

the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection⁶ to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed \$100,000.

(July 14, 1955, ch. 360, title III, §304, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1706; amended Pub. L. 95-95, title III, §303(a)-(c), Aug. 7, 1977, 91 Stat. 771, 772; Pub. L. 95-190, §14(a) (77), (78), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101-549, title III, §302(f), title VII, §707(a)-(g), Nov. 15, 1990, 104 Stat. 2574, 2682, 2683.)

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.

CODIFICATION

Section was formerly classified to section 1857h-2 of this title.

PRIOR PROVISIONS

A prior section 304 of act July 14, 1955, was renumbered section 311 by Pub. L. 91-604 and is classified to section 7611 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-549, §707(a), (f), in closing provisions, inserted before period at end “, and to apply any appropriate civil penalties (except for actions under paragraph (2))” and inserted sentences at end giving courts jurisdiction to compel agency action unreasonably delayed and requiring 180 days notice prior to commencement of action.

Subsec. (a)(1), (3). Pub. L. 101-549, §707(g), inserted “to have violated (if there is evidence that the alleged violation has been repeated) or” before “to be in violation”.

Subsec. (b). Pub. L. 101-549, §302(f), substituted “section 7412(i)(3)(A) or (f)(4)” for “section 7412(c)(1)(B)” in closing provisions.

Subsec. (c)(2). Pub. L. 101-549, §707(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In such action under this section, the Administrator, if not a party, may intervene as a matter of right.”

Subsec. (c)(3). Pub. L. 101-549, §707(d), added subsec. (c)(3).

Subsec. (f)(3). Pub. L. 101-549, §707(e), struck out “any condition or requirement of section 7413(d) of this title (relating to certain enforcement orders)” before “, section 7419 of this title”, substituted “subchapter VI” for “part B of subchapter I”, and substituted “; or” for period at end.

Subsec. (f)(4). Pub. L. 101-549, §707(e), which directed that par. (4) be added at end of subsec. (f), was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101-549, §707(b), added subsec. (g). 1977—Subsec. (a)(3). Pub. L. 95-190, §14(a)(77), inserted “or modified” after “new”.

Pub. L. 95-95, §303(a), added subsec. (a)(3).

Subsec. (e). Pub. L. 95-95, §303(c), inserted provisions which prohibited any construction of this section or

any other law of the United States which would prohibit, exclude, or restrict any State, local, or interstate authority from bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court against the United States or bringing any administrative enforcement action or obtaining any administrative remedy or sanction against the United States in any State or local administrative agency, department, or instrumentality under State or local law.

Subsec. (f)(3). Pub. L. 95-190, §14(a)(78), inserted “, or” after “(relating to ozone protection)”, substituted “any condition or requirement under an” for “requirements under an”, and struck out “or” before “section 7491”.

Pub. L. 95-95, §303(b), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-549, title VII, §707(g), Nov. 15, 1990, 104 Stat. 2683, provided that: “The amendment made by this subsection [amending this section] shall take effect with respect to actions brought after the date 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].”

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (g)(1) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 165 of House Document No. 103-7.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7605. Representation in litigation

(a) Attorney General; attorneys appointed by Administrator

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

⁶ So in original. Probably should be “this section”.

(b) Memorandum of understanding regarding legal representation

In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

(July 14, 1955, ch. 360, title III, §305, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 95-95, title III, §304(a), Aug. 7, 1977, 91 Stat. 772.)

CODIFICATION

Section was formerly classified to section 1857h-3 of this title.

PRIOR PROVISIONS

A prior section 305 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 505, was renumbered section 312 by Pub. L. 91-604 and is classified to section 7612 of this title.

Another prior section 305 of act July 14, 1955, ch. 360, title III, formerly §12, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401, was renumbered section 305 by Pub. L. 89-272, renumbered section 308 by Pub. L. 90-148, and renumbered section 315 by Pub. L. 91-604, and is classified to section 7615 of this title.

AMENDMENTS

1977—Pub. L. 95-95 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7606. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person who is convicted of any

offense under section 7413(c) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 7413(c)(2) of this title, the condition giving rise to the conviction also shall be considered to include any substantive violation of this chapter associated with the violation of 7413(c)(2) of this title. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) Notification procedures

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) Federal agency contracts

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(July 14, 1955, ch. 360, title III, §306, as added Pub. L. 91-604, §12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 101-549, title VII, §705, Nov. 15, 1990, 104 Stat. 2682.)

CODIFICATION

Subsec. (e) of this section, which required the President to annually report to Congress on measures taken toward implementing the purpose and intent of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 14th item on page 20 of House Document No. 103-7.

Section was formerly classified to section 1857h-4 of this title.

PRIOR PROVISIONS

A prior section 306 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506, was renumbered section 313 by Pub. L. 91-604 and is classified to section 7613 of this title.

Another prior section 306 of act July 14, 1955, ch. 360, title III, formerly §13, as added Dec. 17, 1963, Pub. L. 88-206, §1, 77 Stat. 401, renumbered §306, Oct. 20, 1965, Pub. L. 89-272, title I, §101(4), 79 Stat. 992, renumbered §309, Nov. 21, 1967, Pub. L. 90-148, §2, 81 Stat. 506, re-