

L. 115-282, title IX, §903(c)(2), Dec. 4, 2018, 132 Stat. 4356; Pub. L. 115-436, §3(b), Jan. 14, 2019, 132 Stat. 5560.)

### Editorial Notes

#### REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(7), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

#### AMENDMENTS

2019—Subsec. (h). Pub. L. 115-436 added subsec. (h).

2018—Subsec. (a)(3). Pub. L. 115-282, §903(c)(2)(A), substituted “1322(p), 1328” for “1328”.

Subsec. (c)(1)(A), (2)(A), (3)(A). Pub. L. 115-282, §903(c)(2)(B), substituted “1322(p), 1328” for “1328”.

Subsec. (d). Pub. L. 115-282, §903(c)(2)(C), substituted “1322(p), 1328,” for “1328” and “State,” for “State,.”

Subsec. (g)(1)(A). Pub. L. 115-282, §903(c)(2)(D), substituted “1322(p), 1328” for “1328”.

1990—Subsec. (c)(1)(A), (2)(A), (3)(A). Pub. L. 101-380 inserted “1321(b)(3),” after “1318,.”

1987—Subsec. (c). Pub. L. 100-4, §312, amended subsec. (c) generally, revising provisions of par. (1), adding pars. (2), (3), (5), and (7), redesignating former pars. (2) and (4) as (3) and (6), respectively, and revising provisions of redesignated par. (4).

Subsec. (d). Pub. L. 100-4, §313(a)(1), inserted “, or any requirement imposed in a pretreatment program approved under section 1342(a)(3) or 1342(b)(8) of this title,” after second reference to “State,.”

Pub. L. 100-4, §313(b)(1), substituted “\$25,000 per day for each violation” for “\$10,000 per day of such violation”.

Pub. L. 100-4, §313(c), inserted at end “In determining the amount of a civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.”

Subsec. (g). Pub. L. 100-4, §314(a), added subsec. (g).

1977—Subsec. (a)(1). Pub. L. 95-217, §§55(a), 67(c)(2)(A), substituted “1318, 1328, or 1345 of this title” for “or 1318 of this title” and “1342 or 1344 of this title” for “1342 of this title”.

Subsec. (a)(2). Pub. L. 95-217, §56(a), substituted “except where an extension has been granted under paragraph (5)(B) of this subsection, the Administrator shall enforce any permit condition or limitation” for “the Administrator shall enforce any permit condition or limitation”.

Subsec. (a)(3). Pub. L. 95-217, §§55(b), 67(c)(2)(B), substituted “1318, 1328, or 1345 of this title” for “or 1318 of this title” and inserted “or in a permit issued under section 1344 of this title by a State” after “in a permit issued under section 1342 of this title by him or by a State”.

Subsec. (a)(4). Pub. L. 95-217, §56(b), struck out provision that any order issued under this subsection had to be by personal service and had to state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Administrator determined to be reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. See section subsec. (a)(5) of this section.

Subsec. (a)(5), (6). Pub. L. 95-217, §56(c), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95-217, §67(c)(2)(C), substituted “by a State or in a permit issued under section 1344 of this title by a State, shall be punished” for “by a State, shall be punished”.

Subsec. (d). Pub. L. 95-217, §§55(c), 67(c)(2)(D), substituted “1318, 1328, or 1345 of this title” for “or 1318 of this title” and inserted “or in a permit issued under section 1344 of this title by a State,” after “permit issued under section 1342 of this title by the Administrator, or by a State,.”

Subsec. (f). Pub. L. 95-217, §54(b), added subsec. (f).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of this title.

#### SAVINGS PROVISION

Pub. L. 100-4, title III, §313(a)(2), Feb. 4, 1987, 101 Stat. 45, provided that: “No State shall be required before July 1, 1988, to modify a permit program approved or submitted under section 402 of the Federal Water Pollution Control Act [33 U.S.C. 1342] as a result of the amendment made by paragraph (1) [amending this section].”

#### DEPOSIT OF CERTAIN PENALTIES INTO OIL SPILL LIABILITY TRUST FUND

Penalties paid pursuant to subsection (c) of this section and sections 1321 and 1501 et seq. of this title to be deposited in the Oil Spill Liability Trust Fund created under section 9509 of Title 26, Internal Revenue Code, see section 4304 of Pub. L. 101-380, set out as a note under section 9509 of Title 26.

#### INCREASED PENALTIES NOT REQUIRED UNDER STATE PROGRAMS

Pub. L. 100-4, title III, §313(b)(2), Feb. 4, 1987, 101 Stat. 45, provided that: “The Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) of such Act [33 U.S.C. 1319(d)] which has the same monetary amount as the civil penalty established by such section, as amended by paragraph (1) [amending this section]. Nothing in this paragraph shall affect the Administrator’s authority to establish or adjust by regulation a minimum acceptable State civil penalty.”

#### ACTIONS BY SURGEON GENERAL RELATING TO INTERSTATE POLLUTION

Act July 9, 1956, ch. 518, §5, 70 Stat. 507, provided that actions by the Surgeon General with respect to water pollutants under section 2(d) of act June 30, 1948, ch. 758, 62 Stat. 1155, as in effect prior to July 9, 1956, which had been completed prior to such date, would still be subject to the terms of section 2(d) of act June 30, 1948, in effect prior to the July 9, 1956 amendment, but that actions with respect to such pollutants would nevertheless subsequently be possible in accordance with the terms of act June 30, 1948, as amended by act July 9, 1956.

### § 1320. International pollution abatement

#### (a) Hearing; participation by foreign nations

Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution

control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

**(b) Functions and responsibilities of Administrator not affected**

The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

**(c) Hearing board; composition; findings of fact; recommendations; implementation of board's decision**

The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this chapter.

**(d) Report by alleged polluter**

In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or

other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of \$1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

**(e) Compensation of board members**

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5, be fully reimbursed for travel, subsistence and related expenses.

**(f) Enforcement proceedings**

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

(June 30, 1948, ch. 758, title III, §310, as added Pub. L. 92-500, §2, Oct. 18, 1972, 86 Stat. 860.)

**Statutory Notes and Related Subsidiaries**

**REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES**

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable

under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

### § 1321. Oil and hazardous substance liability

#### (a) Definitions

For the purpose of this section, the term—

(1) “oil” means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) “discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 1342 of this title, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 1342 of this title, and subject to a condition in such permit,<sup>1</sup> (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 1342 of this title, which are caused by events occurring within the scope of relevant operating or treatment systems, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section;

(3) “vessel” means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) “public vessel” means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) “United States” means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) “owner or operator” means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) “person” includes an individual, firm, corporation, association, and a partnership;

(8) “remove” or “removal” refers to containment and removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) “contiguous zone” means the entire zone established or to be established by the United

States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) “onshore facility” means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) “offshore facility” means any facility of any kind located in, on, or under, any of the navigable waters of the United States, any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel, and, for the purposes of applying subsections (b), (c), (e), and (o), any foreign offshore unit (as defined in section 1001 of the Oil Pollution Act<sup>2</sup>) or any other facility located seaward of the exclusive economic zone;

(12) “act of God” means an act occasioned by an unanticipated grave natural disaster;

(13) “barrel” means 42 United States gallons at 60 degrees Fahrenheit;

(14) “hazardous substance” means any substance designated pursuant to subsection (b)(2) of this section;

(15) “inland oil barge” means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to operate only in the inland waters of the United States, while operating in such waters;

(16) “inland waters of the United States” means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway;

(17) “otherwise subject to the jurisdiction of the United States” means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party;

(18) “Area Committee” means an Area Committee established under subsection (j);

(19) “Area Contingency Plan” means an Area Contingency Plan prepared under subsection (j);

(20) “Coast Guard District Response Group” means a Coast Guard District Response Group established under subsection (j);

(21) “Federal On-Scene Coordinator” means a Federal On-Scene Coordinator designated in the National Contingency Plan;

(22) “National Contingency Plan” means the National Contingency Plan prepared and published under subsection (d);

(23) “National Response Unit” means the National Response Unit established under subsection (j);

(24) “worst case discharge” means—

(A) in the case of a vessel, a discharge in adverse weather conditions of its entire cargo; and

(B) in the case of an offshore facility or onshore facility, the largest foreseeable discharge in adverse weather conditions;

(25) “removal costs” means—

<sup>1</sup> So in original.

<sup>2</sup> See References in Text note below.