

2702 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke (1) all rights and defenses which would be available to the responsible party under this Act, (2) any defense authorized under subsection (e) of this section, and (3) the defense that the incident was caused by the willful misconduct of the responsible party. The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.”

Subsec. (g). Pub. L. 104-324, §1125(a)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Nothing in this Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party.”

1995—Subsec. (a). Pub. L. 104-55 substituted “the responsible party could be subjected under section 2704(a) or (d) of this title” for “, in the case of a tank vessel, the responsible party could be subject under section 2704(a)(1) or (d) of this title, or to which, in the case of any other vessel, the responsible party could be subjected under section 2704(a)(2) or (d) of this title”.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-324, title XI, §1125(b), Oct. 19, 1996, 110 Stat. 3983, provided that: “The amendment made by subsection (a)(2) [amending this section] shall not apply to any final rule issued before the date of enactment of this section [Oct. 19, 1996].”

#### DELEGATION OF FUNCTIONS

Specific functions of President under subsec. (e) of this section delegated to Secretary of the Interior and Secretary of the Department in which the Coast Guard is operating by section 5(a) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54764, as amended, set out as a note under section 1321 of this title.

### § 2716a. Financial responsibility civil penalties

#### (a) Administrative

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 2716 of this title or the regulations issued under that section, or with a denial or detention order issued under subsection (c)(2)<sup>1</sup> of that section, shall be liable to the United States for a civil penalty, not to exceed \$25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which had been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

#### (b) Judicial

In addition to, or in lieu of, assessing a penalty under subsection (a) of this section, the

President may request the Attorney General to secure such relief as necessary to compel compliance with this<sup>2</sup> section 2716 of this title, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant any relief as the public interest and the equities of the case may require.

(Pub. L. 101-380, title IV, §4303, Aug. 18, 1990, 104 Stat. 539.)

#### CODIFICATION

Section was not enacted as part of title I of Pub. L. 101-380 which comprises this subchapter.

#### DELEGATION OF FUNCTIONS

Specific functions of President under this section delegated to Secretary of Department in which Coast Guard is operating and Secretary of the Interior by section 5(b) of Ex. Ord. No. 12777, Oct. 18, 1991, 56 F.R. 54765, as amended, set out as a note under section 1321 of this title.

### § 2717. Litigation, jurisdiction, and venue

#### (a) Review of regulations

Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

#### (b) Jurisdiction

Except as provided in subsections (a) and (c) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund shall reside in the District of Columbia.

#### (c) State court jurisdiction

A State trial court of competent jurisdiction over claims for removal costs or damages, as defined under this Act, may consider claims under this Act or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of this Act.

#### (d) Assessment and collection of tax

The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, or to the review of any regulation promulgated under title 26.

#### (e) Savings provision

Nothing in this subchapter shall apply to any cause of action or right of recovery arising from

<sup>1</sup> So in original. Probably should be “subsection (b)(2)”.

<sup>2</sup> So in original. The word “this” probably should not appear.

any incident which occurred prior to August 18, 1990. Such claims shall be adjudicated pursuant to the law applicable on the date of the incident.

**(f) Period of limitations**

**(1) Damages**

Except as provided in paragraphs (3) and (4), an action for damages under this Act shall be barred unless the action is brought within 3 years after—

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of natural resource damages under section 2702(b)(2)(A) of this title, the date of completion of the natural resources damage assessment under section 2706(c) of this title.

**(2) Removal costs**

An action for recovery of removal costs referred to in section 2702(b)(1) of this title must be commenced within 3 years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in this paragraph, an action may be commenced under this subchapter for recovery of removal costs at any time after such costs have been incurred.

**(3) Contribution**

No action for contribution for any removal costs or damages may be commenced more than 3 years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

**(4) Subrogation**

No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than 3 years after the date of payment of such claim.

**(5) Commencement**

The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(Pub. L. 101-380, title I, §1017, Aug. 18, 1990, 104 Stat. 504.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), (c), and (f), 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.

**§ 2718. Relationship to other law**

**(a) Preservation of State authorities; Solid Waste Disposal Act**

Nothing in this Act or the Act of March 3, 1851 shall—

(1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to—

(A) the discharge of oil or other pollution by oil within such State; or

(B) any removal activities in connection with such a discharge; or

(2) affect, or be construed or interpreted to affect or modify in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law.

**(b) Preservation of State funds**

Nothing in this Act or in section 9509 of title 26 shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

**(c) Additional requirements and liabilities; penalties**

Nothing in this Act, the Act of March 3, 1851 (46 U.S.C. 183 et seq.),<sup>1</sup> or section 9509 of title 26, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements; or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law;

relating to the discharge, or substantial threat of a discharge, of oil.

**(d) Federal employee liability**

For purposes of section 2679(b)(2)(B) of title 28, nothing in this Act shall be construed to authorize or create a cause of action against a Federal officer or employee in the officer's or employee's personal or individual capacity for any act or omission while acting within the scope of the officer's or employee's office or employment.

(Pub. L. 101-380, title I, §1018, Aug. 18, 1990, 104 Stat. 505.)

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.

<sup>1</sup> See References in Text note below.