

Subsec. (h). Pub. L. 99-499, § 205(d), added subsec. (h).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-58, title XV, § 1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: "This subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title II, § 2505, Sept. 30, 1996, 110 Stat. 3009-468, provided that: "The amendments made by this subtitle [subtitle E (§§ 2501-2505) of title II of div. A of Pub. L. 104-208, amending this section and sections 9601 and 9607 of this title] shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act [Sept. 30, 1996]."

REGULATIONS

Pub. L. 109-58, title XV, § 1530(c), Aug. 8, 2005, 119 Stat. 1104, provided that: "The Administrator shall issue regulations or guidelines implementing the requirements of this subsection [probably means this section, which amended this section and section 6991e of this title and enacted provisions set out as notes under this section], including guidance to differentiate between the terms 'repair' and 'replace' for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act [42 U.S.C. 6991b(i)(1)]."

ASSISTANCE AGREEMENTS WITH INDIAN TRIBES

Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "That hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h)(7) of the Resource Conservation and Recovery Act [probably means section 9003(h)(7) of Pub. L. 89-272, 42 U.S.C. 6991b(h)(7)]."

POLLUTION LIABILITY INSURANCE

Pub. L. 99-499, title II, § 205(h), Oct. 17, 1986, 100 Stat. 1702, provided that:

"(1) **STUDY.**—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and the operation of the Water Quality Insurance Syndicate.

"(2) **REPORT.**—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection [Oct. 17, 1986]. Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

§ 6991c. Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may,¹ submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 6991(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks;

(8) requirements—

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 6991i of this title.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the cor-

¹ So in original. The comma probably should not appear.

responding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator includ-

ing, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(6) **WITHDRAWAL OF APPROVAL.**—After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under subsection (a).

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution

(1) In general

(A) Amount and permitted uses of distribution

The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 6991m(2)(A) of this title for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

- (i) corrective actions taken by the State under section 6991b(h)(7)(A) of this title;
- (ii) necessary administrative expenses, as determined by the Administrator, that

are directly related to State fund or State assurance programs under subsection (c)(1); or

(iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subchapter.

(B) Use of funds for enforcement

In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subchapter.

(C) Prohibited uses

Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on August 8, 2005).

(2) Allocation

(A) Process

Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 6991b(h)(7)(A) of this title, the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of State funds

The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage tanks covered by this subchapter, with the exception of those transfers that had been completed earlier than August 8, 2005.

(C) Revisions to process

The Administrator may revise the allocation process referred to in subparagraph (A) after—

(i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

(ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to State agencies

Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

(A) enters into a cooperative agreement referred to in paragraph (2)(A); or

(B) is enforcing a State program approved under this section.

(Pub. L. 89-272, title II, §9004, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3282; amended Pub. L. 99-499, title II, §205(e), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109-58, title XV, §§1522(a), (b), 1524(b), 1533(3), Aug. 8, 2005, 119 Stat. 1092, 1093, 1096, 1105.)

Editorial Notes

REFERENCES IN TEXT

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-58, §1533(3), substituted “in subparagraph (A) or (B) of section 6991(7)” for “in 6991(2)(A) or (B) or both”.

Subsec. (a)(9). Pub. L. 109-58, §1524(b), added par. (9).

Subsec. (c)(6). Pub. L. 109-58, §1522(b), added par. (6).

Subsec. (f). Pub. L. 109-58, §1522(a), added subsec. (f).

1986—Subsec. (c)(1). Pub. L. 99-499, §205(e)(1), struck out “financed by fees on tank owners and operators and” after “compensation programs”.

Subsec. (c)(2). Pub. L. 99-499, §205(e)(2), struck out “or” after “letter of credit,” and inserted “or any other method satisfactory to the Administrator” and “including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title”.

§ 6991d. Inspections, monitoring, testing, and corrective action

(a) Furnishing information

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where an underground storage tank is located;

(2) to inspect and obtain samples from any person of any regulated substances contained in such tank;