

ganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## **§ 2702. Elements of liability**

### **(a) In general**

Notwithstanding any other provision or rule of law, and subject to the provisions of this Act, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) of this section that result from such incident.

### **(b) Covered removal costs and damages**

#### **(1) Removal costs**

The removal costs referred to in subsection (a) of this section are—

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (f) of section 1321 of this title, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

#### **(2) Damages**

The damages referred to in subsection (a) of this section are the following:

##### **(A) Natural resources**

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

##### **(B) Real or personal property**

Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

##### **(C) Subsistence use**

Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

##### **(D) Revenues**

Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

##### **(E) Profits and earning capacity**

Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

### **(F) Public services**

Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

### **(c) Excluded discharges**

This subchapter does not apply to any discharge—

- (1) permitted by a permit issued under Federal, State, or local law;
- (2) from a public vessel; or
- (3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

### **(d) Liability of third parties**

#### **(1) In general**

##### **(A) Third party treated as responsible party**

Except as provided in subparagraph (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 2703(a)(3) of this title (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this subchapter.

##### **(B) Subrogation of responsible party**

If the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party—

- (i) in accordance with section 2713 of this title, shall pay removal costs and damages to any claimant; and
- (ii) shall be entitled by subrogation to all rights of the United States Government and the claimant to recover removal costs or damages from the third party or the Fund paid under this subsection.

### **(2) Limitation applied**

#### **(A) Owner or operator of vessel or facility**

If the act or omission of a third party that causes an incident occurs in connection with a vessel or facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in section 2704 of this title as applied with respect to the vessel or facility.

#### **(B) Other cases**

In any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from which the discharge actually occurred if the responsible party were liable.

(Pub. L. 101-380, title I, §1002, Aug. 18, 1990, 104 Stat. 489.)

#### REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 101-380, Aug. 18, 1990, 104 Stat. 484, as amended, known as the

Oil Pollution Act of 1990, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Intervention on the High Seas Act, referred to in subsec. (b)(1)(A), is Pub. L. 93-248, Feb. 5, 1974, 88 Stat. 8, as amended, which is classified generally to chapter 28 (§1471 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

The Trans-Alaska Pipeline Authorization Act, referred to in subsec. (c)(3), is title II of Pub. L. 93-153, Nov. 16, 1973, 87 Stat. 584, which is classified generally to chapter 34 (§1651 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of Title 43 and Tables.

## **§ 2703. Defenses to liability**

### **(a) Complete defenses**

A responsible party is not liable for removal costs or damages under section 2702 of this title if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by—

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party—

(A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or

- (4) any combination of paragraphs (1), (2), and (3).

### **(b) Defenses as to particular claimants**

A responsible party is not liable under section 2702 of this title to a claimant, to the extent that the incident is caused by the gross negligence or willful misconduct of the claimant.

### **(c) Limitation on complete defense**

Subsection (a) of this section does not apply with respect to a responsible party who fails or refuses—

- (1) to report the incident as required by law if the responsible party knows or has reason to know of the incident;
- (2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or
- (3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 1321 of this title or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

### **(d) Definition of contractual relationship**

#### **(1) In general**

For purposes of subsection (a)(3) of this section the term “contractual relationship” in-

cludes, but is not limited to, land contracts, deeds, easements, leases, or other instruments transferring title or possession, unless—

(A) the real property on which the facility concerned is located was acquired by the responsible party after the placement of the oil on, in, or at the real property on which the facility concerned is located;

(B) one or more of the circumstances described in subparagraph (A), (B), or (C) of paragraph (2) is established by the responsible party by a preponderance of the evidence; and

(C) the responsible party complies with paragraph (3).

### **(2) Required circumstance**

The circumstances referred to in paragraph (1)(B) are the following:

(A) At the time the responsible party acquired the real property on which the facility is located the responsible party did not know and had no reason to know that oil that is the subject of the discharge or substantial threat of discharge was located on, in, or at the facility.

(B) The responsible party is a government entity that acquired the facility—

- (i) by escheat;
- (ii) through any other involuntary transfer or acquisition; or
- (iii) through the exercise of eminent domain authority by purchase or condemnation.

(C) The responsible party acquired the facility by inheritance or bequest.

### **(3) Additional requirements**

For purposes of paragraph (1)(C), the responsible party must establish by a preponderance of the evidence that the responsible party—

(A) has satisfied the requirements of subsection (a)(3)(A) and (B) of this section;

(B) has provided full cooperation, assistance, and facility access to the persons that are authorized to conduct removal actions, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial removal action;

(C) is in compliance with any land use restrictions established or relied on in connection with the removal action; and

(D) has not impeded the effectiveness or integrity of any institutional control employed in connection with the removal action.

### **(4) Reason to know**

#### **(A) Appropriate inquiries**

To establish that the responsible party had no reason to know of the matter described in paragraph (2)(A), the responsible party must demonstrate to a court that—

- (i) on or before the date on which the responsible party acquired the real property on which the facility is located, the responsible party carried out all appropriate inquiries, as provided in subparagraphs (B) and (D), into the previous ownership and uses of the real property on which the fa-