

the enactment of this Act [Nov. 28, 1990]. The Administrator may extend the effective date for a period not to exceed one year if the Administrator determines that accredited asbestos contractors are needed to perform school-site abatement required under the Asbestos Hazard Emergency Response Act [of 1986] (15 U.S.C. 2641) and such an extension is necessary to ensure effective implementation of section 203 of the Toxic Substances Control Act [15 U.S.C. 2643].”

REVISION OF MODEL CONTRACTOR ACCREDITATION PROGRAM

Pub. L. 101-637, §15(a)(3), Nov. 28, 1990, 104 Stat. 4596, provided that: “Not later than one year after the date of the enactment of this Act [Nov. 28, 1990], the Administrator of the Environmental Protection Agency shall revise the model contractor accreditation plan promulgated under section 206(b)(1) of the Toxic Substances Control Act (15 U.S.C. 2646(b)(1)) to increase the minimum number of hours of training, including additional hours of hands-on health and safety training, required for asbestos abatement workers and to make such other changes as may be necessary to implement the amendments made by paragraphs (1) and (2) [amending this section].”

EPA ADMINISTRATOR NOT EXERCISING “STATUTORY AUTHORITY” UNDER OSHA LAW IN EXERCISING AUTHORITY UNDER THIS CHAPTER

Pub. L. 101-637, §15(b), Nov. 28, 1990, 104 Stat. 4596, provided that: “In exercising any authority under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] in connection with the amendment made by subsection (a) of this section [amending this section and section 2647 of this title], the Administrator of the Environmental Protection Agency shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.”

§ 2647. Enforcement

(a) Penalties

Any local educational agency—

- (1) which fails to conduct an inspection pursuant to regulations under section 2643(b) of this title or under section 2644(b) of this title,
- (2) which knowingly submits false information to the Governor regarding any inspection pursuant to regulations under section 2643(i) of this title or knowingly includes false information in any inspection statement under section 2644(d)(3) of this title,
- (3) which fails to develop a management plan pursuant to regulations under section 2643(i) of this title or under section 2644(d) of this title,
- (4) which carries out any activity prohibited by section 2655 of this title, or
- (5) which knowingly submits false information to the Governor regarding a deferral request under section 2645(d) of this title.¹

is liable for a civil penalty of not more than \$5,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of this title. For purposes of this subsection, a “violation” means a failure to comply with respect to a single school building. The court shall order that any

civil penalty collected under this subsection be used by the local educational agency for purposes of complying with this subchapter. Any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by section 4022 of title 20.

(b) Relationship to subchapter I of this chapter

A local educational agency is not liable for any civil penalty under subchapter I of this chapter for failing or refusing to comply with any rule promulgated or order issued under this subchapter.

(c) Enforcement considerations

(1) In determining the amount of a civil penalty to be assessed under subsection (a) of this section against a local educational agency, the Administrator shall consider—

- (A) the significance of the violation;
- (B) the culpability of the violator, including any history of previous violations under this chapter;
- (C) the ability of the violator to pay the penalty; and
- (D) the ability of the violator to continue to provide educational services to the community.

(2) Any action ordered by a court in fashioning relief under section 2619 of this title shall be consistent with regulations promulgated under section 2643 of this title (or with the requirements of section 2644 of this title if there are no regulations).

(d) Citizen complaints

Any person may file a complaint with the Administrator or with the Governor of the State in which the school building is located with respect to asbestos-containing material in a school building. If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this chapter has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

(e) Citizen petitions

(1) Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a regulation or order under this subchapter.

(2) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a regulation or order under this subchapter.

(3) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

(4) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with this subchapter. If

¹ So in original. The period probably should be a comma.

the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial. The granting or denial of a petition under this subsection shall not affect any deadline or other requirement of this subchapter.

(f) Citizen civil actions with respect to EPA regulations

(1) Any person may commence a civil action without prior notice against the Administrator to compel the Administrator to meet the deadlines in section 2643 of this title for issuing advanced notices of proposed rulemaking, proposing regulations, and promulgating regulations. Any such action shall be brought in the district court of the United States for the District of Columbia.

(2) In any action brought under paragraph (1) in which the court finds the Administrator to be in violation of any deadline in section 2643 of this title, the court shall set forth a schedule for promulgating the regulations required by section 2643 of this title and shall order the Administrator to comply with such schedule. The court may extend any deadline (which has not already occurred) in section 2644(b), (c), or (d) of this title for a period of not more than 6 months, if the court-ordered schedule will result in final promulgation of the pertinent regulations within the extended period. Such deadline extensions may not be granted by the court beginning 720 days after October 22, 1986.

(3) Section 2619 of this title shall apply to civil actions described in this subsection, except to the extent inconsistent with this subsection.

(g) Failure to attain accreditation; penalty

Any contractor who—

- (1) inspects for asbestos-containing material in a school, public or commercial building;
- (2) designs or conducts response actions with respect to friable asbestos-containing material in a school, public or commercial building; or
- (3) employs individuals to conduct response actions with respect to friable asbestos-containing material in a school, public or commercial building;

and who fails to obtain the accreditation under section 2646 of this title, or in the case of employees to require or provide for the accreditation required, is liable for a civil penalty of not more than \$5,000 for each day during which the violation continues, unless such contractor is a direct employee of the Federal Government.

(Pub. L. 94-469, title II, §207, as added Pub. L. 99-519, §2, Oct. 22, 1986, 100 Stat. 2983; amended Pub. L. 100-368, §5, July 18, 1988, 102 Stat. 833; Pub. L. 101-637, §15(a)(4), Nov. 28, 1990, 104 Stat. 4596.)

AMENDMENTS

1990—Subsec. (g). Pub. L. 101-637 added subsec. (g).
1988—Subsec. (a)(4), (5). Pub. L. 100-368 added pars. (4) and (5).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-637 effective upon expiration of 12-month period following Nov. 28, 1990, with

provisions for extension, see section 15(c) of Pub. L. 101-637, set out as a note under section 2646 of this title.

EPA ADMINISTRATOR NOT EXERCISING "STATUTORY AUTHORITY" UNDER OSHA LAW IN EXERCISING AUTHORITY UNDER THIS CHAPTER

In exercising any authority under this chapter in connection with amendment made by Pub. L. 101-637, Administrator of Environmental Protection Agency not, for purposes of section 653(b)(1) of Title 29, Labor, to be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health, see section 15(b) of Pub. L. 101-637, set out as a note under section 2646 of this title.

§ 2648. Emergency authority

(a) Emergency action

(1) Authority

Whenever—

(A) the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment, and

(B) the local educational agency is not taking sufficient action (as determined by the Administrator or the Governor) to respond to the airborne asbestos or friable asbestos-containing material,

the Administrator or the Governor of a State is authorized to act to protect human health or the environment.

(2) Limitations on Governor action

The Governor of a State shall notify the Administrator within a reasonable period of time before the Governor plans to take an emergency action under this subsection. After such notification, if the Administrator takes an emergency action with respect to the same hazard, the Governor may not carry out (or continue to carry out, if the action has been started) the emergency action.

(3) Notification

The following notification shall be provided before an emergency action is taken under this subsection:

(A) In the case of a Governor taking the action, the Governor shall notify the local educational agency concerned.

(B) In the case of the Administrator taking the action, the Administrator shall notify both the local educational agency concerned and the Governor of the State in which such agency is located.

(4) Cost recovery

The Administrator or the Governor of a State may seek reimbursement for all costs of an emergency action taken under this subsection in the United States District Court for the District of Columbia or for the district in which the emergency action occurred. In any action seeking reimbursement from a local educational agency, the action shall be brought in the United States District Court for the district in which the local educational agency is located.

(b) Injunctive relief

Upon receipt of evidence that the presence of airborne asbestos or the condition of friable as-