

§ 1415. Penalties**(a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief**

Any person who violates any provision of this subchapter, or of the regulations promulgated under this subchapter, or a permit issued under this subchapter shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. In addition, any person who violates this subchapter or any regulation issued under this subchapter by engaging in activity involving the dumping of medical waste shall be liable for a civil penalty of not more than \$125,000 for each violation, to be assessed by the Administrator after written notice and an opportunity for a hearing. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) Criminal penalties

In addition to any action that may be brought under subsection (a)—

(1) any person who knowingly violates any provision of this subchapter, any regulation promulgated under this subchapter, or a permit issued under this subchapter, shall be fined under title 18 or imprisoned for not more than 5 years, or both; and

(2) any person who is convicted of such a violation pursuant to paragraph (1) shall forfeit to the United States—

(A) any property constituting or derived from any proceeds that the person obtained, directly or indirectly, as a result of such violation; and

(B) any of the property of the person which was used, or intended to be used in any manner or part, to commit or to facilitate the commission of the violation.

(c) Separate offenses

For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) Injunctive relief

The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this subchapter, of regulations promulgated under this subchapter, or of permits issued under this subchapter, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) Liability of vessels in rem

A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended, used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) Revocation and suspension of permits

If the provisions of any permit issued under section 1412 or 1413 of this title are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g) Civil suits by private persons

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this subchapter. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this subchapter.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (in-

cluding reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

(h) Emergencies

No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

(i) Seizure and forfeiture

(1) In general

Any vessel used to commit an act for which a penalty is imposed under subsection (b) shall be subject to seizure and forfeiture to the United States under procedures established for seizure and forfeiture of conveyances under sections 853 and 881 of title 21.

(2) Limitation on application

This subsection does not apply to an act committed substantially in accordance with a compliance agreement or enforcement agreement entered into by the Administrator under section 1414b(c) of this title.

(Pub. L. 92-532, title I, §105, Oct. 23, 1972, 86 Stat. 1057; Pub. L. 100-688, title III, §3201(c), (d), Nov. 18, 1988, 102 Stat. 4153; Pub. L. 102-580, title V, §508, Oct. 31, 1992, 106 Stat. 4869.)

REFERENCES IN TEXT

Section 13 of the Federal Water Pollution Control Act, referred to in subsec. (e), is section 13 of act June 30, 1948, ch. 758, as added by act Apr. 3, 1970, Pub. L. 91-224, title I, §102, 84 Stat. 100, which was classified to section 1163 of this title and was superseded by Pub. L. 92-500, Oct. 18, 1972, 86 Stat. 816. See section 1322 of this title.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102-580, §508(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this subchapter, regulations promulgated under this subchapter, or a permit issued under this subchapter shall be fined not more than \$50,000, or imprisoned for not more than one year, or both.

“(2) In addition to any action which may be brought under subsection (a), any person—

“(A) who knowingly violates any provision of this subchapter by engaging in activity involving the dumping into ocean waters of medical waste shall upon conviction be fined not more than \$250,000, or imprisoned for not more than 5 years, or both; and

“(B) convicted of a violation involving such activity shall forfeit to the United States any property constituting or derived from any proceeds the person obtained, directly or indirectly, as a result of such violation, and any of the property of the person which was used, or intended to be used in any manner or part, to commit or to facilitate the commission of the violation.”

Subsec. (i). Pub. L. 102-508, §508(b), added subsec. (i). 1988—Subsec. (a). Pub. L. 100-688, §3201(c), inserted provisions relating to civil penalty of not more than \$125,000 for engaging in activity involving dumping of medical waste.

Subsec. (b). Pub. L. 100-688, §3201(d), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE

Section effective 6 months after Oct. 23, 1972, see section 110(a) of Pub. L. 92-532, set out as a note under section 1411 of this title.

§ 1416. Relationship to other laws

(a) Voiding of preexisting licenses

After the effective date of this subchapter, all licenses, permits, and authorizations other than those issued pursuant to this subchapter shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this subchapter, and whether issued before or after the effective date of this subchapter.

(b) Actions under authority of Rivers and Harbors Act

The provisions of subsection (a) shall not apply to actions taken before the effective date of this subchapter under the authority of the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended (33 U.S.C. 401 et seq.).

(c) Impairment of navigation

Prior to issuing any permit under this subchapter, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) State programs

(1) State rights preserved

Except as expressly provided in this subsection, nothing in this subchapter shall preclude or deny the right of any State to adopt or enforce any requirements respecting dumping of materials into ocean waters within the jurisdiction of the State.

(2) Federal projects

In the case of a Federal project, a State may not adopt or enforce a requirement that is more stringent than a requirement under this subchapter if the Administrator finds that such requirement—

(A) is not supported by relevant scientific evidence showing the requirement to be protective of human health, aquatic resources, or the environment;

(B) is arbitrary or capricious; or

(C) is not applicable or is not being applied to all projects without regard to Federal, State, or private participation and the Secretary of the Army concurs in such finding.

(3) Exemption from State requirements

The President may exempt a Federal project from any State requirement respecting dumping of materials into ocean waters if it is in