

form any act or duty under this subchapter which is not discretionary with the Administrator; or

(3) for the collection of a penalty by the United States Government (and associated costs and interest) against any Federal agency that fails, by the date that is 18 months after the effective date of a final order to pay a penalty assessed by the Administrator under section 300h-8(b)<sup>1</sup> of this title, to pay the penalty.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

**(b) Conditions for commencement of civil action; notice**

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator; or

(3) under subsection (a)(3) prior to 60 days after the plaintiff has given notice of such action to the Attorney General and to the Federal agency.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) to require a State to prescribe a schedule under section 300g-4 or 300g-5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

**(c) Intervention of right**

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

<sup>1</sup> So in original. Probably should be section "300j-6(b)".

**(d) Costs; attorney fees; expert witness fees; filing of bond**

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any 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.

**(e) Availability of other relief**

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 requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction,

against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j-7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j-6 of this title.

(July 1, 1944, ch. 373, title XIV, §1449, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1690; amended Pub. L. 95-190, §8(c), Nov. 16, 1977, 91 Stat. 1397; Pub. L. 104-182, title I, §129(b), Aug. 6, 1996, 110 Stat. 1662.)

REFERENCES IN TEXT

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

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-182, §129(b)(1), added par. (3).

Subsec. (b)(3). Pub. L. 104-182, §129(b)(2), added par. (3).

1977—Subsec. (e). Pub. L. 95-190 inserted provisions relating to suits by State or local governments for enforcement of safe drinking water, etc., requirements.

**§ 300j-9. General provisions**

**(a) Regulations; delegation of functions**

(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.

(2) The Administrator may delegate any of his functions under this subchapter (other than prescribing regulations) to any officer or employee of the Agency.

**(b) Utilization of officers and employees of Federal agencies**

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this subchapter.

**(c) Assignment of Agency personnel to State or interstate agencies**

Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this subchapter.

**(d) Payments of grants; adjustments; advances; reimbursement; installments; conditions; eligibility for grants; "nonprofit agency or institution" defined**

(1) The Administrator may make payments of grants under this subchapter (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term "nonprofit agency or institution" means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

**(e) Labor standards**

The Administrator shall take such action as may be necessary to assure compliance with provisions of sections 3141-3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

**(f) Appearance and representation of Administrator through Attorney General or attorney appointees**

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this subchapter to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

**(g) Authority of Administrator under other provisions unaffected**

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

**(h) Reports to Congressional committees; review by Office of Management and Budget; submittal of comments to Congressional committees**

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Com-

merce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

**(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations**

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Sec-

retary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this subchapter.

(July 1, 1944, ch. 373, title XIV, §1450, as added Pub. L. 93-523, §2(a), Dec. 16, 1974, 88 Stat. 1691; amended Pub. L. 98-620, title IV, §402(38), Nov. 8, 1984, 98 Stat. 3360; Pub. L. 103-437, §15(a)(2), Nov. 2, 1994, 108 Stat. 4591.)

## REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (e), is set out in the Appendix to Title 5, Government Organization and Employees.

Part G of subchapter II of this chapter, referred to in subsec. (g), is classified to section 264 et seq. of this title.

## CODIFICATION

In subsec. (e), "sections 3141-3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a-276a(5))" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934 (40 U.S.C. 276c)" on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

## AMENDMENTS

1994—Subsec. (h). Pub. L. 103-437 substituted "Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House" for "Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House".

1984—Subsec. (i)(4). Pub. L. 98-620 struck out provision which required civil actions filed under par. (4) to be heard and decided expeditiously.

## CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of title 28, Judiciary and Judicial Procedure.

## APPLICABILITY OF LABOR STANDARDS TO DRINKING WATER TREATMENT CONSTRUCTION PROJECTS

Pub. L. 112-74, div. E, title II, Dec. 23, 2011, 125 Stat. 1020, provided in part: "For fiscal year 2012 and each fiscal year thereafter, the requirements of section 1450(e) of the Safe Drinking Water Act (42 U.S.C. 300j-9(e)) shall apply to any construction project carried out in whole or in part with assistance made available by a drinking water treatment revolving loan fund as authorized by section 1452 of that Act (42 U.S.C. 300j-12)."

**§ 300j-10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation**

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the