

§ 60127. Population encroachment and rights-of-way

(a) **STUDY.**—The Secretary of Transportation, in conjunction with the Federal Energy Regulatory Commission and in consultation with appropriate Federal agencies and State and local governments, shall undertake a study of land use practices, zoning ordinances, and preservation of environmental resources with regard to pipeline rights-of-way and their maintenance.

(b) **PURPOSE OF STUDY.**—The purpose of the study shall be to gather information on land use practices, zoning ordinances, and preservation of environmental resources—

(1) to determine effective practices to limit encroachment on existing pipeline rights-of-way;

(2) to address and prevent the hazards and risks to the public, pipeline workers, and the environment associated with encroachment on pipeline rights-of-way;

(3) to raise the awareness of the risks and hazards of encroachment on pipeline rights-of-way; and

(4) to address how to best preserve environmental resources in conjunction with maintaining pipeline rights-of-way, recognizing pipeline operators' regulatory obligations to maintain rights-of-way and to protect public safety.

(c) **CONSIDERATIONS.**—In conducting the study, the Secretary shall consider, at a minimum, the following:

(1) The legal authority of Federal agencies and State and local governments in controlling land use and the limitations on such authority.

(2) The current practices of Federal agencies and State and local governments in addressing land use issues involving a pipeline easement.

(3) The most effective way to encourage Federal agencies and State and local governments to monitor and reduce encroachment upon pipeline rights-of-way.

(d) **REPORT.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this subsection, the Secretary shall publish a report identifying practices, laws, and ordinances that are most successful in addressing issues of encroachment and maintenance on pipeline rights-of-way so as to more effectively protect public safety, pipeline workers, and the environment.

(2) **DISTRIBUTION OF REPORT.**—The Secretary shall provide a copy of the report to—

(A) Congress and appropriate Federal agencies; and

(B) States for further distribution to appropriate local authorities.

(3) **ADOPTION OF PRACTICES, LAWS, AND ORDINANCES.**—The Secretary shall encourage Federal agencies and State and local governments to adopt and implement appropriate practices, laws, and ordinances, as identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way and to address the potential methods of preserving environmental resources while maintaining pipeline rights-of-way, consistent with pipeline safety.

(Added Pub. L. 104-304, §16(a), Oct. 12, 1996, 110 Stat. 3803; amended Pub. L. 107-355, §11(a), Dec. 17, 2002, 116 Stat. 2996.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 107-355, which was approved Dec. 17, 2002.

AMENDMENTS

2002—Pub. L. 107-355 substituted “Population encroachment and rights-of-way” for “Population encroachment” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) **LAND USE RECOMMENDATIONS.**—The Secretary of Transportation shall make available to an appropriate official of each State, as determined by the Secretary, the land use recommendations of the special report numbered 219 of the Transportation Research Board, entitled ‘Pipelines and Public Safety’.

“(b) **EVALUATION.**—The Secretary shall—

“(1) evaluate the recommendations in the report referred to in subsection (a);

“(2) determine to what extent the recommendations are being implemented;

“(3) consider ways to improve the implementation of the recommendations; and

“(4) consider other initiatives to further improve awareness of local planning and zoning entities regarding issues involved with population encroachment in proximity to the rights-of-way of any interstate gas pipeline facility or interstate hazardous liquid pipeline facility.”

§ 60128. Dumping within pipeline rights-of-way

(a) **PROHIBITION.**—No person shall excavate for the purpose of unauthorized disposal within the right-of-way of an interstate gas pipeline facility or interstate hazardous liquid pipeline facility, or any other limited area in the vicinity of any such interstate pipeline facility established by the Secretary of Transportation, and dispose solid waste therein.

(b) **DEFINITION.**—For purposes of this section, the term “solid waste” has the meaning given that term in section 1004(27) of the Solid Waste Disposal Act (42 U.S.C. 6903(27)).

(Added Pub. L. 104-304, §18(a), Oct. 12, 1996, 110 Stat. 3804.)

§ 60129. Protection of employees providing pipeline safety information

(a) **DISCRIMINATION AGAINST EMPLOYEE.**—

(1) **IN GENERAL.**—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)—

(A) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard under this chapter or any other Federal law relating to pipeline safety;

(B) refused to engage in any practice made unlawful by this chapter or any other Federal law relating to pipeline safety, if the employee has identified the alleged illegality to the employer;

(C) provided, caused to be provided, or is about to provide or cause to be provided, tes-

timony before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or any other Federal law relating to pipeline safety;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or any other Federal law relating to pipeline safety, or a proceeding for the administration or enforcement of any requirement imposed under this chapter or any other Federal law relating to pipeline safety;

(E) provided, caused to be provided, or is about to provide or cause to be provided, testimony in any proceeding described in subparagraph (D); or

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or any other Federal law relating to pipeline safety.

(2) EMPLOYER DEFINED.—In this section, the term “employer” means—

(A) a person owning or operating a pipeline facility; or

(B) a contractor or subcontractor of such a person.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person or persons named in the complaint and the Secretary of Transportation of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person or persons under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the person or persons named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person or persons alleged to have committed a violation of subsection (a) of the Secretary of Labor’s findings. If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall include with the Secretary of Labor’s findings with a preliminary order providing the relief prescribed by paragraph

(3)(B). Not later than 60 days after the date of notification of findings under this subparagraph, any person alleged to have committed a violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Such hearings shall be conducted expeditiously. If a hearing is not requested in such 60-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—

(i) REQUIRED SHOWING BY COMPLAINANT.—

The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—Not later than 90 days after the date of conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person or persons alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person or persons who committed such violation to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(iii) provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the person or persons against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing the complaint upon which the order was issued.

(C) FRIVOLOUS COMPLAINTS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney's fee not exceeding \$1,000.

(4) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—Any person adversely affected or aggrieved by an order issued under paragraph (3) 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 or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days after the date of issuance of the final order of the Secretary of Labor. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

(B) LIMITATION ON COLLATERAL ATTACK.—An order of the Secretary of Labor 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.

(5) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—Whenever any person has failed to comply with an order issued under paragraph (3), the Secretary of Labor may 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 to be limited to, injunctive relief and compensatory damages.

(6) ENFORCEMENT OF ORDER BY PARTIES.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person or persons to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(B) ATTORNEY FEES.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award of costs is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an action of an employee of an employer who, acting without direction from the employer (or such employer's agent), deliberately causes a violation of any requirement relating to pipeline safety under this chapter or any other law of the United States.

(Added Pub. L. 107-355, §6(a), Dec. 17, 2002, 116 Stat. 2989.)

§ 60130. Pipeline safety information grants to communities

(a) GRANT AUTHORITY.—

(1) IN GENERAL.—The Secretary of Transportation may make grants for technical assistance to local communities and groups of individuals (not including for-profit entities) relating to the safety of pipeline facilities in local communities, other than facilities regulated under Public Law 93-153 (43 U.S.C. 1651 et seq.). No grants may be awarded under section 60114(g) until the Secretary has established competitive procedures for awarding grants under this section and criteria for selecting grant recipients. The amount of any grant under this section may not exceed \$100,000 for a single grant recipient. The Secretary shall establish appropriate procedures to ensure the proper use of funds provided under this section.

(2) DEMONSTRATION GRANTS.—At least the first 3 grants awarded under this section shall be demonstration grants for the purpose of demonstrating and evaluating the utility of grants under this section. Each such demonstration grant shall not exceed \$25,000.

(3) DISSEMINATION OF TECHNICAL FINDINGS.—Each recipient of a grant under this section shall ensure that—

(A) the technical findings made possible by the grants are made available to the relevant operators; and

(B) open communication between the grant recipients, local operators, local communities, and other interested parties is encouraged.

(4) TECHNICAL ASSISTANCE DEFINED.—In this subsection, the term "technical assistance" means engineering and other scientific analysis of pipeline safety issues, including the promotion of public participation on technical pipeline safety issues in official proceedings conducted under this chapter.

(b) PROHIBITED USES.—Funds provided under this section to grant recipients and their contractors may not be used for lobbying, for direct advocacy for or against a pipeline construction or expansion project, or in direct support of litigation.