

nying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph¹ shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement of order by Secretary

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Enforcement of order by person on whose behalf order was issued

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation

(including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violation by employee

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter.

(July 14, 1955, ch. 360, title III, §322, as added Pub. L. 95-95, title III, §312, Aug. 7, 1977, 91 Stat. 783.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7623. Repealed. Pub. L. 96-300, §1(c), July 2, 1980, 94 Stat. 831

Section, act July 14, 1955, ch. 360, title III, §323, as added Aug. 7, 1977, Pub. L. 95-95, title III, §313, 91 Stat. 785; amended Nov. 16, 1977, Pub. L. 95-190, §14(a)(81), 91 Stat. 1404; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980; July 2, 1980, Pub. L. 96-300, §1(a), 94 Stat. 831, established a National Commission on Air Quality, prescribed numerous subjects for study and report to Congress, enumerated specific questions for study and investigation, required specific identification of loss or irretrievable commitment of resources, and provided for appointment and confirmation of its membership, cooperation of Federal executive agencies, submission of a National Academy of Sciences study to Congress, compensation and travel expenses, termination of Commission, appointment and compensation of staff, and public participation.

EFFECTIVE DATE OF REPEAL

Section 1(c) of Pub. L. 96-300 provided that this section is repealed on date on which National Commission on Air Quality ceases to exist pursuant to provisions of former subsec. (g) of this section, which provided that not later than Mar. 1, 1981, a report be submitted containing results of all Commission studies and investigations and that Commission cease to exist on Mar. 1, 1981, if report is not submitted on Mar. 1, 1981, or Commission would cease to exist on such date, but not later than May 1, 1981, as determined and ordered by Commission if report is submitted on Mar. 1, 1981.

NATIONAL COMMISSION ON AIR QUALITY; EXTENSION PROHIBITION

Section 1(d) of Pub. L. 96-300 provided that nothing in any other authority of law shall be construed to authorize or permit the extension of the National Commission on Air Quality pursuant to any Executive order or other Executive or agency action.

§ 7624. Cost of vapor recovery equipment

(a) Costs to be borne by owner of retail outlet

The regulations under this chapter applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b) of

¹ So in original.