

penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

(Pub. L. 99-499, title III, §326, Oct. 17, 1986, 100 Stat. 1755.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, known as the Superfund Amendments and Reauthorization Act of 1986. 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.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 11047. Exemption

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

(Pub. L. 99-499, title III, §327, Oct. 17, 1986, 100 Stat. 1757.)

§ 11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

(Pub. L. 99-499, title III, §328, Oct. 17, 1986, 100 Stat. 1757.)

§ 11049. Definitions

For purposes of this chapter—

(1) Administrator

The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) Environment

The term “environment” includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term “extremely hazardous substance” means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term “facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term “hazardous chemical” has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term “material safety data sheet” means the sheet required to be developed