information provided under this section, which is exempt from public inspection and copying under shall be used by the Secretary only in connection with the responsibilities of the Secretary pursuant to this subchapter, and otherwise shall be kept confidential. A person providing such information may submit it to the Secretary separately from other information provided in this section.

(g) As used in this section, "information" means any written or recorded information, including all documents, records, photographs, recordings, e-mail, or correspondence.

Sec. 8. 10 V.S.A. § 6615d is added to read:

Sec. 9. 10 V.S.A. § 8005(b) is amended to read:

(b) Access orders and information requests.

(1) A Superior Court judge shall issue an access order when access has been refused and the investigator, by affidavit, describes the property to be examined and identifies:

(A) a provision of a permit that authorizes the inspection; or

(B) the property as being scheduled for inspection in accordance with a neutral inspection program adopted by the Secretary or the Natural Resources Board; or

(C) facts providing reasonable grounds to believe that a violation exists and that an examination of the specifically described property will be of material aid in determining the existence of the violation.

(2) A Superior Court shall issue an order requiring compliance with an information request submitted pursuant to section 6615c of this title when:

(A) the person served with the request fails to respond to the request in the time frame identified by the Secretary;

(B) the Secretary submits, by affidavit, facts providing reasonable grounds that a release or threatened release has taken place; and

(C) the information will be of material aid in responding to the release or threatened release.

(3) Issuance of an access order shall not negate the Secretary's authority to initiate criminal proceedings in the same matter by referring the matter to the Office of the Attorney General or a State's Attorney.

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