

6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

(Pub. L. 89-272, title II, §7002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2825; amended Pub. L. 95-609, §7(p), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 98-616, title IV, §401, Nov. 8, 1984, 98 Stat. 3268.)

REFERENCES IN TEXT

That Act, referred to in subsec. (b)(2)(B)(iii), (C)(iii), means Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (§9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §401(a), (b), designated existing provisions of subsec. (a)(1) as subpar. (A) thereof, inserted “prohibition,” after “requirement,” added subpar. (B), and in provisions following par. (2) inserted “or the alleged endangerment may occur” in first sentence and substituted “to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title” for “to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be”.

Subsec. (b). Pub. L. 98-616, §401(d), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as

follows: “No action may be commenced under paragraph (a)(1) of this section—

“(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

“(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however*, That in any such action in a court of the United States, any person may intervene as a matter of right.”

Subsec. (e). Pub. L. 98-616, §401(e), substituted “to the prevailing or substantially prevailing party” for “to any party” and inserted “or section 6976 of this title”.

Subsec. (g). Pub. L. 98-616, §401(c), added subsec. (g). 1978—Subsec. (c). Pub. L. 95-609, §7(p)(1), substituted “subchapter III of this chapter” for “section 212 of this Act.”

Subsec. (e). Pub. L. 95-609, §7(p)(2), substituted “require” for “requiring”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6973. Imminent hazard

(a) Authority of Administrator

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual¹ arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such

¹ So in original. Probably should be “contractual”.

orders as may be necessary to protect public health and the environment.

(b) Violations

Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues.

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.

(Pub. L. 89-272, title II, §7003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2826; amended Pub. L. 95-609, §7(q), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96-482, §25, Oct. 21, 1980, 94 Stat. 2348; Pub. L. 98-616, title IV, §§402, 403(a), 404, Nov. 8, 1984, 98 Stat. 3271, 3273.)

CODIFICATION

In subsec. (d), “chapter 7 of title 5” substituted for “the Administrative Procedure Act” on authority of Pub. L. 89-554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §402, inserted “past or present” after “evidence that the”, substituted “against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or, who is” for “to immediately restrain any person”, substituted “to restrain such person from” for “to stop”, substituted “, to order such person to take such other action as may be necessary, or both” for “or to take such other action as may be necessary”, and inserted “A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal, taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual [sic] arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.”

Subsec. (c). Pub. L. 98-616, §403(a), added subsec. (c).
Subsec. (d). Pub. L. 98-616, §404, added subsec. (d).

1980—Pub. L. 96-482, §25, designated existing provisions as subsec. (a), substituted “may present” for “is presenting” and “such handling, storage, treatment, transportation or disposal” for “the alleged disposal” and authorized other action to be taken by the Administrator after notice including issuance of protective orders relating to public health and the environment, and added subsec. (b).

1978—Pub. L. 95-609 struck out “for” after “restrain any person”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

§ 6974. Petition for regulations; public participation

(a) Petition

Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this chapter. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—

(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency’s intention to issue such permit, and

(B) transmit in writing notice of the agency’s intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency’s intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location