

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(4), (f), and (g)(4), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (a), was amended generally by Pub. L. 101-380, title IV, §4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

Such amendments and the amendments made by the Superfund Amendments and Reauthorization Act of 1986, referred to in subsec. (b), are the amendments made by Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

## AMENDMENTS

2002—Subsec. (h). Pub. L. 107-118 added subsec. (h).

1986—Subsec. (a). Pub. L. 99-499, §105(a)(1), designated existing provisions as subsec. (a) and added heading.

Subsec. (a)(8)(A). Pub. L. 99-499, §105(a)(2), inserted "the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release, the contamination or potential contamination of the ambient air which is associated with the release or threatened release," after "ecosystems,".

Subsec. (a)(8)(B). Pub. L. 99-499, §105(a)(3), struck out "at least four hundred of" after "To the extent practicable," substituted "one hundred highest priority facilities" for "one hundred highest priority facilities at least", and inserted "A State shall be allowed to designate its highest priority facility only once."

Subsec. (a)(9). Pub. L. 99-499, §105(a)(4), inserted "and including consideration of minority firms in accordance with subsection (f)".

Subsec. (a)(10). Pub. L. 99-499, §105(a)(5), added par. (10).

Subsecs. (b) to (g). Pub. L. 99-499, §105(b), added subsecs. (b) to (g).

**§ 9606. Abatement actions****(a) Maintenance, jurisdiction, etc.**

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The President may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and welfare and the environment.

**(b) Fines; reimbursement**

(1) Any person who, without sufficient cause, willfully violates, or fails or refuses to comply

with, any order of the President under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(2)(A) Any person who receives and complies with the terms of any order issued under subsection (a) may, within 60 days after completion of the required action, petition the President for reimbursement from the Fund for the reasonable costs of such action, plus interest. Any interest payable under this paragraph shall accrue on the amounts expended from the date of expenditure at the same rate as specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26.

(B) If the President refuses to grant all or part of a petition made under this paragraph, the petitioner may within 30 days of receipt of such refusal file an action against the President in the appropriate United States district court seeking reimbursement from the Fund.

(C) Except as provided in subparagraph (D), to obtain reimbursement, the petitioner shall establish by a preponderance of the evidence that it is not liable for response costs under section 9607(a) of this title and that costs for which it seeks reimbursement are reasonable in light of the action required by the relevant order.

(D) A petitioner who is liable for response costs under section 9607(a) of this title may also recover its reasonable costs of response to the extent that it can demonstrate, on the administrative record, that the President's decision in selecting the response action ordered was arbitrary and capricious or was otherwise not in accordance with law. Reimbursement awarded under this subparagraph shall include all reasonable response costs incurred by the petitioner pursuant to the portions of the order found to be arbitrary and capricious or otherwise not in accordance with law.

(E) Reimbursement awarded by a court under subparagraph (C) or (D) may include appropriate costs, fees, and other expenses in accordance with subsections (a) and (d) of section 2412 of title 28.

**(c) Guidelines for using imminent hazard, enforcement, and emergency response authorities; promulgation by Administrator of EPA, scope, etc.**

Within one hundred and eighty days after December 11, 1980, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this chapter. Such guidelines shall to the extent practicable be consistent with the national hazardous substance response plan, and shall include, at a minimum, the assignment of responsibility for coordinating response actions with the issuance of administrative orders, enforcement of standards and permits, the gathering of

information, and other imminent hazard and emergency powers authorized by (1) sections 1321(c)(2),<sup>1</sup> 1318, 1319, and 1364(a) of title 33, (2) sections 6927, 6928, 6934, and 6973 of this title, (3) sections 300j-4 and 300i of this title, (4) sections 7413, 7414, and 7603 of this title, and (5) section 2606 of title 15.

(Pub. L. 96-510, title I, § 106, Dec. 11, 1980, 94 Stat. 2780; Pub. L. 99-499, title I, §§ 106, 109(b), Oct. 17, 1986, 100 Stat. 1628, 1633; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

### Editorial Notes

#### REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which enacted this chapter, section 6911a of this title, and sections 4611, 4612, 4661, 4662, 4681, and 4682 of Title 26, Internal Revenue Code, amended section 6911 of this title, section 1364 of Title 33, Navigation and Navigable Waters, and section 11901 of Title 49, Transportation, and enacted provisions set out as notes under section 6911 of this title and sections 1 and 4611 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

Section 1321(c)(2) of title 33, referred to in subsec. (c), was amended generally by Pub. L. 101-380, title IV, § 4201(a), Aug. 18, 1990, 104 Stat. 523. Prior to general amendment, subsec. (c)(2) related to preparation of a National Contingency Plan. Provisions relating to a National Contingency Plan are contained in section 1321(d) of Title 33, Navigation and Navigable Waters.

#### AMENDMENTS

1986—Subsec. (b). Pub. L. 99-499 designated existing provisions as par. (1), substituted "who, without sufficient cause, willfully" for "who willfully" and "\$25,000" for "\$5,000", and added par. (2).

Subsec. (b)(2)(A). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

### Statutory Notes and Related Subsidiaries

#### COORDINATION OF TITLES I TO IV OF PUB. L. 99-499

Any provision of titles I to IV of Pub. L. 99-499, imposing any tax, premium, or fee; establishing any trust fund; or authorizing expenditures from any trust fund, to have no force or effect, see section 531 of Pub. L. 99-499, set out as a note under section 1 of Title 26, Internal Revenue Code.

### § 9607. Liability

#### (a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section—

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

(3) any person who by contract, agreement, or otherwise arranged for disposal or treat-

ment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and

(4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for—

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and

(D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be the same rate as is specified for interest on investments of the Hazardous Substance Superfund established under subchapter A of chapter 98 of title 26. For purposes of applying such amendments to interest under this subsection, the term "comparable maturity" shall be determined with reference to the date on which interest accruing under this subsection commences.

#### (b) Defenses

There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by—

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (a) he exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances, and (b) he took precautions against foresee-

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