

“(2) the term ‘expenses’ includes incremental and base salaries, ships, aircraft, and associated indirect costs, except the term does not include base salaries and benefits of National Oceanic and Atmospheric Administration Support Coordinators.”

DAMAGE ASSESSMENT AND RESTORATION REVOLVING FUND; DEPOSITS; AVAILABILITY; TRANSFER

Pub. L. 101-515, title I, Nov. 5, 1990, 104 Stat. 2105, provided that: “For contingency planning, response and natural resource damage assessment and restoration activities, pursuant to the Comprehensive Environmental Response, Compensation[,] and Liability Act [of 1980], as amended [42 U.S.C. 9601 et seq.], the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], the Marine Protection, Research[,] and Sanctuaries Act [of 1972], as amended [16 U.S.C. 1431 et seq., 1447 et seq.; 33 U.S.C. 1401 et seq., 2801 et seq.], and the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], \$5,000,000 to remain available until expended: *Provided*, That notwithstanding any other provision of law, in fiscal year 1991 and thereafter, sums provided by any party or governmental entity for natural resource damage assessment, response or restoration activities conducted or to be conducted by the National Oceanic and Atmospheric Administration as a result of any injury to the marine environment and/or resources for which the National Oceanic and Atmospheric Administration acts as trustee of said marine environment and/or resources, shall be deposited in the Damage Assessment and Restoration Revolving Fund and said funds so deposited shall remain available until expended: *Provided further*, That for purposes of obligation and expenditure in fiscal year 1991 and thereafter, sums available in the Damage Assessment and Restoration Revolving Fund may be transferred, upon the approval of the Secretary of Commerce or his delegate, to the Operations, Research, and Facilities appropriation of the National Oceanic and Atmospheric Administration.”

§ 2707. Recovery by foreign claimants

(a) Required showing by foreign claimants

(1) In general

In addition to satisfying the other requirements of this Act, to recover removal costs or damages resulting from an incident a foreign claimant shall demonstrate that—

(A) the claimant has not been otherwise compensated for the removal costs or damages; and

(B) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(2) Exceptions

Paragraph (1)(B) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in subsection (b)(4) of this section.

(b) Discharges in foreign countries

A foreign claimant may make a claim for removal costs and damages resulting from a discharge, or substantial threat of a discharge, of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country, only if the discharge is from—

(1) an Outer Continental Shelf facility or a deepwater port;

(2) a vessel in the navigable waters;

(3) a vessel carrying oil as cargo between 2 places in the United States; or

(4) a tanker that received the oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), for transportation to a place in the United States, and the discharge or threat occurs prior to delivery of the oil to that place.

(c) “Foreign claimant” defined

In this section, the term “foreign claimant” means—

(1) a person residing in a foreign country;

(2) the government of a foreign country; and

(3) an agency or political subdivision of a foreign country.

(Pub. L. 101-380, title I, §1007, Aug. 18, 1990, 104 Stat. 496.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), 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 Trans-Alaska Pipeline Authorization Act, referred to in subsec. (b)(4), 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.

§ 2708. Recovery by responsible party

(a) In general

The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that—

(1) the responsible party is entitled to a defense to liability under section 2703 of this title; or

(2) the responsible party is entitled to a limitation of liability under section 2704 of this title.

(b) Extent of recovery

A responsible party who is entitled to a limitation of liability may assert a claim under section 2713 of this title only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party, or by the guarantor on behalf of the responsible party, for claims asserted under section 2713 of this title exceeds the amount to which the total of the liability under section 2702 of this title and removal costs and damages incurred by, or on behalf of, the responsible party is limited under section 2704 of this title.

(Pub. L. 101-380, title I, §1008, Aug. 18, 1990, 104 Stat. 497.)

§ 2709. Contribution

A person may bring a civil action for contribution against any other person who is liable or potentially liable under this Act or another law.

The action shall be brought in accordance with section 2717 of this title.

(Pub. L. 101-380, title I, §1009, Aug. 18, 1990, 104 Stat. 497.)

REFERENCES IN TEXT

This Act, referred to in text, 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.

§ 2710. Indemnification agreements

(a) Agreements not prohibited

Nothing in this Act prohibits any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this Act.

(b) Liability not transferred

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability imposed under this Act from a responsible party or from any person who may be liable for an incident under this Act to any other person.

(c) Relationship to other causes of action

Nothing in this Act, including the provisions of subsection (b) of this section, bars a cause of action that a responsible party subject to liability under this Act, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

(Pub. L. 101-380, title I, §1010, Aug. 18, 1990, 104 Stat. 498.)

REFERENCES IN TEXT

This Act, referred to in text, 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.

§ 2711. Consultation on removal actions

The President shall consult with the affected trustees designated under section 2706 of this title on the appropriate removal action to be taken in connection with any discharge of oil. For the purposes of the National Contingency Plan, removal with respect to any discharge shall be considered completed when so determined by the President in consultation with the Governor or Governors of the affected States. However, this determination shall not preclude additional removal actions under applicable State law.

(Pub. L. 101-380, title I, §1011, Aug. 18, 1990, 104 Stat. 498.)

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Administrator of Environmental Protection Agency for inland zone and to Secretary of Department in which Coast Guard is operating for coastal zone by section 3 of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54757, set out as a note under section 1321 of this title.

§ 2712. Uses of Fund

(a) Uses generally

The Fund shall be available to the President for—

(1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan—

(A) by Federal authorities; or

(B) by a Governor or designated State official under subsection (d) of this section;

(2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 2706 of this title for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;

(3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;

(4) the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;

(5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this Act (including, but not limited to, sections 1004(d)(2), 1006(e), 4107, 4110, 4111, 4112, 4117, 5006, 8103, and title VII) and subsections (b), (c), (d), (j), and (l) of section 1321 of this title with respect to prevention, removal, and enforcement related to oil discharges, provided that—

(A) not more than \$25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;

(B) not more than \$15,000,000 in each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, response and damage assessment capabilities of the National Oceanic and Atmospheric Administration;

(C) not more than \$30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 1321(j) of this title, including the purchase and prepositioning of oil spill removal equipment; and

(D) not more than \$27,250,000 in each fiscal year shall be available to carry out subchapter IV of this chapter; and

(6) the making of loans pursuant to the program established under section 2713(f) of this title.

(b) Defense to liability for Fund

The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) Obligation of Fund by Federal officials

The President may promulgate regulations designating one or more Federal officials who