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United States Code Annotated [Currentness](#)

Title 33. Navigation and Navigable Waters ([Refs & Annos](#))

▣ [Chapter 26](#). Water Pollution Prevention and Control ([Refs & Annos](#))

▣ [Subchapter III](#). Standards and Enforcement ([Refs & Annos](#))

→ **§ 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, [\[FN1\]](#) (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, and 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;

(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 Intra-coastal 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) of this section;

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

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

(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) of this section;

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

(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--

(A) the costs of removal of oil or a hazardous substance that are incurred after it is discharged; and

(B) in any case in which there is a substantial threat of a discharge of oil or a hazardous substance, the costs to prevent, minimize, or mitigate that threat; and

(26) “nontank vessel” means a self-propelled vessel that--

(A) is at least 400 gross tons as measured under [section 14302 of Title 46](#), or, for vessels not measured under that section, as measured under section 14502 of that title;

(B) is not a tank vessel;

(C) carries oil of any kind as fuel for main propulsion; and

(D) operates on the navigable waters of the United States, as defined in section 2101(17a) of that title.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous substances; study of higher standard of care incentives and report to Congress; liability; penalties; civil actions; penalty limitations, separate offenses, jurisdiction, mitigation of damages and costs, recovery of removal costs, alternative remedies, and withholding clearance of vessels

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [[43 U.S.C.A. § 1331 et seq.](#)] or the Deepwater Port Act of 1974 [[33 U.S.C.A. § 1501 et seq.](#)], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [[16 U.S.C.A. § 1801 et seq.](#)]).

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act [[43 U.S.C.A. § 1331 et seq.](#)] or the Deepwater Port Act of 1974 [[33 U.S.C.A. § 1501 et seq.](#)], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [[16 U.S.C.A. § 1801 et seq.](#)]), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and re-

port to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities, or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act [[43 U.S.C.A. § 1331 et seq.](#)] or the Deepwater Port Act of 1974 [[33 U.S.C.A. § 1501 et seq.](#)], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [[16 U.S.C.A. § 1801 et seq.](#)]), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. The Federal agency shall immediately notify the appropriate State agency of any State which is, or may reasonably be expected to be, affected by the discharge of oil or a hazardous substance. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined in accordance with Title 18, or imprisoned for not more than 5 years, or both. Notification received pursuant to this paragraph shall not be used against any such natural person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) Administrative penalties

(A) Violations

Any owner, operator, or person in charge of any vessel, onshore facility, or offshore facility--

(i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or

(ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject,

may be assessed a class I or class II civil penalty by the Secretary of the department in which the Coast Guard is operating or the Administrator.

(B) Classes of penalties

(i) Class I

The amount of a class I civil penalty under subparagraph (A) may not exceed \$10,000 per violation, except that the maximum amount of any class I civil penalty under this subparagraph shall not exceed \$25,000. Before assessing a civil penalty under this clause, the Administrator or Secretary, as the case may be, shall give to the person to be assessed such penalty written notice of the Administrator's or Secretary's proposal to assess the penalty and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the proposed penalty. Such hearing shall not be subject to [section 554](#) or [556 of Title 5](#), but shall provide a reasonable opportunity to be heard and to present evidence.

(ii) Class II

The amount of a class II civil penalty under subparagraph (A) may not exceed \$10,000 per day for each day during which the violation continues; except that the maximum amount of any class II civil penalty under this subparagraph shall not exceed \$125,000. Except as otherwise provided in this subsection, a class II civil penalty shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected after notice and opportunity for a hearing on the record in accordance with [section 554 of Title 5](#). The Administrator and Secretary may issue rules for discovery procedures for hearings under this paragraph.

(C) Rights of interested persons

(i) Public notice

Before issuing an order assessing a class II civil penalty under this paragraph the Administrator or Secretary, as the case may be, shall provide public notice of and reasonable opportunity to comment on the proposed issuance of such order.

(ii) Presentation of evidence

Any person who comments on a proposed assessment of a class II civil penalty under this paragraph shall be given notice of any hearing held under this paragraph and of the order assessing such penalty. In any hearing held under this paragraph, such person shall have a reasonable opportunity to be heard and to present evidence.

(iii) Rights of interested persons to a hearing

If no hearing is held under subparagraph (B) before issuance of an order assessing a class II civil penalty under this paragraph, any person who commented on the proposed assessment may petition, within 30 days after the issuance of such order, the Administrator or Secretary, as the case may be, to set aside such order and to provide

a hearing on the penalty. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator or Secretary shall immediately set aside such order and provide a hearing in accordance with subparagraph (B)(ii). If the Administrator or Secretary denies a hearing under this clause, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of and the reasons for such denial.

(D) Finality of order

An order assessing a class II civil penalty under this paragraph shall become final 30 days after its issuance unless a petition for judicial review is filed under subparagraph (G) or a hearing is requested under subparagraph (C)(iii). If such a hearing is denied, such order shall become final 30 days after such denial.

(E) Effect of order

Action taken by the Administrator or Secretary, as the case may be, under this paragraph shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this chapter; except that any violation--

(i) with respect to which the Administrator or Secretary has commenced and is diligently prosecuting an action to assess a class II civil penalty under this paragraph, or

(ii) for which the Administrator or Secretary has issued a final order assessing a class II civil penalty not subject to further judicial review and the violator has paid a penalty assessed under this paragraph,

shall not be the subject of a civil penalty action under [section 1319\(d\)](#), [1319\(g\)](#), or [1365](#) of this Title or under paragraph (7).

(F) Effect of action on compliance

No action by the Administrator or Secretary under this paragraph shall affect any person's obligation to comply with any section of this chapter.

(G) Judicial review

Any person against whom a civil penalty is assessed under this paragraph or who commented on the proposed assessment of such penalty in accordance with subparagraph (C) may obtain review of such assessment--

(i) in the case of assessment of a class I civil penalty, in the United States District Court for the District of Columbia or in the district in which the violation is alleged to have occurred, or

(ii) in the case of assessment of a class II civil penalty, in United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business,

by filing a notice of appeal in such court within the 30-day period beginning on the date the civil penalty order is issued and by simultaneously sending a copy of such notice by certified mail to the Administrator or Secretary, as the case may be, and the Attorney General. The Administrator or Secretary shall promptly file in such court a certified copy of the record on which the order was issued. Such court shall not set aside or remand such order unless there is not substantial evidence in the record, taken as a whole, to support the finding of a viola-

tion or unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the Administrator's or Secretary's assessment of the penalty constitutes an abuse of discretion.

(H) Collection

If any person fails to pay an assessment of a civil penalty--

(i) after the assessment has become final, or

(ii) after a court in an action brought under subparagraph (G) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,

the Administrator or Secretary shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this subparagraph shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(I) Subpoenas

The Administrator or Secretary, as the case may be, may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this paragraph. In case of contumacy or refusal to obey a subpoena issued pursuant to this subparagraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(7) Civil penalty action

(A) Discharge, generally

Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3), shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

(B) Failure to remove or comply

Any person described in subparagraph (A) who, without sufficient cause--

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c) of this section; or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B) of this section;

shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

(C) Failure to comply with regulation

Any person who fails or refuses to comply with any regulation issued under subsection (j) of this section shall be subject to a civil penalty in an amount up to \$25,000 per day of violation.

(D) Gross negligence

In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or unit of reportable quantity of hazardous substance discharged.

(E) Jurisdiction

An action to impose a civil penalty under this paragraph may be brought in the district court of the United States for the district in which the defendant is located, resides, or is doing business, and such court shall have jurisdiction to assess such penalty.

(F) Limitation

A person is not liable for a civil penalty under this paragraph for a discharge if the person has been assessed a civil penalty under paragraph (6) for the discharge.

(8) Determination of amount

In determining the amount of a civil penalty under paragraphs (6) and (7), the Administrator, Secretary, or the court, as the case may be, shall consider the seriousness of the violation or violations, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

(9) Mitigation of damage

In addition to establishing a penalty for the discharge of oil or a hazardous substance, the Administrator or the Secretary of the department in which the Coast Guard is operating may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(10) Recovery of removal costs

Any costs of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under [section 1319\(b\)](#) of this Title.

(11) Limitation

Civil penalties shall not be assessed under both this section and [section 1319](#) of this Title for the same discharge.

(12) Withholding clearance

If any owner, operator, or person in charge of a vessel is liable for a civil penalty under this subsection, or if reasonable cause exists to believe that the owner, operator, or person in charge may be subject to a civil penalty under this subsection, the Secretary of the Treasury, upon the request of the Secretary of the department in which the Coast Guard is operating or the Administrator, shall with respect to such vessel refuse or revoke--

- (A) the clearance required by [section 60105 of Title 46](#);
- (B) a permit to proceed under section 313 of the Appendix to Title 46; and
- (C) a permit to depart required under [section 1443 of Title 19](#);

as applicable. Clearance or a permit refused or revoked under this paragraph may be granted upon the filing of a bond or other surety satisfactory to the Secretary of the department in which the Coast Guard is operating or the Administrator.

(c) Federal removal authority**(1) General removal requirement**

(A) The President shall, in accordance with the National Contingency Plan and any appropriate Area Contingency Plan, ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge, of oil or a hazardous substance--

- (i) into or on the navigable waters;
- (ii) on the adjoining shorelines to the navigable waters;
- (iii) into or on the waters of the exclusive economic zone; or
- (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

(B) In carrying out this paragraph, the President may--

(i) remove or arrange for the removal of a discharge, and mitigate or prevent a substantial threat of a discharge, at any time;

(ii) direct or monitor all Federal, State, and private actions to remove a discharge; and

(iii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(2) Discharge posing substantial threat to public health or welfare

(A) If a discharge, or a substantial threat of a discharge, of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the President shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge.

(B) In carrying out this paragraph, the President may, without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government--

(i) remove or arrange for the removal of the discharge, or mitigate or prevent the substantial threat of the discharge; and

(ii) remove and, if necessary, destroy a vessel discharging, or threatening to discharge, by whatever means are available.

(3) Actions in accordance with National Contingency Plan

(A) Each Federal agency, State, owner or operator, or other person participating in efforts under this subsection shall act in accordance with the National Contingency Plan or as directed by the President.

(B) An owner or operator participating in efforts under this subsection shall act in accordance with the National Contingency Plan and the applicable response plan required under subsection (j) of this section, or as directed by the President, except that the owner or operator may deviate from the applicable response plan if the President or the Federal On-Scene Coordinator determines that deviation from the response plan would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.

(4) Exemption from liability

(A) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance.

(B) Subparagraph (A) does not apply--

(i) to a responsible party;

(ii) to a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ([42 U.S.C. 9601 et seq.](#));

(iii) with respect to personal injury or wrongful death; or

(iv) if the person is grossly negligent or engages in willful misconduct.

(C) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (A).

(5) Obligation and liability of owner or operator not affected

Nothing in this subsection affects--

(A) the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil; or

(B) the liability of a responsible party under the Oil Pollution Act of 1990 [[33 U.S.C.A. § 2701 et seq.](#)].

(6) "Responsible party" defined

For purposes of this subsection, the term "responsible party" has the meaning given that term under section 1001 of the Oil Pollution Act of 1990 [[33 U.S.C.A. § 2701](#)].

(d) National Contingency Plan

(1) Preparation by President

The President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section.

(2) Contents

The National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to, the following:

(A) Assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies and port authorities including, but not limited to, water pollution control and conservation and trusteeship of natural resources (including conservation of fish and wildlife).

(B) Identification, procurement, maintenance, and storage of equipment and supplies.

(C) Establishment or designation of Coast Guard strike teams, consisting of--

- (i) personnel who shall be trained, prepared, and available to provide necessary services to carry out the National Contingency Plan;
 - (ii) adequate oil and hazardous substance pollution control equipment and material; and
 - (iii) a detailed oil and hazardous substance pollution and prevention plan, including measures to protect fisheries and wildlife.
- (D) A system of surveillance and notice designed to safeguard against as well as ensure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies.
- (E) Establishment of a national center to provide coordination and direction for operations in carrying out the Plan.
- (F) Procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances.
- (G) A schedule, prepared in cooperation with the States, identifying--
 - (i) dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the Plan,
 - (ii) the waters in which such dispersants, other chemicals, and other spill mitigating devices and substances may be used, and
 - (iii) the quantities of such dispersant, other chemicals, or other spill mitigating device or substance which can be used safely in such waters,which schedule shall provide in the case of any dispersant, chemical, spill mitigating device or substance, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants, other chemicals, and other spill mitigating devices and substances which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters.
- (H) A system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed in accordance with the Oil Pollution Act of 1990 [[33 U.S.C.A. § 2701 et seq.](#)], in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred for that removal, from the Oil Spill Liability Trust Fund.
- (I) Establishment of criteria and procedures to ensure immediate and effective Federal identification of, and response to, a discharge, or the threat of a discharge, that results in a substantial threat to the public health or welfare of the United States, as required under subsection (c)(2) of this section.
- (J) Establishment of procedures and standards for removing a worst case discharge of oil, and for mitigating or preventing a substantial threat of such a discharge.

(K) Designation of the Federal official who shall be the Federal On-Scene Coordinator for each area for which an Area Contingency Plan is required to be prepared under subsection (j) of this section.

(L) Establishment of procedures for the coordination of activities of--

- (i)** Coast Guard strike teams established under subparagraph (C);
- (ii)** Federal On-Scene Coordinators designated under subparagraph (K);
- (iii)** District Response Groups established under subsection (j) of this section; and
- (iv)** Area Committees established under subsection (j) of this section.

(M) A fish and wildlife response plan, developed in consultation with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other interested parties (including State fish and wildlife conservation officials), for the immediate and effective protection, rescue, and rehabilitation of, and the minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or that may be jeopardized by a discharge.

(3) Revisions and amendments

The President may, from time to time, as the President deems advisable, revise or otherwise amend the National Contingency Plan.

(4) Actions in accordance with National Contingency Plan

After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(e) Civil enforcement

(1) Orders protecting public health

In addition to any action taken by a State or local government, when the President determines that there may be an imminent and substantial threat to the public health or welfare of the United States, including fish, shellfish, and wildlife, public and private property, shorelines, beaches, habitat, and other living and nonliving natural resources under the jurisdiction or control of the United States, because of an actual or threatened discharge of oil or a hazardous substance from a vessel or facility in violation of subsection (b) of this section, the President may--

(A) require the Attorney General to secure any relief from any person, including the owner or operator of the vessel or facility, as may be necessary to abate such endangerment; or

(B) after notice to the affected State, take any other action under this section, including issuing administrative orders, that may be necessary to protect the public health and welfare.

(2) Jurisdiction of district courts

The district courts of the United States shall have jurisdiction to grant any relief under this subsection that the public interest and the equities of the case may require.

(f) Liability for actual costs of removal

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed \$50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the

privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) Third party liability

Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) of this section for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) Rights against third parties who caused or contributed to discharge

The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have

caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) Recovery of removal costs

In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Federal Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(j) National Response System

(1) In general

Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) National Response Unit

The Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit at Elizabeth City, North Carolina. The Secretary, acting through the National Response Unit--

(A) shall compile and maintain a comprehensive computer list of spill removal resources, personnel, and equipment that is available worldwide and within the areas designated by the President pursuant to paragraph (4), and of information regarding previous spills, including data from universities, research institutions, State governments, and other nations, as appropriate, which shall be disseminated as appropriate to response groups and area committees, and which shall be available to Federal and State agencies and the public;

(B) shall provide technical assistance, equipment, and other resources requested by a Federal On-Scene Coordinator;

(C) shall coordinate use of private and public personnel and equipment to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near an area designated by the President pursuant to paragraph (4);

(D) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph

(4);

(E) shall administer Coast Guard strike teams established under the National Contingency Plan;

(F) shall maintain on file all Area Contingency Plans approved by the President under this subsection; and

(G) shall review each of those plans that affects its responsibilities under this subsection.

(3) Coast Guard District Response Groups

(A) The Secretary of the department in which the Coast Guard is operating shall establish in each Coast Guard district a Coast Guard District Response Group.

(B) Each Coast Guard District Response Group shall consist of--

(i) the Coast Guard personnel and equipment, including firefighting equipment, of each port within the district;

(ii) additional prepositioned equipment; and

(iii) a district response advisory staff.

(C) Coast Guard district response groups--

(i) shall provide technical assistance, equipment, and other resources when required by a Federal On-Scene Coordinator;

(ii) shall maintain all Coast Guard response equipment within its district;

(iii) may provide technical assistance in the preparation of Area Contingency Plans required under paragraph (4); and

(iv) shall review each of those plans that affect its area of geographic responsibility.

(4) Area Committees and Area Contingency Plans

(A) There is established for each area designated by the President an Area Committee comprised of members appointed by the President from qualified personnel of Federal, State, and local agencies.

(B) Each Area Committee, under the direction of the Federal On-Scene Coordinator for its area, shall--

(i) prepare for its area the Area Contingency Plan required under subparagraph (C);

(ii) work with State and local officials to enhance the contingency planning of those officials and to assure pre-planning of joint response efforts, including appropriate procedures for mechanical recovery, dispersal, shoreline cleanup, protection of sensitive environmental areas, and protection, rescue, and rehabilitation of fisheries and wildlife; and

(iii) work with State and local officials to expedite decisions for the use of dispersants and other mitigating substances and devices.

(C) Each Area Committee shall prepare and submit to the President for approval an Area Contingency Plan for its area. The Area Contingency Plan shall--

(i) when implemented in conjunction with the National Contingency Plan, be adequate to remove a worst case discharge, and to mitigate or prevent a substantial threat of such a discharge, from a vessel, offshore facility, or onshore facility operating in or near the area;

(ii) describe the area covered by the plan, including the areas of special economic or environmental importance that might be damaged by a discharge;

(iii) describe in detail the responsibilities of an owner or operator and of Federal, State, and local agencies in removing a discharge, and in mitigating or preventing a substantial threat of a discharge;

(iv) list the equipment (including firefighting equipment), dispersants or other mitigating substances and devices, and personnel available to an owner or operator and Federal, State, and local agencies, to ensure an effective and immediate removal of a discharge, and to ensure mitigation or prevention of a substantial threat of a discharge;

(v) compile a list of local scientists, both inside and outside Federal Government service, with expertise in the environmental effects of spills of the types of oil typically transported in the area, who may be contacted to provide information or, where appropriate, participate in meetings of the scientific support team convened in response to a spill, and describe the procedures to be followed for obtaining an expedited decision regarding the use of dispersants;

(vi) describe in detail how the plan is integrated into other Area Contingency Plans and vessel, offshore facility, and onshore facility response plans approved under this subsection, and into operating procedures of the National Response Unit;

(vii) include any other information the President requires; and

(viii) be updated periodically by the Area Committee.

(D) The President shall--

(i) review and approve Area Contingency Plans under this paragraph; and

(ii) periodically review Area Contingency Plans so approved.

(5) Tank vessel, nontank vessel, and facility response plans

(A)(i) The President shall issue regulations which require an owner or operator of a tank vessel or facility described in subparagraph (C) to prepare and submit to the President a plan for responding, to the maximum extent

practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.

(ii) The President shall also issue regulations which require an owner or operator of a nontank vessel to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil.

(B) The Secretary of the Department in which the Coast Guard is operating may issue regulations which require an owner or operator of a tank vessel, a nontank vessel, or a facility described in subparagraph (C) that transfers noxious liquid substances in bulk to or from a vessel to prepare and submit to the Secretary a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of a noxious liquid substance that is not designated as a hazardous substance or regulated as oil in any other law or regulation. For purposes of this paragraph, the term “noxious liquid substance” has the same meaning when that term is used in the MARPOL Protocol described in [section 1901\(a\)\(3\)](#) of this title.

(C) The tank vessels, nontank vessels, and facilities referred to in subparagraphs (A) and (B) are the following:

(i) A tank vessel, as defined under [section 2101 of Title 46](#).

(ii) A nontank vessel.

(iii) An offshore facility.

(iv) An onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone.

(D) A response plan required under this paragraph shall--

(i) be consistent with the requirements of the National Contingency Plan and Area Contingency Plans;

(ii) identify the qualified individual having full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the persons providing personnel and equipment pursuant to clause (iii);

(iii) identify, and ensure by contract or other means approved by the President the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge (including a discharge resulting from fire or explosion), and to mitigate or prevent a substantial threat of such a discharge;

(iv) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel or at the facility, to be carried out under the plan to ensure the safety of the vessel or facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(v) be updated periodically; and

(vi) be resubmitted for approval of each significant change.

(E) With respect to any response plan submitted under this paragraph for an onshore facility that, because of its location, could reasonably be expected to cause significant and substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines or the exclusive economic zone, and with respect to each response plan submitted under this paragraph for a tank vessel, nontank vessel, or offshore facility, the President shall--

(i) promptly review such response plan;

(ii) require amendments to any plan that does not meet the requirements of this paragraph;

(iii) approve any plan that meets the requirements of this paragraph;

(iv) review each plan periodically thereafter; and

(v) in the case of a plan for a nontank vessel, consider any applicable State-mandated response plan in effect on August 9, 2004 and ensure consistency to the extent practicable.

(F) A tank vessel, nontank vessel, offshore facility, or onshore facility required to prepare a response plan under this subsection may not handle, store, or transport oil unless--

(i) in the case of a tank vessel, nontank vessel, offshore facility, or onshore facility for which a response plan is reviewed by the President under subparagraph (E), the plan has been approved by the President; and

(ii) the vessel or facility is operating in compliance with the plan.

(G) Notwithstanding subparagraph (E), the President may authorize a tank vessel, nontank vessel, offshore facility, or onshore facility to operate without a response plan approved under this paragraph, until not later than 2 years after the date of the submission to the President of a plan for the tank vessel, nontank vessel, or facility, if the owner or operator certifies that the owner or operator has ensured by contract or other means approved by the President the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

(H) The owner or operator of a tank vessel, nontank vessel, offshore facility, or onshore facility may not claim as a defense to liability under title I of the Oil Pollution Act of 1990 [[33 U.S.C.A. § 2701 et seq.](#)] that the owner or operator was acting in accordance with an approved response plan.

(I) The Secretary shall maintain, in the Vessel Identification System established under chapter 125 of Title 46, the dates of approval and review of a response plan under this paragraph for each tank vessel and nontank vessel that is a vessel of the United States.

(6) Equipment requirements and inspection

The President may require--

(A) periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove

discharges; and

(B) vessels operating on navigable waters and carrying oil or a hazardous substance in bulk as cargo, and non-tank vessels carrying oil of any kind as fuel for main propulsion, to carry appropriate removal equipment that employs the best technology economically feasible and that is compatible with the safe operation of the vessel.

(7) Area drills

The President shall periodically conduct drills of removal capability, without prior notice, in areas for which Area Contingency Plans are required under this subsection and under relevant tank vessel, nontank vessel, and facility response plans. The drills may include participation by Federal, State, and local agencies, the owners and operators of vessels and facilities in the area, and private industry. The President may publish annual reports on these drills, including assessments of the effectiveness of the plans and a list of amendments made to improve plans.

(8) United States Government not liable

The United States Government is not liable for any damages arising from its actions or omissions relating to any response plan required by this section.

(k) Repealed. Pub.L. 101-380, Title I, § 2002(b)(2), Aug. 18, 1990, 104 Stat. 507

(l) Administration

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Administrative provisions

(1) For vessels

Anyone authorized by the President to enforce the provisions of this section with respect to any vessel may, except as to public vessels--

(A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone,

(B) with or without a warrant, arrest any person who in the presence or view of the authorized person violates the provisions of this section or any regulation issued thereunder, and

(C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(2) For facilities

(A) Recordkeeping

Whenever required to carry out the purposes of this section, the Administrator or the Secretary of the Department in which the Coast Guard is operating shall require the owner or operator of a facility to which this section applies to establish and maintain such records, make such reports, install, use, and maintain such monitoring equipment and methods, and provide such other information as the Administrator or Secretary, as the case may be, may require to carry out the objectives of this section.

(B) Entry and inspection

Whenever required to carry out the purposes of this section, the Administrator or the Secretary of the Department in which the Coast Guard is operating or an authorized representative of the Administrator or Secretary, upon presentation of appropriate credentials, may--

- (i) enter and inspect any facility to which this section applies, including any facility at which any records are required to be maintained under subparagraph (A); and
- (ii) at reasonable times, have access to and copy any records, take samples, and inspect any monitoring equipment or methods required under subparagraph (A).

(C) Arrests and execution of warrants

Anyone authorized by the Administrator or the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section with respect to any facility may--

- (i) with or without a warrant, arrest any person who violates the provisions of this section or any regulation issued thereunder in the presence or view of the person so authorized; and
- (ii) execute any warrant or process issued by an officer or court of competent jurisdiction.

(D) Public access

Any records, reports, or information obtained under this paragraph shall be subject to the same public access and disclosure requirements which are applicable to records, reports, and information obtained pursuant to [section 1318](#) of this title.

(n) Jurisdiction

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o) Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State, or with respect to any removal activities related to such discharge.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) Repealed. Pub.L. 101-380, Title II, § 2002(b)(4), Aug. 18, 1990, 104 Stat. 507

(q) Establishment of maximum limit of liability with respect to onshore or offshore facilities

The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f)(2) and (3) of this section of less than \$50,000,000, but not less than \$8,000,000.

(r) Liability limitations not to limit liability under other legislation

Nothing in this section shall be construed to impose, or authorize the imposition of, any limitation on liability under the Outer Continental Shelf Lands Act [[43 U.S.C.A. § 1331 et seq.](#)] or the Deepwater Port Act of 1974 [[33 U.S.C.A. § 1501 et seq.](#)].

(s) Oil Spill Liability Trust Fund

The Oil Spill Liability Trust Fund established under [section 9509 of Title 26](#) shall be available to carry out subsections (b), (c), (d), (j), and (l) of this section as those subsections apply to discharges, and substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in the Oil Spill Liability Trust Fund.

CREDIT(S)

(June 30, 1948, c. 758, Title III, § 311, as added Oct. 18, 1972, Pub.L. 92-500, § 2, 86 Stat. 862, and amended Dec. 28, 1973, [Pub.L. 93-207](#), § 1(4), 87 Stat. 906; Dec. 27, 1977, [Pub.L. 95-217](#), §§ 57, 58(a) to (g), (i), (k) to (m), 91 Stat. 1593-1596; Nov. 2, 1978, [Pub.L. 95-576](#), § 1(b), 92 Stat. 2467; Oct. 21, 1980, [Pub.L. 96-478](#), § 13(b), 94 Stat. 2303; Oct. 21, 1980, [Pub.L. 96-483](#), § 8, 94 Stat. 2362; Dec. 22, 1980, [Pub.L. 96-561](#), Title II, § 238(b), 94 Stat. 3300; Apr. 2, 1982, [Pub.L. 97-164](#), Title I, § 161(5), 96 Stat. 49; Feb. 4, 1987, [Pub.L. 100-4](#), Title V, § 502(b), 101 Stat. 75; Aug. 18, 1990, [Pub.L. 101-380](#), Title II, § 2002(b), Title IV, §§ 4201(a), (b), (b)[(c)], 4202(a), (c), 4204, 4301(a), (b), 4305, 4306, 104 Stat. 507, 523 to 527, 532, 533, 540, 541; Oct. 6, 1992, [Pub.L. 102-388](#), Title III, § 349, 106 Stat. 1554; Oct. 29, 1992, [Pub.L. 102-572](#), Title IX, § 902(b)(1), 106 Stat. 4516; Sept. 30, 1996, [Pub.L. 104-208](#), Div. A, Title I, § 101(a) [Title II, § 211(b)], 110 Stat. 3009-41; Oct. 19, 1996, [Pub.L. 104-324](#), Title XI, §§ 1143, 1144, 110 Stat. 3992; Nov. 13, 1998, [Pub.L. 105-383](#), Title IV, § 411, 112 Stat. 3432; Aug. 9, 2004, [Pub.L.](#)

[108-293, Title VII, § 701\(a\), \(b\), \(d\)](#), 118 Stat. 1067, 1068; July 11, 2006, [Pub.L. 109-241, Title VI, § 608, Title IX, § 901\(i\)](#), 120 Stat. 558, 564.)

[FN1] So in original. The second comma probably should not appear.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1972 Acts. [Senate Report No. 92-414](#) and [Senate Conference Report No. 92-1236](#), see 1972 U.S. Code Cong. and Adm. News, p. 3668.

1973 Acts. [House Report No. 93-680](#), see 1973 U.S. Code Cong. and Adm. News, p. 3008.

1977 Acts. [Senate Report No. 95-370](#) and [House Conference Report No. 95-830](#), see 1977 U.S. Code Cong. and Adm. News, p. 4326.

1980 Acts. [House Report No. 96-1224](#), see 1980 U.S. Code Cong. and Adm. News, p. 4849.

[Senate Report No. 96-744](#), see 1980 U.S. Code Cong. and Adm. News, p. 5047.

[House Report No. 96-1243](#)(Parts I and II), see 1980 U.S. Code Cong. and Adm. News, p. 6793.

1982 Acts. [Senate Report No. 97-275](#), see 1982 U.S. Code Cong. and Adm. News, p. 11.

1987 Acts. Section-by-Section Analysis, see 1987 U.S. Code Cong. and Adm. News, p. 5.

1990 Acts. [Senate Report Nos. 101-94 and 101-99](#), [House Conference Report No. 101-653](#), and Statement by President, see 1990 U.S. Code Cong. and Adm. News, p. 722.

1992 Acts. [House Report No. 102-1006](#) and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3921.

1996 Acts. [Senate Report No. 104-160](#) and [House Conference Report No. 104-854](#), see 1996 U.S. Code Cong. and Adm. News, p. 4239.

1998 Acts. [House Report No. 105-236](#), see 1998 U.S. Code Cong. and Adm. News, p. 794.

2004 Acts. [House Conference Report No. 108-617](#), see 2004 U.S. Code Cong. and Adm. News, p. 936.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S26.

2006 Acts. House Conference Report No. 109-43, see 2006 U.S. Code Cong. and Adm. News, p. 579.

Statement by President, see 2006 U.S. Code Cong. and Adm. News, p. S29.

References in Text

The Outer Continental Shelf Lands Act, referred to in subsecs. (b)(1), (2)(A), (3), and (r), is Act Aug. 7, 1953, c. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (section 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Deepwater Port Act of 1974, referred to in subsecs. (b)(1), (2)(A), (3), and (r), is Pub.L. 93-627, Jan. 3, 1975, 88 Stat. 2126, as amended, which is classified generally to chapter 29 (section 1501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of this title and Tables volume.

The Magnuson-Stevens Fishery Conservation and Management Act, referred to in subsec. (b)(1), (2)(A), and (3), is Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to chapter 38 (section 1801 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 16 and Tables.

The date of enactment of this paragraph, referred to in subsec. (b)(2)(B), probably means the date of enactment of Pub. L. 95-576, which amended subsec. (b)(2)(B) and which was approved Nov. 2, 1978.

Section 313 of the Appendix to Title 46, referred to in subsec. (b)(12)(B), was repealed by Pub.L. 103-182, Title VI, § 690(a)(21), Dec. 8, 1993, 107 Stat. 2223.

The penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500, referred to in subsec. (b)(2)(B), probably means the penalty provision of subsec. (b)(2)(B)(iii)(bb) of this section as added by Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 864, prior to the amendment to subsec. (b)(2)(B) by section 1(b)(3) of Pub.L. 95-576. Prior to amendment, subsec. (b)(2)(B)(iii)(bb) read as follows: “a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than \$5,000,000 in the case of a discharge from a vessel and \$500,000 in the case of a discharge from an onshore or offshore facility.”

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (c)(4)(B)(ii), is Pub.L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is principally classified to chapter 103 (section 9601 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 9601 of Title 42 and Tables.

The Oil Pollution Act of 1990, referred to in subsecs. (c)(5)(B), (c)(6), (d)(2)(H) and (j)(5)(G), is Pub.L. 101-380, Aug. 18, 1990, 104 Stat. 484, which is principally classified to chapter 40 (section 2701 et seq.) of this title. Section 1001 of the Act is classified to section 2701 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Codifications

“Section 60105 of Title 46” substituted in subsec. (b)(12)(A) for “section 91 of the Appendix to Title 46” on authority of Pub.L. 109-304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which completed the codification of T. 46, Shipping, as positive law.

“Not later than 2 years after August 18, 1990”, appearing in subsec. (j)(6), was, in the original, “not later than 2 years after the date of enactment of this section”, and was editorially translated according to the probable intent of Congress in enacting subsec. (j)(6) by Pub.L. 101-380, 104 Stat. 484, which was approved Aug. 18, 1990.

Amendments

2006 Amendments. Pub.L. 109-241, § 901(i)(2), amended Pub.L. 108-293, § 701(b)(9), resulting in no change in text. See 2004 Amendments note for subsec. (j)(5)(H), now (j)(5)(I).

Subsec. (a)(26). Pub.L. 109-241, § 608, rewrote par. (26), which formerly read:

“(26) ‘nontank vessel’ means a self-propelled vessel of 400 gross tons as measured under section 14302 of Title 46, or greater, other than a tank vessel, that carries oil of any kind as fuel for main propulsion and that--

“(A) is a vessel of the United States; or

“(B) operates on the navigable waters of the United States.”.

Subsec. (j)(5)(A)(ii). Pub.L. 109-241, § 901(i)(1), struck out “non-tank” and inserted “nontank”.

Subsec. (j)(5)(B). Pub.L. 109-241, § 901(i)(1), struck out “non-tank” and inserted “nontank”.

Subsec. (j)(5)(F). Pub.L. 109-241, § 901(i)(1), struck out “non-tank” and inserted “nontank” wherever appearing.

Subsec. (j)(5)(G). Pub.L. 109-241, § 901(i)(1), struck out “non-tank” and inserted “nontank” wherever appearing.

2004 Amendments. Subsec. (a)(24)(B). Pub.L. 108-293, § 701(a)(1), struck out “and” after the semicolon in subpar. (B).

Subsec. (a)(25)(B). Pub.L. 108-293, § 701(a)(2), substituted “threat; and” for “threat.”.

Subsec. (a)(26). Pub.L. 108-293, § 701(a)(3), inserted par. (26).

Subsec. (j)(5). Pub.L. 108-293, § 701(b)(1), in the heading, inserted “, nontank vessel,” after “vessel”.

Subsec. (j)(5)(A)(i). Pub.L. 108-293, § 701(b)(2)(A), designated the contents of subpar. (A) as cl. (i).

Pub.L. 108-293, § 701(d)(3), substituted “subparagraph (C)” for “subparagraph (B)” in redesignated cl. (i).

Subsec. (j)(5)(A)(ii). Pub.L. 108-293, § 701(b)(2)(B), inserted cl. (ii).

Subsec. (j)(5)(B). Pub.L. 108-293, § 701(b)(3), (4), inserted “, nontank vessels,” after “vessels” in the matter preceding cl. (i), inserted a new cl. (ii) and redesignated former cls. (ii) and (iii) as cls. (iii) and (iv), respectively, in subpar. (B), which was subsequently redesignated (C).

Pub.L. 108-293, § 701(d)(1), (2), inserted a new subpar. (B) and redesignated former subpar. (B) as subpar. (C).

Subsec. (j)(5)(C). Pub.L. 108-293, § 701(d)(1), redesignated former subpars. (B) and (C) as subpars. (C) and (D).

Pub.L. 108-293, § 701(d)(4), substituted “subparagraphs (A) and (B)” for “subparagraph (A)” in redesignated subpar. (C).

Subsec. (j)(5)(D) [subsequently redesignated (j)(5)(E)]. Pub.L. 108-293, § 701(b)(5)(A), inserted “, nontank vessel,” after “vessel” in subpar. (D), which was subsequently redesignated (E).

Pub.L. 108-293, § 701(d)(1), redesignated former subpars. (C) and (D) as subpars. (D) and (E).

Subsec. (j)(5)(D)(iii) [subsequently redesignated (j)(5)(E)(iii)]. Pub.L. 108-293, § 701(b)(5)(B), struck out “and” after the semicolon at the end of cl. (iii) in subpar. (D), which was subsequently redesignated (E).

Subsec. (j)(5)(D)(iv) [subsequently redesignated (j)(5)(E)(iv)]. Pub.L. 108-293, § 701(b)(5)(C), substituted “; and” for the period at the end of cl. (iv) in subpar. (D), which was subsequently redesignated (E).

Subsec. (j)(5)(D)(v) [subsequently redesignated (j)(5)(E)(v)]. Pub.L. 108-293, § 701(b)(5)(D), inserted cl. (v) in subpar. (D), which was subsequently redesignated (E).

Subsec. (j)(5)(E) [subsequently redesignated (j)(5)(F)]. Pub.L. 108-293, § 701(b)(6), inserted “, nontank vessel,” after “vessel,” each place it appears in subpar. (E), which was subsequently redesignated (F).

Pub.L. 108-293, § 701(d)(1), redesignated former subpars. (D) and (E) as subpars. (E) and (F).

Subsec. (j)(5)(F) [subsequently redesignated (j)(5)(G)]. Pub.L. 108-293, § 701(b)(7)(A), inserted “, nontank vessel,” after “vessel,” in subpar. (F), which was subsequently redesignated (G).

Pub.L. 108-293, § 701(b)(7)(B), substituted “vessel, nontank vessel, or” for “vessel or” in subpar. (F), which was subsequently redesignated (G).

Pub.L. 108-293, § 701(d)(1), redesignated former subpars. (E) and (F) as subpars. (F) and (G).

Subsec. (j)(5)(F)(i). Pub.L. 108-293, § 701(d)(5), substituted “subparagraph (E)” for “subparagraph (D)” in redesignated subpar. (F)(i).

Subsec. (j)(5)(G) [subsequently redesignated (j)(5)(H)]. Pub.L. 108-293, § 701(b)(8), inserted “nontank vessel,” after “vessel,” in subpar. (G), which was subsequently redesignated (H).

Pub.L. 108-293, § 701(d)(1), redesignated former subpars. (F) and (G) as subpars. (G) and (H).

Subsec. (j)(5)(H) [subsequently redesignated (j)(5)(I)]. Pub.L. 108-293, § 701(b)(9), as amended by Pub.L. 109-241, § 901(i)(2), inserted “and nontank vessel” after “each vessel” in subpar. (H), which was subsequently redesignated (I).

Pub.L. 108-293, § 701(d)(1), redesignated former subpars. (G) and (H) as subpars. (H) and (I).

Subsec. (j)(5)(I). Pub.L. 108-293, § 701(d)(1), redesignated former subpar. (H) as subpar. (I).

Subsec. (j)(6). Pub.L. 108-293, § 701(b)(10), in the matter preceding subpar. (A), substituted “The President may require--” for “Not later than 2 years after August 18, 1990, the President shall require--”

Subsec. (j)(6)(B). Pub.L. 108-293, § 701(b)(11), inserted “, and nontank vessels carrying oil of any kind as fuel for main propulsion,” after “cargo”.

Subsec. (j)(7). Pub.L. 108-293, § 701(b)(12), inserted “, nontank vessel,” after “vessel”.

1998 Amendments. Subsec. (a)(2). Pub.L. 105-383, § 411(b), struck out “and (C)” and inserted “, (C)” in lieu thereof; and inserted “, and (D) discharges incidental to mechanical removal authorized by the President under subsection (c) of this section” before the semicolon at the end thereof.

Subsec. (a)(8). Pub.L. 105-383, § 411(a)(1), struck out “to minimize or mitigate damage” and inserted “to prevent, minimize, or mitigate damage” in lieu thereof.

Subsec. (a)(25). Pub.L. 105-383, § 411(a)(2), added par. (25).

Subsec. (c)(4)(A). Pub.L. 105-383, § 401(a)(3), inserted “relating to a discharge or a substantial threat of a discharge of oil or a hazardous substance” before the period at the end thereof.

1996 Amendments. Subsec. (b). Pub.L. 104-208, § 101(a) [§ 211(b)], substituted reference to the Magnuson-Stevens Fishery Conservation and Management Act for reference to the Magnuson Fishery Conservation and Management Act, wherever appearing.

Subsec. (c)(3)(B). Pub.L. 104-324, § 1144, added provisions allowing an owner or operator to deviate from the response plan if more expeditious or effective.

Subsec. (j)(2)(A). Pub.L. 104-324, § 1143(1), added provisions relating to compiling, maintaining, and disseminating information regarding previous spills.

Subsec. (j)(4)(C)(v). Pub.L. 104-324, § 1143(2), added provisions relating to compiling a list of local scientists with expertise in environmental effects of spills, who may be contacted in response to a spill.

1992 Amendments. Subsec. (b)(12). Pub.L. 102-388, § 349, added par. (12).

1990 Amendments. Subsec. (a)(8). Pub.L. 101-380, § 4201(b)(1), inserted “containment and” following “refers to”.

Subsec. (a)(17). Pub.L. 101-380, § 4201(b)(2), (3), substituted “otherwise” for “Otherwise”.

Subsec. (a)(18) to (24). Pub.L. 101-380, § 4201(b)(4), added pars. (18) to (24).

Subsec. (b)(4). Pub.L. 101-380, § 4204, inserted “or the environment” after “the public health or welfare”.

Subsec. (b)(5). Pub.L. 101-380, § 4301(a), added provisions relating to notification by Federal agency to appropriate State agency concerning discharges of oil and hazardous materials affecting State, substituted “fined in accordance with Title 18, or imprisoned for not more than 5 years, or both” for “fined not more than \$10,000, or imprisoned for not more than one year, or both” and “natural person” for “person”, and struck out “or information obtained by the exploitation of such notification” following “Notification received pursuant to this paragraph”.

Subsec. (b)(6) to (11). Pub.L. 101-380, § 4301(b), added pars. (6) to (11). Former par. (6), which related to the assessment of civil penalties, limited to \$5,000 for each offense, against any owner, operator, or person in charge of any onshore or offshore facility from which oil or hazardous substances were discharged in violation of par. (3) of this subsec., was struck out.

Subsec. (c). Pub.L. 101-380, § 4201(a), substituted provisions authorizing federal removal authority, by the President, over discharges of oil or hazardous substances into or on navigable waters of the U.S., waters of the exclusive economic zone and waters that may affect the natural resources of the U.S., in accordance with the specifics of the National Contingency Plan, for provisions authorizing President to arrange for removal of discharge of oil or a hazardous substance, into or upon the navigable waters of the U.S., in accordance with provisions of federal law, unless he determines such removal will be properly conducted by owner or operator of the vessel causing discharge, and directed President to prepare and publish a National Contingency Plan within 60 days after October 18, 1972.

Subsec. (d). Pub.L. 101-380, § 4201(b), substituted provisions directing President to prepare and publish a National Contingency Plan for removal of oil and hazardous substances pursuant to this section, supplying non-exhaustive list of contents of such plan, authorizing the revision of such plan, and directing that removal of oil and hazardous substance discharges shall be in accordance with such plan, for provisions authorizing U.S. to coordinate the removal of all marine disaster discharges in or upon the navigable waters of the U.S.

Subsec. (e). Pub.L. 101-380, § 4306, substituted provisions whereby President, upon determination of threat to public health, may require Attorney General to secure relief to abate such threat, or, after notice to the affected State, take any other necessary action, including issuance of administrative orders, for provisions whereby President, upon determination of threat to the public health, may require the U.S. attorney of the district in which threat occurs to secure such relief as may be necessary to abate such threat.

Subsec. (i). Pub.L. 101-380, § 2002(b)(1), struck out the par. “(1)” designation preceding “In any case”, and deleted pars. (2) and (3) which had directed that the provisions of this subsection did not apply in any case where liability was established pursuant to the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, and that any amount paid in accordance with a judgment of the United States Claims Court pursuant to this section would be paid from the funds established pursuant to subsection (k) of this section.

Subsec. (j). Pub.L. 101-380, § 4202(a)(1), in catchline, substituted “(j) National response system.--” for “(j) Regulations; penalty”.

Subsec. (j)(1). Pub.L. 101-380, § 4202(a)(4), substituted “(1) In general.--” for “(1)”.

Subsecs. (j)(2) to (8). Pub.L. 101-380, § 4202(a)(5), (6), added pars. (2) to (8). Former par. (2), which related to an owner or operator of a vessel who fails to comply with the regulations issued pursuant to par. (1) being held liable for a civil penalty of no more than \$5,000 for each violation, was struck out.

Subsec. (k). Pub.L. 101-380, § 2002(b)(2), struck out subsec. (k) which had authorized appropriations and supplementary appropriations to create and maintain a revolving fund to carry out subsecs. (c), (d), (i), and (l) of this section.

Subsec. (l). Pub.L. 101-380, § 2002(b)(3), struck out sentence which had provided that any moneys in the fund established by subsection (k) of this section were available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section.

Subsec. (m). Pub.L. 101-380, § 4305, substituted provisions permitting persons authorized by the President to board and inspect any vessel upon navigable waters of the U.S. and permitting persons authorized by the President or Secretary to make arrest with or without warrant and to execute warrant or process, along with provisions relating to maintenance, access, and disclosure of records required to be maintained by facilities under this section, for provisions permitting persons authorized by the President to board and inspect any vessel upon navigable waters of the U.S., to make arrest with or without warrant and to execute warrant or process.

Subsec. (o)(2). Pub.L. 101-380, § 4202(c), inserted “, or with respect to any removal activities related to such discharge” following “within such State”.

Subsec. (p). Pub.L. 101-380, § 2002(b)(4), struck out subsec. (p) which had provided for the establishment and maintenance of evidence of financial responsibility by vessels over 300 gross tons carrying oil or hazardous substances. See section 9509 of Title 26, Internal Revenue Code.

Subsec. (s). Pub.L. 101-380, § 2002(b)(5), added subsec. (s).

1987 Amendments. Subsec. (a)(5). Pub.L. 100-4 substituted “the Commonwealth of the Northern Mariana Islands” for “the Canal Zone”.

1982 Amendments. Subsec. (i)(1), (3). Pub. L. 97-164 substituted “Claims Court” for “Court of Claims”.

1980 Amendments. Subsecs. (b)(1), (2)(A), (3), (c)(1). Pub.L. 96-561 substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

Subsec. (b)(3). Pub.L. 96-478 struck out in first sentence “of oil” following “except (A) in the case of such discharges” and substituted “Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973” for “International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended”.

Subsec. (k). Pub.L. 96-483 designated existing provisions as par. (1), and added par. (2).

1978 Amendments. Subsec. (a)(2). Pub.L. 95-576, § 1(b)(1), excluded discharges described in clauses (A) to (C) from the term “discharge”.

Subsec. (a)(17). Pub.L. 95-576, § 1(b)(2), added par. (17).

Subsec. (b)(2)(B). Pub.L. 95-576, § 1(b)(3), substituted requirement that a study be made respecting methods, mechanisms, and procedures for creating incentives to achieve higher standard of care in management and movement of

hazardous substances, including consideration of enumerated items, and a report made to Congress within 18 months after Nov. 2, 1978, for provisions concerning actual removability of any designated hazardous substance, liability during two year period commencing Oct. 18, 1972 based on toxicity, degradability, and dispersal characteristics of the substance limited to \$50,000 and without limitation in cases of willful negligence or willful misconduct, liability after such two year period ranging from \$500 to \$5,000 based on toxicity, etc., or liability for penalty determined by number of units discharged multiplied by amount established for the unit limited to \$5,000,000 in the case of a discharge from a vessel and to \$500,000 in the case of a discharge from onshore or offshore facility, establishment by regulation of a unit of measurement based upon the usual trade practice for each designated hazardous substance and establishment for such unit a fixed monetary amount ranging from \$100 to \$1,000 based on toxicity, etc.

Subsec. (b)(3). Pub.L. 95-576, § 1(b)(4), substituted “such quantities as may be harmful” for “harmful quantities”.

Subsec. (b)(4). Pub.L. 95-576, § 1(b)(5), struck out “, to be issued as soon as possible after October 18, 1972,” following “regulation” and substituted “substances” for “substance” and “discharge of which may be harmful” for “discharge of which, at such times, locations, circumstances, and conditions, will be harmful”.

Subsec. (b)(5). Pub.L. 95-576, § 1(b)(6), inserted after “otherwise subject to the jurisdiction of the United States” the phrase “at the time of the discharge”.

Subsec. (b)(6)(A) to (E). Pub.L. 95-576, § 1(b)(7), designated existing provisions as subpar. (A), and in subpar. (A) as so designated, inserted “at the time of the discharge” following “jurisdiction of the United States”, and added subpars. (B) to (E).

1977 Amendments. Subsec. (a)(11). Pub.L. 95-217, § 58(k), added “and 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,” following “United States”.

Subsec. (a)(15), (16). Pub.L. 95-217, § 58(d)(1), added pars. (a)(15) and (16).

Subsec. (b)(1). Pub.L. 95-217, § 58(a)(1), added reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(A). Pub.L. 95-217, § 58(a)(2), added reference to activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Subsec. (b)(2)(B)(v). Pub.L. 95-217, § 57, added cl. (v).

Subsec. (b)(3). Pub.L. 95-217, § 58(a)(3), (4), designated a part of the existing provisions preceding cl. (A) as cl. (i) and added cl. (ii), and in cl. (A), added “or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)” following “waters of the contiguous zone” and struck out “article IV of” preceding “the International Convention for the Prevention of Pollution of the Sea by Oil, 1954”.

Subsec. (b)(4). Pub.L. 95-217, § 58(a)(5), struck out provisions under which, in the case of the discharge of oil into

or upon the waters of the contiguous zone, only those discharges which threatened the fishery resources of the contiguous zone or threatened to pollute or contribute to the pollution of the territory or the territorial sea of the United States could be determined to be harmful.

Subsec. (b)(5). Pub.L. 95-217, § 58(a)(6), added cls. (A), (B), and (C) between “Any such person” and “who fails to notify”.

Subsec. (b)(6). Pub.L. 95-217, § 58(a)(7), (8), substituted “Any owner, operator, or person in charge of any onshore facility, or offshore facility” for “Any owner or operator of any vessel, onshore facility, or offshore facility” in the provision relating to violations of par. (3) of this subsection, and added provisions directing the assessment of a civil penalty of not more than \$5,000 for each offense by the Secretary of the department in which the Coast Guard is operating to be assessed against any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) who is otherwise subject to the jurisdiction of the United States.

Subsec. (c)(1). Pub.L. 95-217, § 58(b), (c)(1), added “or there is a substantial threat of such discharge,” following “Whenever any oil or a hazardous substance is discharged,” and “or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976)” following “waters of the contiguous zone,”.

Subsec. (c)(2)(D). Pub.L. 95-217, § 58(e), substituted “and imminent threats of such discharges to the appropriate State and Federal agencies;” for “to the appropriate Federal agency;”.

Subsec. (d). Pub.L. 95-217, § 58(c)(2), added “or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof)” following “Any expense incurred under this subsection”.

Subsec. (f)(1). Pub.L. 95-217, § 58(d)(2), substituted “in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater,” for “\$100 per gross ton of such vessel or \$14,000,000, whichever is lesser,”.

Subsec. (f)(2). Pub.L. 95-217, § 58(d)(5), substituted “\$50,000,000” for “\$8,000,000”.

Subsec. (f)(3). Pub.L. 95-217, § 58(d)(6), substituted “\$50,000,000” for “\$8,000,000”.

Subsecs. (f)(4), (5). Pub.L. 95-217, § 58(g), added pars. (4) and (5).

Subsec. (g). Pub.L. 95-217, § 58(d)(3), (f), substituted “, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater” for “\$100 per gross ton of such vessel or \$14,000,000, whichever is the lesser” in the existing provisions and added provision under which, where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsec. (b) of this section, alleges that the discharge was caused solely by an act or omission of a third party, the owner or operator must pay to the United States Government the ac-

tual costs incurred under subsec. (c) of this section for removal of the oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover the costs from the third party under this subsection.

Subsec. (i)(2). Pub.L. 95-217, § 58(m), added reference to the Deepwater Port Act of 1974.

Subsec. (j)(2). Pub.L. 95-217, § 58(c)(3), added provision that subsec. (j)(2) shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsec. (b)(3)(ii) of this section unless the owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States.

Subsec. (k). Pub.L. 95-217, § 58(l), substituted “such sums as may be necessary to maintain such fund at a level of \$35,000,000” for “not to exceed \$35,000,000”.

Subsec. (p)(1). Pub.L. 95-217, § 58(d)(4), substituted “, in the case of an inland oil barge \$125 per gross ton of such barge, or \$125,000, whichever is greater, and in the case of any other vessel, \$150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, \$250,000), whichever is greater,” for “\$100 per gross ton, or \$14,000,000 whichever is the lesser,”.

Subsecs. (q), (r). Pub.L. 95-217, § 58(i), added subsecs. (q) and (r).

1973 Amendments. Subsec. (f)(1). Pub.L. 93-207, § 1(4)(A), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section.

Subsec. (f)(2). Pub.L. 93-207, § 1(4)(A), (B), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in two places, and Administrator for Secretary.

Subsec. (f)(3). Pub.L. 93-207, § 1(4)(A), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section.

Subsec. (g). Pub.L. 93-207, § 1(4)(c), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in three places.

Subsec. (i). Pub.L. 93-207, § 1(4)(C), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in par. (1).

Effective and Applicability Provisions

2006 Acts. Pub.L. 109-241, Title IX, § 901(i)(2), July 11, 2006, 120 Stat. 564, in part provided that the amendment by Pub.L. 109-241, § 901(i)(2), is ‘[e]ffective August 9, 2004’.

1996 Acts. Amendment by Pub.L. 104-208, Div. A, Title I, § 101(a) [Title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009-41, effective 15 days after Oct. 11, 1996, see Pub.L. 104-208, Div. A, Title I, § 101(a) [Title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009-41, set out as a note under section 1801 of Title 16, Conservation.

1992 Acts. Amendment by Title IX of Pub.L. 102-572 effective Oct. 29, 1992, see section 911 of Pub.L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

1982 Acts. Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

1980 Acts. Amendment by Pub.L. 96-561 effective 15 days after Dec. 22, 1980, see section 238 of Pub.L. 96-561, set out as a Short Title note under section 1801 of Title 16, Conservation.

Amendment by Pub.L. 96-478 effective Oct. 2, 1983, see section 14(a) of Pub.L. 96-478, set out as a note under section 1901 of this title.

1977 Acts. Section 58(h) of Pub.L. 95-217 provided that: “The amendments made by paragraphs (5) and (6) of subsection (d) of this section [substituting ‘\$50,000,000’ for ‘\$8,000,000’ in subsec. (f)(2) and substituting ‘\$50,000,000’ for ‘\$8,000,000’ in subsec. (f)(3) of this section] shall take effect 180 days after the date of enactment of the Clean Water Act of 1977 [Dec. 27, 1977].”

Change of Name

References to United States Claims Court deemed to refer to United States Court of Federal Claims and references to Claims Court deemed to refer to Court of Federal Claims, see section 902(b) of Pub.L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Transfer of Functions

Enforcement functions of Administrator or other official of the Environmental Protection Agency under this section relating to spill prevention, containment and countermeasure plans with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of the date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in Appendix 1 to Title 5, Government Organization and Employees.

Delegation of Functions

Functions of the President under subsec. (p)(1)-(2), as incorporated by reference in section 1653(c)(3) of Title 43, Public Lands, relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline, delegated to the Secretary of the Department in which the Coast Guard is operating, see [Ex. Ord. No. 12418](#), § 4, May 5, 1983, [48 F.R. 20891](#).

Implementation Date

Pub.L. 108-293, Title VII, § 701(c), Aug. 9, 2004, 118 Stat. 1068, provided that: “No later than one year after the date of enactment of this Act [Aug. 9, 2004], the owner or operator of a nontank vessel (as defined section 311(j)(9) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(9) [sic; see section 311(a)(26) of that Act, which is classified to subsec. (a)(26) of this section], as amended by this section [Pub.L. 108-293, § 701(a)(3), which added par. (26) of subsec. (a) of this section]) shall prepare and submit a vessel response plan for such vessel.”

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding [48 U.S.C.A. § 1681](#).

Termination of United States District Court for the District of the Canal Zone

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub.L. 96-70, Title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to [22 U.S.C.A. §§ 3831](#) and [3841](#) to [3843](#), respectively.

Territorial Sea and Contiguous Zone of United States

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under [43 U.S.C.A. § 1331](#).

Deposit of Certain Penalties Into Oil Spill Liability Trust Fund

Penalties paid pursuant to this section and sections 1319(c) and 1501 et seq., respectively, of this title, 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.

Report on Oil Spill Responder Immunity

Pub.L. 107-295, Title IV, § 440, Nov. 25, 2002, 116 Stat. 2130, provided that:

“(a) Report to Congress.--Not later than January 1, 2004, the Secretary of the department in which the Coast Guard is operating, jointly with the Secretary of Commerce and the Secretary of the Interior, and after consultation with the Administrator of the Environmental Protection Agency and the Attorney General, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the immunity from criminal and civil penalties provided under existing law of a private responder (other than a responsible party) in the case of the incidental take of federally listed fish or wildlife that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by that responder during an oil spill removal activity where the responder was acting in a manner consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator for the spill, and on the circumstances under which such penalties have been or could be imposed on a private responder. The report shall take into consideration the procedures under the Inter-Agency Memorandum for addressing incidental takes.

“(b) Definitions.--In this section--

“(1) the term ‘Federal On-Scene Coordinator’ has the meaning given that term in section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321);

“(2) the term ‘incidental take’ has the meaning given that term in the Inter-Agency Memorandum;

“(3) the term ‘Inter-Agency Memorandum’ means the Inter-Agency Memorandum of Agreement Regarding Oil Spill Planning and Response Activities under the Federal Water Pollution Control Act’s National Oil and Hazardous Substances Pollution Contingency Plan [[40 C.F.R. § 300.1 et seq.](#)] and the Endangered Species Act [Pub.L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to [16 U.S.C.A. § 1531 et seq.](#); see

Tables for complete classification], effective on July 22, 2001;

“(4) the terms ‘National Contingency Plan’, ‘removal’, and ‘responsible party’ have the meanings given those terms under section 1001 of the Oil Pollution Act of 1990 ([33 U.S.C. 2701](#)); and

“(5) the term ‘private responder’ means a nongovernmental entity or individual that is carrying out an oil spill removal activity at the direction of a Federal agency or a responsible party.”

Implementation of National Planning and Response System

Section 4202(b) of Pub.L. 101-380 provided that:

“(1) **Area Committees and Contingency Plans.**--(A) Not later than 6 months after the date of the enactment of this Act [Aug. 18, 1990], the President shall designate the areas for which Area Committees are established under section 311(j)(4) of the Federal Water Pollution Control Act [subsec. (j)(4) of this section], as amended by this Act. In designating such areas, the President shall ensure that all navigable waters, adjoining shorelines, and waters of the exclusive economic zone are subject to an Area Contingency Plan under that section.

“(B) Not later than 18 months after the date of the enactment of this Act [Aug. 18, 1990], each Area Committee established under that section [subsec. (j)(4) of this section] shall submit to the President the Area Contingency Plan required under that section.

“(C) Not later than 24 months after the date of the enactment of this Act [Aug. 18, 1990], the President shall--

“(i) promptly review each plan;

“(ii) require amendments to any plan that does not meet the requirements of section 311(j)(4) of the Federal Water Pollution Control Act [subsec. (j)(4) of this section]; and

“(iii) approve each plan that meets the requirements of that section.

“(2) **National Response Unit.**--Not later than one year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary of the department in which the Coast Guard is operating shall establish a National Response Unit in accordance with section 311(j)(2) of the Federal Water Pollution Control Act, as amended by this Act [subsec. (j)(2) of this section].

“(3) **Coast Guard District Response Groups.**--Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary of the department in which the Coast Guard is operating shall establish Coast Guard District Response Groups in accordance with section 311(j)(3) of the Federal Water Pollution Control Act, as amended by this Act [subsec. (j)(3) of this section].

“(4) **Tank vessel and facility response plans; transition provision; effective date of prohibition.**--(A) Not later than 24 months after the date of the enactment of this Act [Aug. 18, 1990], the President shall issue regulations for tank vessel and facility response plans under section 311(j)(5) of the Federal Water Pollution Control Act, as amended by this Act [subsec. (j)(5) of this section].

“(B) During the period beginning 30 months after the date of the enactment of this paragraph [Aug. 18, 1990], and

ending 36 months after that date of enactment, a tank vessel or facility for which a response plan is required to be prepared under section 311(j)(5) of the Federal Water Pollution Control Act, [subsec. (j)(5) of this section], as amended by this Act, may not handle, store, or transport oil unless the owner or operator thereof has submitted such a plan to the President.

“(C) Subparagraph (E) of section 311(j)(5) of the Federal Water Pollution Control Act [subsec. (j)(5) of this section], as amended by this Act, shall take effect 36 months after the date of the enactment of this Act [Aug. 18, 1990].”

Oil Spill Liability Under Oil Pollution Act of 1990

Section 2002(a) of Pub.L. 101-380 provided that: “Subsections (f), (g), (h), and (i) of section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321) [subsecs. (f), (g), (h), and (i) of this section] shall not apply with respect to any incident for which liability is established under section 1002 of this Act [section 2702 of this title].”

Transfer to Oil Spill Liability Trust Fund of Moneys Remaining in Revolving Fund Upon Its Repeal

Section 2002(b)(2) of Pub.L. 101-380 provided that: “Subsection (k) [of this section] is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the [Oil Spill Liability Trust] Fund. The [Oil Spill Liability Trust] Fund shall assume all liability incurred by the revolving fund established under that subsection.”

Revision of National Contingency Plan

Section 4201(c) of Pub.L. 101-380 provided that: “Not later than one year after the date of the enactment of this Act [Aug. 18, 1990], the President shall revise and republish the National Contingency Plan prepared under section 311(c)(2) of the Federal Water Pollution Control Act [subsec. (c)(2) of this section] (as in effect immediately before the date of the enactment of this Act [Aug. 18, 1990]) to implement the amendments made by this section [amending subsecs. (a), (c), and (d) of this section] and section 4202 [amending subsecs. (j) and (o) of this section].”

Designation of Federal Trustees for Natural Resources

For designation by the President, in accordance with subsec. (f)(5) of this section, of the Secretaries of Defense, Interior, Agriculture, Commerce and Energy as among those to be designated in the National Contingency Plan as Federal Trustees for natural resources, see section 1(c) of [Ex. Ord. No. 12580](#), Jan. 23, 1987, 52 F.R. 2923, set out as a note under section 9615 of Title 42, The Public Health and Welfare.

Allowable Delay in Establishing Financial Responsibility for Increases in Amounts Under 1977 Amendment

Section 58(j) of Pub.L. 95-217 provided that: “No vessel subject to the increased amounts which result from the amendments made by subsections (d)(2), (d)(3), and (d)(4) of this section [amending subsecs. (f)(1), (g), and (p)(1) of this section] shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act [subsec. (p) of this section] for such increased amounts before October 1, 1978.”

EXECUTIVE ORDERS

[EXECUTIVE ORDER NO. 11735](#)

[Ex. Ord. No. 11735](#), Aug. 3, 1973, 38 F.R. 21243, as amended by [Ex. Ord. No. 12418](#), May 5, 1983, 48 F.R. 20891, relating to the assignment of Presidential functions under this section, was revoked by [Ex. Ord. No. 12777](#), Oct. 18, 1991, 56 F.R. 54757, set out as a note under this section.

[EXECUTIVE ORDER NO. 12418](#)

[Ex. Ord. No. 12418](#), May 5, 1983, 91 F.R. 20891, relating to the transfer of functions concerning financial responsibility of vessels for pollution liability, was revoked by [Ex. Ord. No. 12777](#), Oct. 18, 1991, 56 F.R. 54757, set out as a note under this section.

[EXECUTIVE ORDER NO. 12777](#)

<Oct. 18, 1991, 56 F.R. 54757, as amended [Ex. Ord. No. 13286](#), Sec. 34, Feb. 28, 2003, [68 F.R. 10619](#)>

IMPLEMENTATION OF SECTION 311 OF THE FEDERAL WATER POLLUTION CONTROL ACT OF OCTOBER 18, 1972, AS AMENDED, AND THE OIL POLLUTION ACT OF 1990

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Section 311 of the Federal Water Pollution Control Act, (“FWPCA”) (33 U.S.C. 1321), as amended by the Oil Pollution Act of 1990 ([Public Law 101-380](#)) (“OPA”) [this section], and by [Section 301 of Title 3 of the United States Code](#) [[section 301 of Title 3](#), the President], it is hereby ordered as follows:

Section 1. National Contingency Plan Area Committees and Area Contingency Plans (a) Section 1 of [Executive Order No. 12580](#) of January 23, 1987 [set out as a note under [section 9615 of Title 42](#), the Public Health and Welfare], is amended to read as follows:

“**Section 1. National Contingency Plan. (a)(1)** The National Contingency Plan (‘the NCP’), shall provide for a National Response Team (‘the NRT’) composed of representatives of appropriate Federal departments and agencies for national planning and coordination of preparedness and response actions, and Regional Response Teams as the regional counterparts to the NRT for planning and coordination of regional preparedness and response actions.

“(2) The following agencies (in addition to other appropriate agencies) shall provide representatives to the National and Regional Response Teams to carry out their responsibilities under the NCP: Department of State, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Transportation, Department of Energy, Environmental Protection Agency, Federal Emergency Management Agency, United States Coast Guard, and the Nuclear Regulatory Commission.

“(3) Except for periods of activation because of response action, the representative of the Environmental Protection Agency (‘EPA’) shall be the chairman, and the representative of the United States Coast Guard shall be the vice chairman, of the NRT and these agencies’ representatives shall be co-chairs of the Regional Response Teams (‘the RRTs’). When the NRT or an RRT is activated for a response action, the EPA representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the inland zone, and the United States Coast Guard representative shall be the chairman when the release or threatened release or discharge or threatened discharge occurs in the coastal zone, unless otherwise agreed upon by the EPA and the United States Coast Guard representatives (inland and coastal zones are defined in the NCP).

“(4) The RRTs may include representatives from State governments, local governments (as agreed upon by the States), and Indian tribal governments. Subject to the functions and authorities delegated to Executive departments and agencies in other sections of this order, the NRT shall provide policy and program direction to the RRTs.

“(b)(1) The responsibility for the revision of the NCP and all the other functions vested in the President by Sections 105(a), (b), (c), and (g), 125, and 301(f) of the Act [sections 9605(a), (b), (c), and (g), 9625, and 9651(f), respectively, of Title 42], by Section 311(d)(1) of the Federal Water Pollution Control Act [subsec. (d)(1) of this section], and by Section 4201(c) of the Oil Pollution Act of 1990 [set out as a note under this section] is delegated to the Administrator of the Environmental Protection Agency (‘the Administrator’).

“(2) The function vested in the President by Section 118(p) [not classified to the Code] of the Superfund Amendments and Reauthorization Act of 1986 ([Pub.L. 99-499](#)) (‘SARA’) [see [section 1 of Pub.L. 99-499](#), set out as a short title of 1986 Amendment note under [section 9601 of Title 42](#)] is delegated to the Administrator.

“(c) In accord with Section 107(f)(2)(A) of the Act [[section 9607\(f\)\(2\)\(A\) of Title 42](#)], Section 311(f)(5) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(f)(5)) [subsec. (f)(5) of this section], and Section 1006(b)(1) and (2) of the Oil Pollution Act of 1990 [section 2706(b)(1) and (2) of this title], the following shall be among those designated in the NCP as Federal trustees for natural resources:

“(1) Secretary of Defense;

“(2) Secretary of the Interior;

“(3) Secretary of Agriculture;

“(4) Secretary of Commerce;

“(5) Secretary of Energy.

In the event of a spill, the above named Federal trustees for natural resources shall designate one trustee to act as Lead Administrative Trustee, the duties of which shall be defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA [section 2706(e)(1) of this title]. If there are natural resource trustees other than those designated above which are acting in the event of a spill, those other trustees may join with the Federal trustees to name a Lead Administrative Trustee which shall exercise the duties defined in the regulations promulgated pursuant to Section 1006(e)(1) of OPA [section 2706(e)(1) of this title].

“(d) Revisions to the NCP shall be made in consultation with members of the NRT prior to publication for notice and comment.

“(e) All revisions to the NCP, whether in proposed or final form, shall be subject to review and approval by the Director of the Office of Management and Budget (‘OMB’).”

(b) The functions vested in the President by Section 311(j)(4) of FWPCA [subsec. (j)(4) of this section], and Section 4202(b)(1) of OPA [set out as a note under this section], respecting the designation of Areas, the appointment of Area Committee members, the requiring of information to be included in Area Contingency Plans, and the review and approval of Area Contingency Plans are delegated to the Administrator of the Environmental Protection Agency (‘Administrator’) for the inland zone and the Secretary of the Department in which the Coast Guard is operating for

the coastal zone (inland and coastal zones are defined in the NCP).

Sec. 2. National Response System. (a) The functions vested in the President by Section 311(j)(1)(A) of FWPCA [subsec. (j)(1)(A) of this section], respecting the establishment of methods and procedures for the removal of discharged oil and hazardous substances, and by Section 311(j)(1)(B) of FWPCA [subsec. (j)(1)(B) of this section] respecting the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, are delegated to the Administrator for the inland zone and the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

(b)(1) The functions vested in the President by Section 311(j)(1)(C) of FWPCA [subsec. (j)(1)(C) of this section], respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(1)(C) of FWPCA [subsec. (j)(1)(C) of this section], respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports subject to the Deepwater Ports Act of 1974 (“DPA”) [[section 1501 et seq.](#) of this title], are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(1)(C) of FWPCA [subsec. (j)(1)(C) of this section], respecting the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(c) The functions vested in the President by Section 311(j)(1)(D) of FWPCA [subsec. (j)(1)(D) of this section], respecting the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(d)(1) The functions vested in the President by Section 311(j)(5) of FWPCA [subsec. (j)(5) of this section] and Section 4202(b)(4) of OPA [set out as a note under this section], respecting the issuance of regulations requiring the owners or operators of non-transportation-related onshore facilities to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of non-transportation-related onshore facilities to operate without approved response plans, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(5) of FWPCA [subsec. (j)(5) of this section] and Section 4202(b)(4) of OPA [set out as a note under this section], respecting the issuance of regulations requiring the owners or operators of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equipment, the review and approval of such response plans, and the authorization of tank vessels, transportation-related onshore facilities and deepwater ports subject to the DPA to operate without approved response plans, are delegated to the Secretary of Transportation and the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(5) of FWPCA [subsec. (j)(5) of this section] and Section 4202(b)(4) of OPA [set out as a note under this section], respecting the issuance of regulations requiring the owners or operators of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to prepare and submit response plans, the approval of means to ensure the availability of private personnel and equip-

ment, the review and approval of such response plans, and the authorization of offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, to operate without approved response plans, are delegated to the Secretary of the Interior.

(e)(1) The functions vested in the President by Section 311(j)(6)(A) of FWPCA [subsec. (j)(6)(A) of this section], respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at non-transportation-related onshore facilities, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(6)(A) of FWPCA [subsec. (j)(6)(A) of this section], respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges on vessels, and at transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(3) The functions vested in the President by Section 311(j)(6)(A) of FWPCA [subsec. (j)(6)(A) of this section], respecting the requirements for periodic inspections of containment booms and equipment used to remove discharges at offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

(f) The functions vested in the President by Section 311(j)(6)(B) of FWPCA [subsec. (j)(6)(B) of this section], respecting requirements for vessels to carry appropriate removal equipment, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(g)(1) The functions vested in the President by Section 311(j)(7) of FWPCA [subsec. (j)(7) of this section] respecting periodic drills of removal capability under relevant response plans for onshore and offshore facilities located in the inland zone, and the publishing of annual reports on those drills, are delegated to the Administrator.

(2) The functions vested in the President by Section 311(j)(7) of FWPCA [subsec. (j)(7) of this section] respecting periodic drills of removal capability under relevant response plans for tank vessels, and for onshore and offshore facilities located in the coastal zone, and the publishing of annual reports on those drills, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) No provision of Section 2 of this order, including, but not limited to, any delegation or assignment of any function hereunder, shall in any way affect, or be construed or interpreted to affect the authority of any Department or agency, or the head of any Department or agency under any provision or law other than Section 311(j) of FWPCA [subsec. (j) of this section] or Section 4202(b)(4) of OPA [set out as a note under this section].

(i) The functions vested in the President by Section 311(j) of FWPCA [subsec. (j) of this section] or Section 4202(b)(4) of OPA [set out as a note under this section] which have been delegated or assigned by Section 2 of this order may be redelegated to the head of any Executive department or agency with his or her consent.

Sec. 3. Removal. The functions vested in the President by Section 311(c) of FWPCA [subsec. (c) of this section] and Section 1011 of OPA [section 2711 of this title], respecting an effective and immediate removal or arrangement for removal of a discharge and mitigation or prevention of a substantial threat of a discharge of oil or a hazardous substance, the direction and monitoring of all Federal, State and private actions, the removal and destruction of a vessel the issuance of directions consulting with affected trustees, and removal completion determinations, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

Sec. 4. Liability Limit Adjustment. (a) The functions vested in the President by Section 1004(d) of OPA [section 2704(d) of this title], respecting the establishment of limits of liability, with respect to classes or categories of non-transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of liability with respect to non-transportation-related onshore facilities, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to non-transportation-related onshore facilities, are delegated to the Administrator, acting in consultation with the Secretary of Transportation, the Secretary of Energy, and the Attorney General.

(b) The functions vested in the President by Section 1004(d) of OPA [section 2704(d) of this title], respecting the establishment of limits of liability, with respect to classes or categories of transportation-related onshore facilities, the reporting to Congress on the desirability of adjusting limits of liability, with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to vessels or transportation-related onshore facilities and deepwater ports subject to the DPA, are delegated to the Secretary of Transportation.

(c) The functions vested in the President by Section 1004(d) of OPA [section 2704(d) of this title], respecting the reporting to Congress on the desirability of adjusting limits of liability with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, and the adjustment of limits of liability to reflect significant increases in the Consumer Price Index with respect to offshore facilities, including associated pipelines, other than deepwater ports subject to the DPA, are delegated to the Secretary of the Interior.

Sec. 5. Financial Responsibility. (a)(1) The functions vested in the President by Section 1016(e) of OPA [section 2716(e) of this title], respecting (in the case of offshore facilities other than deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Interior.

(2) The functions vested in the President by Section 1016(e) of OPA [section 2716(e) of this title], respecting (in the case of deepwater ports) the issuance of regulations concerning financial responsibility, the determination of acceptable methods of financial responsibility, and the specification of necessary or unacceptable terms, conditions, or defenses, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b)(1) The functions vested in the President by Section 4303 of OPA [section 2716a of this title], respecting (in cases involving vessels) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(2) The functions vested in the President by Section 4303 of OPA [section 2716a of this title], respecting (in cases involving offshore facilities other than deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Interior.

(3) The functions vested in the President by Section 4303 of OPA [section 2716a of this title], respecting (in cases involving deepwater ports) the assessment of civil penalties, the compromising, modification or remission, with or without condition, and the referral for collection of such imposed penalties, and requests to the Attorney General to secure necessary judicial relief, are delegated to the Secretary of the Department in which the Coast Guard is operating.

Sec. 6. Enforcement. (a) The functions vested in the President by Section 311(m)(1) of FWPCA [subsec. (m)(1) of this section], respecting the enforcement of Section 311 [this section] with respect to vessels, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(b) The functions vested in the President by Section 311(e) of FWPCA [subsec. (e) of this section], respecting determinations of imminent and substantial threat, requesting the Attorney General to secure judicial relief, and other action including issuing administrative orders, are delegated to the Administrator for the inland zone and to the Secretary of the Department in which the Coast Guard is operating for the coastal zone.

Sec. 7. Management of the Oil Spill Liability Trust Fund and Claims. (a)(1)(A) The functions vested in the President by Section 1012(a)(1), (3), and (4) of OPA [section 2712(a)(1), (3), and (4) of this title] respecting payment of removal costs and claims and determining consistency with the National Contingency Plan (NCP) are delegated to the Secretary or the Department in which the Coast Guard is operating.

(B) The functions vested in the President by Section 6002(b) of the OPA [section 2752(b) of this title] respecting making amounts, not to exceed \$50,000,000 and subject to normal budget controls, in any fiscal year, available from the Fund (i) to carry out Section 311(c) of FWPCA [subsec. (c) of this section], and (ii) to initiate the assessment of natural resources damages required under Section 1006 of OPA [section 2706 of this title] are delegated to the Secretary of the Department in which the Coast Guard is operating. Such Secretary shall make amounts available from the Fund to initiate the assessment of natural resources damages exclusively to the Federal trustees designated in the NCP. Such Federal trustees shall allocate such amounts among all trustees required to assess natural resources damages under Section 1006 of OPA [section 2706 of this title].

(2) The functions vested in the President by Section 1012(a)(2) of OPA [section 2712(a)(2) of this title], respecting the payment of costs and determining consistency with the NCP, are delegated to the Federal trustees designated in the NCP.

(3) The functions vested in the President by Section 1012(a)(5) of OPA [section 2712(a)(5) of this title], respecting the payment of costs and expenses of departments and agencies having responsibility for the implementation, administration, and enforcement of the Oil Pollution Act of 1990 [Pub.L. 101-380, Aug. 18, 1990, 104 Stat. 484. See Tables for classification] and subsections (b), (c), (d), (j) and (l) of Section 311 of FWPCA [subsecs. (b), (c), (d), (j), and (l) of this section], are delegated to each head of such department and agency.

(b) The functions vested in the President by Section 1012(c) of OPA [section 2712(c) of this title], respecting designation of Federal officials who may obligate money, are delegated to each head of the departments and agencies to whom functions have been delegated under section 7(a) of this order for the purpose of carrying out such functions.

(c)(1) The functions vested in the President by Section 1012(d) and (e) of OPA [section 2712(d) and (e) of this title], respecting the obligation of the Trust Fund on the request of a Governor or pursuant to an agreement with a State, entrance into agreements with States, agreement upon terms and conditions, and the promulgation of regulations concerning such obligation and entrance into such agreement, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Administrator.

(2) The functions vested in the President by Section 1013(e) of OPA [section 2713(e) of this title], respecting the promulgation and amendment of regulations for the presentation, filing, processing, settlement, and adjudication of claims under OPA against the Trust Fund, are delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Attorney General.

(3) The functions vested in the President by Section 1012(a) of OPA [section 2712(a) of this title], respecting the payment of costs, damages, and claims, delegated herein to the Secretary of the Department in which the Coast Guard is operating, include, *inter alia*, the authority to process, settle, and administratively adjudicate such costs, damages, and claims, regardless of amount.

(d)(1) The Coast Guard is designated the “appropriate agency” for the purpose of receiving the notice of discharge of oil or hazardous substances required by Section 311(b)(5) of FWPCA [subsec. (b)(5) of this section], and the Secretary of the Department in which the Coast Guard is operating is authorized to issue regulations implementing this designation.

(2) The functions vested in the President by Section 1014 of OPA [section 2714 of this title], respecting designation of sources of discharges or threats, notification to responsible parties, promulgation of regulations respecting advertisements, the advertisement of designation, and notification of claims procedures, are delegated to the Secretary of the Department in which the Coast Guard is operating.

Sec. 8. Miscellaneous. (a) The functions vested in the President by Section 311(b)(3) and (4) of FWPCA, as amended by the Oil Pollution Act of 1990 [subsec. (b)(3) and (4) of this section], respecting the determination of quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment and the determinations of quantities, time, locations, circumstances, or conditions, which are not harmful, are delegated to the Administrator.

(b) The functions vested in the President by Section 311(d)(2)(G) of FWPCA [subsec. (d)(2)(G) of this section], respecting schedules of dispersant, chemical, and other spill mitigating devices or substances, are delegated to the Administrator.

(c) The functions vested in the President by Section 1006(b)(3) and (4) of OPA [section 2706(b)(3) and (4) of this title] respecting the receipt of designations of State and Indian tribe trustees for natural resources are delegated to the Administrator.

(d) The function vested in the President by Section 3004 of OPA [not classified to the Code], with respect to encouraging the development of an international inventory of equipment and personnel, is delegated to the Secretary of the Department in which the Coast Guard is operating, in consultation with the Secretary of State.

(e) The functions vested in the President by Section 4113 of OPA [not classified to the Code], respecting a study on the use of liners or other secondary means of containment for onshore facilities, and the implementation of the recommendations of the study, are delegated to the Administrator.

(f) The function vested in the President by Section 5002(c)(2)(D) of OPA [section 2732(c)(2)(D) of this title], respecting the designating of an employee of the Federal Government who shall represent the Federal Government on the Oil Terminal Facilities and Oil Tanker Operations Associations, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(g) The functions vested in the President by Section 5002(o) of OPA [section 2732(o) of this title], respecting the annual certification of alternative voluntary advisory groups, are delegated to the Secretary of the Department in which the Coast Guard is operating.

(h) The function vested in the President by Section 7001(a)(3) of OPA [section 2761(a)(3) of this title], respecting the appointment of Federal agencies to membership on the Interagency Coordinating Committee on Oil Pollution Research, is delegated to the Secretary of the Department in which the Coast Guard is operating.

(i) [Executive Order No. 11735](#) of August 3, 1973 [formerly set out as a note under this section]; [Executive Order No. 12123](#) of February 26, 1979 [formerly set out as a note under [section 1811 of Title 43](#), Public Lands]; [Executive Order No. 12418](#) of May 5, 1983 [formerly set out as a note under this section and amending Ex. Ord. Nos. 11735 and 12123] and the memorandum of August 24, 1990 [formerly set out as a note under section 2712 of this title], delegating certain authorities of the President under the Oil Pollution Act of 1990 are revoked.

Sec. 9. Consultation. Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with statutory responsibilities which may be significantly affected, including, but not limited to, the Department of Justice.

Sec. 10. Litigation. (a) Notwithstanding any other provision of this order, any representation pursuant to or under this order in any judicial proceedings shall be by or through the Attorney General. The conduct and control of all litigation arising under the Oil Pollution Act of 1990 [[Pub.L. 101-380](#); see Tables for classification] shall be the responsibility of the Attorney General.

(b) Notwithstanding any other provision of this order, the authority under the Oil Pollution Act of 1990 [[Pub.L. 101-380](#); see Tables for classification] to require the Attorney General to commence litigation is retained by the President.

(c) Notwithstanding any other provision of this order, the Secretaries of the Departments of Transportation, Commerce, Interior, Agriculture, the Secretary of the Department in which the Coast Guard is operating, and/or the Administrator of the Environmental Protection Agency may request that the Attorney General commence litigation under the Oil Pollution Act of 1990 [[Pub.L. 101-380](#); see Tables for classification].

(d) The Attorney General, in his discretion, is authorized to require that, with respect to a particular oil spill, an agency refrain from taking administrative enforcement action without first consulting with the Attorney General.

GEORGE BUSH

[For transfer of functions of the Federal Emergency Management Agency, including existing responsibilities for emergency alert systems and continuity of operations and continuity of government plans and programs as constituted on June 1, 2006, including all of its personnel, assets, components, authorities, grant programs, and liabilities, and including the functions of the Under Secretary for Federal Emergency Management relating thereto, see [6 U.S.C.A. § 315](#).]

CROSS REFERENCES

Authorization of appropriations to carry out this chapter with certain exceptions, see [33 USCA § 1376](#).

Coordination of guidelines for use of imminent hazard, enforcement, and emergency response authorities with powers under this section, see [42 USCA § 9606](#).

Definition of “hazardous substance” for purposes of comprehensive environmental response, compensation, and liability provisions, see [42 USCA § 9601](#).

Demonstration of financial responsibility in accordance with this section, see [43 USCA § 1653](#).

Designation of hazardous substance under this section as constituting hazardous material in relation to vessels and seamen, see [46 USCA § 2101](#).

Effective date of regulations issued pursuant to this section, see [42 USCA § 9652](#).

Establishment and maintenance of records to carry out this section, see [33 USCA § 1318](#).

Establishment of reportable released quantities of hazardous substances, see [42 USCA § 9602](#).

Hazardous Substance Response Fund, payment of claims incurred as result of carrying out national contingency plan established under this section, see [42 USCA § 9611](#).

Hudson River reclamation demonstration project, see [33 USCA § 1266](#).

Oil within meaning of this section as included in definition of “material”, see [33 USCA § 1402](#).

Regulations respecting assessment of damages to natural resources, see [42 USCA § 9651](#).

Regulations supplemental to effluent limitations for specific hazardous pollutants, see [33 USCA § 1314](#).

Revision of National Contingency Plan, see [42 USCA § 9605](#).

Transfer of unobligated funds under this section to Hazardous Substance Fund, see [42 USCA § 9654](#).

FEDERAL SENTENCING GUIDELINES

See [Federal Sentencing Guidelines § 2Q1.2](#), 18 USCA.

CODE OF FEDERAL REGULATIONS

Designation of substances, reportable quantities, and notification requirements for release of substances, see [40 CFR § 302.1 et seq.](#)

Hazardous substances--

Designation, see [40 CFR § 116.1 et seq.](#)

Determination of reportable quantities, see [40 CFR § 117.1 et seq.](#)

Limitations on discharge of oil, see [40 CFR §§ 110.1 et seq., 112.1 et seq.](#)

Pollution contingency plan, see [40 CFR § 300.1 et seq.](#)

Pollution of coastal and navigable waters, reports by United States Customs Service officers, see [19 CFR § 4.0 et seq.](#)

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
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NOTES OF DECISIONS

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


I. GENERALLY



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

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
[1. Constitutionality](#)



Statutory scheme under this section, as applied to impose civil penalty regardless of fault upon owner of facility which discharges oil or hazardous substances into or upon navigable waters, does not violate proscription of [U.S.C.A.Const. Amend. 5](#) against taking of property without due process of law. [U. S. v. Coastal States Crude Gathering Co., C.A.5 \(Tex.\) 1981, 643 F.2d 1125](#), rehearing denied [647 F.2d 1122](#), certiorari denied [102 S.Ct. 136, 454 U.S. 835, 70 L.Ed.2d 114](#). [Constitutional Law](#)  [4327](#); [Environmental Law](#)  [166](#); [Constitutional Law](#)  [4323](#)

Imposition of penalty under this section against persons who spill oil accidentally, report such spill to the appropriate authorities, and clean it up at their own expense is based on a rational nexus between the behavior being penalized and the purpose of the revolving fund and does not deny due process. [U.S. v. Atlantic Richfield Co., E.D.Pa.1977, 429 F.Supp. 830](#), affirmed [573 F.2d 1303](#). [Constitutional Law](#)  [4426](#); [Environmental Law](#)  [166](#)


In view of the substantial difference between parties subject to the provisions of this section, particularly in terms of their different abilities to sustain losses as a result of fines, etc., its provisions do not run afoul of the equal protection clause of [U.S.C.A. Const. Amend. 14](#) in providing that, relative to determining the amount of a penalty for discharge of oil or hazardous substance into navigable waters, consideration should be given to the size of the business of the owner or operator charged and the effect on his ability to continue in business. [U. S. v. Eureka Pipeline Co., N.D.W.Va.1975, 401 F.Supp. 934](#). [Constitutional Law](#)  [3720](#); [Navigable Waters](#)  [3](#)


[2. Construction](#)


This section imposing liability for costs of oil spill cleanups, and not the exceptions to it, is remedial and is to be construed liberally. [Sabine Towing & Transp. Co., Inc. v. U. S., Ct.Cl.1981, 666 F.2d 561, 229 Ct.Cl. 265](#). [Environmental Law](#)  [214](#)



A liberal construction of the immunity provision of this section with respect to reporting oil spills, insofar as it applies to individuals, would not require same liberal construction as it applies to corporations, where broad construction as to individuals would turn on presumption that Congress does not intend to act unconstitutionally, since that presumption need not be indulged where none of the available interpretations would infringe on constitutional protections afforded corporations. [U. S. v. Le Beouf Bros. Towing Co., Inc., C.A.5 \(La.\) 1976, 537 F.2d 149](#), rehearing denied [541 F.2d 281](#), rehearing denied [541 F.2d 282](#), certiorari denied [97 S.Ct. 1688, 430 U.S. 987, 52 L.Ed.2d 383](#). [Constitutional Law](#)  [1007](#); [Environmental Law](#)  [207](#)



3. Construction with other laws



Department of Interior reasonably interpreted provision of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) authorizing natural resource damages assessment process affording remedies to public trustees under CERCLA and Clean Water Act (CWA) to establish coextensive remedial schemes under both CERCLA and CWA so as to allow recovery of damages for value of lost interim services while awaiting restoration of natural resources. [Kennecott Utah Copper Corp. v. U.S. Dept. of Interior, C.A.D.C.1996, 88 F.3d 1191, 319 U.S.App.D.C. 128. Environmental Law](#)  446

Judicially created remedies in aid of statutes like Refuse Act, section 407 of this title, fall somewhere between federal common law of nuisance and specific commands of such Act in their resistance to implied preemption by this section. [Matter of Oswego Barge Corp., C.A.2 \(N.Y.\) 1981, 664 F.2d 327, rehearing denied 673 F.2d 47. Constitutional Law](#)  2511


This chapter was government's exclusive means of recovering cleanup costs of certain hazardous wastes and therefore Government could not seek reimbursement under Toxic Substances Control Act, section 2601 et seq. of Title 15. [U. S. v. Burns, W.D.Pa.1981, 512 F.Supp. 916. Environmental Law](#)  170

In enacting this chapter, Congress declared its policy that there should be no discharges of oil or hazardous substances into or upon navigable waters of United States, and, therefore, Congress did not intend provisions of Limitations Act, section 181 et seq., of Title 46, to apply to government's recovery by setting different standards for both minimum and maximum liability on different dollar limitation, since section 181 et seq. of Title 46 also provides that affected vessels must maintain evidence of financial responsibility for minimum amount and funds are unreachable by other suitors in limitation proceeding. [In re Hokkaido Fisheries Co., Ltd., D.C.Alaska 1981, 506 F.Supp. 631. Environmental Law](#)  214; [Environmental Law](#)  170

This section acted as a limit on federal government's claim for cost of cleaning up oil which spilled from sunken barge, regardless of the basis on which such claim was made; government was not permitted to present a claim for such costs under general maritime law, common law or other statutes, except the Outer Continental Shelf Lands Act, section 1331 et seq. of Title 43. [Complaint of Steuart Transp. Co., E.D.Va.1977, 435 F.Supp. 798, affirmed 596 F.2d 609. Navigable Waters](#)  35; [Environmental Law](#)  214

Civil penalty assessed against Chapter 7 debtor under the Clean Water Act (CWA), for failing to have any Spill Prevention Control and Countermeasures plan in place to prevent and control oil pollution from his company, was not "in compensation for actual pecuniary loss" sustained by government, and was thus excepted from discharge as penalty payable to government other than in compensation for its actual pecuniary loss, where it was debtor's failure to have plan in place that subjected him to liability regardless of whether any oil spill occurred or whether government sustained any clean-up costs. [In re Jones, Bkrtcy.M.D.Ga.2004, 311 B.R. 647. Bankruptcy](#)  3345; [Bankruptcy](#)  3377

4. Purpose

Clean Water Act, a statute expressly geared to protecting "water," "shorelines," and "natural resources," was not intended to eliminate sub silentio oil companies' common law duties to refrain from injuring the bodies and livelihoods of private individuals. [Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605. States](#)  18.31

Only purpose of oil spill cleanup provisions of this section is to create precise remedy solely for United States to recover specified damages pursuant to carefully devised formula. Complaint of [Oswego Barge Corp., C.A.2 \(N.Y.\) 1982, 673 F.2d 47](#). [Environmental Law](#) 214

In enacting this section, Congress intended to achieve balanced and comprehensive remedial scheme by matching limited recovery of cleanup costs with strict liability, and unlimited recovery with proof of willful conduct, and Congress apparently intended to deter oil spills and recover cleanup costs in manner that would protect most vessel owners from potentially crushing liability. [U. S. v. Dixie Carriers, Inc., C.A.5 \(La.\) 1980, 627 F.2d 736](#). [Environmental Law](#) 214

Purpose of penalty provision of this section is to ensure, insofar as possible, that small discharges will not go undetected and that the possibility of effective abatement will not be lost. [Apex Oil Co. v. U. S., C.A.8 \(Mo.\) 1976, 530 F.2d 1291](#), certiorari denied [97 S.Ct. 84, 429 U.S. 827, 50 L.Ed.2d 90](#). [Environmental Law](#) 762

This section is comprehensive plan attempting to expedite oil pollution cleanup and to establish workable scheme for limiting and distributing liability. [U. S. v. City of New York, S.D.N.Y.1979, 481 F.Supp. 4](#), affirmed [614 F.2d 1292](#), certiorari denied [100 S.Ct. 2154, 446 U.S. 936, 64 L.Ed.2d 789](#). [Environmental Law](#) 177

The principal purpose of this section is to deter harmful oil spills. Com. of Puerto Rico [Rico v. SS Zoe Colocotroni, D.C.Puerto Rico 1978, 456 F.Supp. 1327](#), affirmed in part, vacated in part on other grounds [628 F.2d 652](#), certiorari denied [101 S.Ct. 1350, 450 U.S. 912, 67 L.Ed.2d 336](#). See, also, [U.S. v. Atlantic Richfield Co., D.C.Pa.1977, 429 F.Supp. 830](#), affirmed [573 F.2d 1303](#).

In order to prevent and control water pollution, Congress provided civil penalty for those who violated provisions of this chapter. [Matter of Vest Transp. Co., Inc., N.D.Miss.1977, 434 F.Supp. 748](#). [Environmental Law](#) 223

This section governing discharges of oil and hazardous substances is aimed at preventing any discharges, rather than preventing only those discharges not removed. [U.S. v. W. B. Enterprises, Inc., S.D.N.Y.1974, 378 F.Supp. 420](#). [Environmental Law](#) 177


5. Law governing


Federal Water Pollution Control Act preempted government's Refuse Act claims for expenses incurred in cleaning up an oil spill. [Kyoei Kaiun Kaisha, Ltd. v. M/V Bering Trader, W.D.Wash.1991, 760 F.Supp. 174](#). [Environmental Law](#) 214; [States](#) 18.31; [Environmental Law](#) 170


Where barge grounding and subsequent oil spill involved impairment of a navigable waterway, federal common law principles of public nuisance, rather than state law, governed barge owner's liability. [Matter of Oswego Barge Corp., N.D.N.Y.1977, 439 F.Supp. 312](#). [Federal Courts](#) 433


Where United States sought to vindicate against municipal entities and others a federally created right embodied in this chapter with respect to alleged oil discharge into river from facilities on or near municipal marine terminal, [10 Del.C. § 8124](#), relating to notice of claim, was inapplicable with respect to the claims asserted against the municipal defendants. [U. S. v. Board of Harbor Com'rs, D.C.Del.1977, 73 F.R.D. 460](#). [Federal Courts](#) 433


6. State regulation or control--Generally

Clean Water Act's (CWA) penalties for water pollution were not intended to occupy the entire field of pollution remedies. [Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605. States](#)  [18.31](#)


Clean Water Act's (CWA) penalties for water pollution did not preempt maritime common law on punitive damages in action arising from grounding of supertanker and resulting oil spill in Alaska. [Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605. States](#)  [18.15](#)


One reason why Congress decided that this section does not preempt the states from establishing either “any requirement or liability” respecting oil spills is that this section presupposes a coordinated effort with the states, with any federal limitation of liability running to vessels and not to shore facilities, so that, waiver of preemption with respect to discharge of oil into any waters within the state is valid. [Askew v. American Waterways Operators, Inc., U.S.Fla.1973, 93 S.Ct. 1590, 411 U.S. 325, 36 L.Ed.2d 280, rehearing denied 93 S.Ct. 2746, 412 U.S. 933, 37 L.Ed.2d 162, on remand. States](#)  [18.31](#)




This chapter imposed no limits on right of Commonwealth of Virginia to recover from barge owner the entire cost of cleaning up oil which spilled from barge when it sank in Chesapeake Bay. [Steuart Transp. Co. v. Allied Towing Corp., C.A.4 \(Va.\) 1979, 596 F.2d 609. Environmental Law](#)  [214](#)


Nothing in this chapter conflicts with or otherwise preempts any state statute imposing liability on the owner or operator of any vessel which illegally discharges oil, nor does it limit the amount of that liability; similarly, nothing in this chapter precludes the states from imposing civil penalties on vessel owners or operators who violate state statutes by discharging oil illegally; it merely provides states with an alternative federal remedy which assures that, either through the action and expenditure of the state or federal government, the natural resources of this country will be preserved. [Complaint of Allied Towing Corp., E.D.Va.1979, 478 F.Supp. 398. States](#)  [18.31](#)


7. ---- Miscellaneous laws and regulations

Clean Water Act's (CWA) penalties for water pollution did not preempt maritime common law on punitive damages in action arising from grounding of supertanker and resulting oil spill in Alaska. [Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605. States](#)  [18.15](#)


Regulations of Florida Department of Natural Resources requiring “containment gear” pursuant to Florida Oil-Spill Prevention and Pollution Control Act, Laws Fla.1970, c. 70-244, § 7(2)(a), are not per se invalid on ground that subject to be regulated requires uniform federal regulation. [Askew v. American Waterways Operators, Inc., U.S.Fla.1973, 93 S.Ct. 1590, 411 U.S. 325, 36 L.Ed.2d 280, rehearing denied 93 S.Ct. 2746, 412 U.S. 933, 37 L.Ed.2d 162, on remand. States](#)  [18.31](#)


General maritime law, including rule barring claims for purely economic losses sounding in tort, was not preempted by Federal Water Pollution Control Act (FWPCA), so as to permit recovery in connection with oil spill pursuant to Rhode Island statute specifically allowing such losses; FWPCA evidenced no intent to provide recovery for private parties not previously allowed to collect damages, nor did FWPCA delegate to states the authority to enact legislation preempting federal maritime law. [Complaint of Ballard Shipping Co., D.R.I.1993, 810 F.Supp. 359, affirmed in part, reversed in part 32 F.3d 623. Admiralty](#)  [1.6](#); [Navigable Waters](#)  [35](#); [States](#)  [18.91](#)



Coastal Conveyance of Petroleum Act, [38 M.R.S.A. § 541 et seq.](#), does not conflict with this chapter by reason of state Act's providing fewer defenses to oil clean-up reimbursement suit. [Portland Pipe Line Corp. v. Environmental Imp. Com'n, Me.1973, 307 A.2d 1, appeal dismissed 94 S.Ct. 532, 414 U.S. 1035, 38 L.Ed.2d 326. States](#)  [18.31](#)



Oil spillage ordinance requiring that persons unloading fuel or oil from vessels obtain a permit, give advance notice of unloading and pay into a special fund to provide for cleaning costs resulting from oil spillage could not be said, as a matter of law, to be an unconstitutional infringement upon the exclusive maritime and admiralty jurisdiction of the federal government. [Mobil Oil Corp. v. Town of Huntington, N.Y.Sup.1972, 339 N.Y.S.2d 139, 72 Misc.2d 530. Municipal Corporations](#)  53


8. Exclusiveness of remedy


Subsec. (g) of this section comes into play when discharger proves that discharge was caused solely by an act or omission of a third party is not exclusive remedy for government's recovery of oil-spill cleanup costs against a negligent third-party nondischarging vessel; rather, United States may assert other causes of action that are not inconsistent with remedies established by subsec. (g). [U. S. v. M/V Big Sam, C.A.5 \(La.\) 1982, 681 F.2d 432](#), rehearing denied [693 F.2d 451](#), certiorari denied [103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367. Environmental Law](#)  214


Precise and comprehensive statutory damage remedy Congress has created for United States under oil spill cleanup provisions of this section is exclusive of nonstatutory damage remedies. Complaint of [Oswego Barge Corp., C.A.2 \(N.Y.\) 1982, 673 F.2d 47. Environmental Law](#)  214

This chapter is not government's exclusive remedy to recover oil spill cleanup costs, and right to seek damages under maritime tort or nuisance theory are not usurped by this chapter where there is no inconsistency in remedy. [U. S. v. City of Redwood City, C.A.9 \(Cal.\) 1981, 640 F.2d 963. Environmental Law](#)  214; [Nuisance](#)  77

Congress intended that this section would provide exclusive legal remedy for government to recover its oil spill cleanup costs, and government may not obtain additional recovery under Refuse Act or on showing of mere negligence or public nuisance under common law maritime tort and nuisance theories. [U. S. v. Dixie Carriers, Inc., C.A.5 \(La.\) 1980, 627 F.2d 736. Environmental Law](#)  214; [Environmental Law](#)  170


This chapter affords United States its exclusive remedy for recovery of federal oil pollution removal costs. [Steuart Transp. Co. v. Allied Towing Corp., C.A.4 \(Va.\) 1979, 596 F.2d 609. Environmental Law](#)  214


This chapter provided Government's exclusive remedy against discharging vessel and its owners and operators for recovery of oil spill cleanup costs, and thus, Government's claims to recover cleanup costs under maritime tort law and Rivers and Harbors Act of 1899, section 401 et seq. of this title, were properly dismissed. [Frederick E. Bouchard, Inc. v. U.S., D.C.Mass.1984, 583 F.Supp. 477. Environmental Law](#)  214


Under this chapter, to the extent a discharging party's liability or the "substituted" liability of nondischarging party is not adequate to completely reimburse government for oil spill cleanup costs, government is not, by virtue of this chapter, precluded from asserting and pursuing claim in maritime tort against third party who does not fit either category; government possesses right to claim such excess, just as this section reserves to one compelled to pay cleanup costs the right to seek contribution from third party to the extent that statute imposes liability upon such discharger or its substituted third-party surrogate. [U. S. v. Bear Marine Services, E.D.La.1980, 509 F.Supp. 710. Environmental Law](#)  214


9. Rules and regulations


Regulations promulgated under Clean Water Act require owner of a facility which, due to its location, could reason-




ably be expected to discharge oil in harmful quantities into or upon navigable waters to prepare a Spill Prevention Control and Countermeasures (SPCC) Plan whether there is an oil spill or not, as point of the SPCC Plan is to be prophylactic--to prevent oil discharges to navigable waters. [Pepperell Associates v. U.S. E.P.A., C.A.1 2001, 246 F.3d 15. Environmental Law](#)  207


While administrative regulation stating that any oil spill that causes a “sheen” on the water is harmful was generally valid, regulation was invalid as applied to particular oil spill case wherein uncontradicted evidence presented at administrative hearing on proposed civil penalty showed that although discharge of oil produced a “sheen,” the discharge did not have a harmful effect. [U. S. v. Chevron Oil Co., C.A.5 \(La.\) 1978, 583 F.2d 1357. Environmental Law](#)  223

This chapter gave continued life to previously existing regulations defining certain terms used in former section 1151 et seq. of this title until new ones were promulgated by presidential order in accordance with the dictates of this chapter. [U.S. v. Kennecott Copper Corp., C.A.9 \(Ariz.\) 1975, 523 F.2d 821. Environmental Law](#)  170




Regulation stating that oil discharge which causes a film or sheen upon or discoloration of the surface of the water or adjoining shoreline shall be deemed harmful for purpose of this section is reasonable. [U.S. v. Boyd, C.A.9 \(Wash.\) 1973, 491 F.2d 1163. See, also, U.S. v. Beatty, Inc., D.C.Ky.1975, 401 F.Supp. 1040. Environmental Law](#)  743

Environmental Protection Agency regulation determining that any discharge of oil which creates a sheen “may be harmful,” and thus prohibited under the Clean Water Act, is authorized by the Act, even though all spills of oil, even de minimis spills, create a sheen. [Orgulf Transport Co. v. U.S., W.D.Ky.1989, 711 F.Supp. 344. Environmental Law](#)  177



One-pound method set forth in regulations promulgated by Environmental Protection Agency for determining hazardous quantities in chemical substances and thereby triggering a comprehensive reporting, liability and cleanup scheme for discharges of those substances from offshore facilities, vessels and onshore facilities, including motor vehicles and rolling stock, is arbitrary and capricious and contrary to statutory mandate in that such factors as times, locations, circumstances and conditions are not met and their influence cannot be found in method as promulgated. [Manufacturing Chemists Ass'n v. Costle, W.D.La.1978, 455 F.Supp. 968. Environmental Law](#)  428; [Environmental Law](#)  439; [Environmental Law](#)  186

Where regulations duly published in the Federal Register require notification of oil discharges in accordance with a regional contingency plan, but the plan itself was not published in the Federal Register and the public could ascertain its requirements only by visiting a Coast Guard office, failure to follow the plan cannot be the basis for a criminal prosecution of a defendant who did not have actual knowledge of the plan's contents. [U. S. v. Messer Oil Corp., W.D.Pa.1975, 391 F.Supp. 557. Environmental Law](#)  743


10. Person

Language in both Clean Water Act (CWA) and Resource Conservation and Recovery Act (RCRA) defined “person” for purposes of entire section in which term occurs so that inclusion of United States as “person” occurs only in clauses subjecting United States to suit. [U.S. Dept. of Energy v. Ohio, U.S. Ohio 1992, 112 S.Ct. 1627, 503 U.S. 607, 118 L.Ed.2d 255, on remand 965 F.2d 1401. Environmental Law](#)  428; [Environmental Law](#)  175; [Environmental Law](#)  353


11. Person in charge


Inclusion of a corporation within meaning of term “person in charge” as used in the criminal penalty provision of this section is not inconsistent with use of the words “owner or operator” in the civil penalty provisions; phrase “owner or operator” designates persons of a particular proprietary class as does the phrase “person in charge”; a corporation, being a “person” is included within the meaning of both. [Apex Oil Co. v. U. S., C.A.8 \(Mo.\) 1976, 530 F.2d 1291](#), certiorari denied [97 S.Ct. 84, 429 U.S. 827, 50 L.Ed.2d 90. Environmental Law](#)  [762](#); [Environmental Law](#)  [223](#)

12. Responsible party


Owner of oil pipeline was “responsible party” under the Oil Pollution Act throughout period of pipeline spill and attempted containment, and was thus obligated to respond to pipeline discharge, even if spill was caused by third party in the first instance. [Unocal Corp. v. U.S., C.A.9 \(Cal.\) 2000, 222 F.3d 528. Environmental Law](#)  [445\(1\)](#)

13. Owner or operator


Entity is “operator” of facility within meaning of Clean Water Act (CWA) if it has power or capacity to make timely discovery of discharges, direct activities of persons who control mechanisms causing pollution, and prevent and abate damage. [Beartooth Alliance v. Crown Butte Mines, D.Mont.1995, 904 F.Supp. 1168. Environmental Law](#)  [175](#)

Owner or operator strictly liable for cost of cleaning pollution site is to be defined as of date of discovery of spill and not some date in past. [Quaker State Corp. v. U.S. Coast Guard, W.D.Pa.1988, 681 F.Supp. 280. Environmental Law](#)  [214](#)

This section is applicable to municipalities. [U. S. v. City of New York, S.D.N.Y.1979, 481 F.Supp. 4](#), affirmed [614 F.2d 1292](#), certiorari denied [100 S.Ct. 2154, 446 U.S. 936, 64 L.Ed.2d 789](#).

Public interest in preserving environmental integrity of Lake Champlain, in which there had been numerous oil spillages, was sufficiently paramount that parent corporation, which profited from operations of its alter ego, wholly owned, vessel-owning corporate subsidiaries, should be accountable, by piercing veil of corporate entities, for any violation or continuing threat of violations to that integrity. [U.S. v. Ira S. Bushey & Sons, Inc., D.C.Vt.1973, 363 F.-Supp. 110](#), affirmed [487 F.2d 1393](#), certiorari denied [94 S.Ct. 3182, 417 U.S. 976, 41 L.Ed.2d 1146. Corporations](#)  [1.6\(4\)](#)

14. Public vessel

Dredge owned by port was “public vessel” engaged in commerce and thus covered by policy which extended coverage coextensive with Federal Water Pollution Control Act's liabilities, where dredge was used to dredge two rivers as aid to navigation, port was authorized by law to engage in certain commercial activities, including dredging, and dredge, when not used by United States Army Corps of Engineers for dredging, was on standby available by contract to third parties. [Port of Portland v. Water Quality Ins. Syndicate, C.A.9 \(Or.\) 1986, 796 F.2d 1188. Insurance](#)  [2325](#)

15. Navigable waters of United States

This section, which prohibited discharge of oil into navigable waters of United States in harmful quantities, was applicable to unnamed tributary, which was part of overall tributary of navigable river, regardless of whether there was a continuous flow of water, and, thus, Coast Guard's decision that pipeline company had violated this section by discharging oil into the tributary was not void for lack of jurisdiction. [U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728](#), affirmed [611 F.2d 345](#). [Environmental Law](#) 173

This section applies to all “waters of the United States”, not just to the classical “navigable waters of the United States”. [U. S. v. Ashland Oil & Transp. Co., W.D.Ky.1973, 364 F.Supp. 349](#), affirmed [504 F.2d 1317](#). [Environmental Law](#) 743

16. Designation of substance as hazardous

Until a substance other than oil is designated as hazardous by the Administrator, none of the provisions of this section apply, including duty to report spill, provision for assessment of civil penalty by the Coast Guard, immunity provisions and liability of the polluter for clean-up costs. [U.S. v. Ohio Barge Lines, W.D.La.1975, 410 F.Supp. 625](#), affirmed [531 F.2d 574](#). [Environmental Law](#) 207; [Environmental Law](#) 214; [Environmental Law](#) 223

17. Discharges within section

Certain de minimis discharges of oil into navigable waters of the United States are not prohibited by this section which, in relevant part, prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States “in harmful quantities as determined by the President.” [U. S. v. Chevron Oil Co., C.A.5 \(La.\) 1978, 583 F.2d 1357](#). [Environmental Law](#) 177

Congress in enacting this section requiring a report to appropriate federal authorities of all discharges of oil in navigable waters in harmful quantities does not intend that all oil discharges be deemed harmful, and there is a certain class of de minimis discharges to which sanctions of this section do not apply. [U.S. v. Boyd, C.A.9 \(Wash.\) 1973, 491 F.2d 1163](#). [Environmental Law](#) 177

Provision of Clean Water Act (CWA) permitting government to secure “any relief” necessary to protect public health and welfare following determination of “imminent and substantial threat” because of actual or threatened discharge of oil authorized government to seek injunctive relief requiring pipeline owner to take all appropriate action to prevent future discharges of oil into navigable waters. [U.S. v. Colonial Pipeline Co., Inc., N.D.Ga.2002, 242 F.Supp.2d 1365](#).

Clean Water Act (CWA) and its regulations applied to discharge of tugboat's bilge water, which allegedly contained hazardous substance, into river. [Pickens v. Kanawha River Towing, S.D.Ohio 1996, 916 F.Supp. 702](#). [Environmental Law](#) 175

Coast Guard's findings, that shipper twice discharged oil into navigable waterways in “harmful” amounts and was on that basis liable for civil penalties, was sufficiently supported by evidence that each discharge resulted in sheen, though first discharge was estimated at no more than 20 gallons, and second discharge was dissipated by thunder showers and strong winds. [U.S. v. Chotin Transp., Inc., S.D.Ohio 1986, 649 F.Supp. 356](#). [Environmental Law](#) 223

18. Notification of discharge--Generally

Provision of this section which requires any person in charge of an onshore facility to report a discharge of oil to the appropriate agency of the government as soon as he has knowledge of such a discharge and which prohibits discharge of oil in harmful quantities into navigable waters was not void for vagueness because of failure to adequately define “harmful quantities”, “immediately”, and “appropriate government agency”. [U.S. v. Kennecott Copper Corp., C.A.9 \(Ariz.\) 1975, 523 F.2d 821. Statutes ↪47](#)

Provision of this section imposing penal sanctions on captain of vessel for failing to report to appropriate authorities harmful oil discharge into navigable waters and regulation defining as harmful any oil spill which produces a sheen upon surface of waters does not violate due process on ground that the sheen test is void for vagueness. [U.S. v. Boyd, C.A.9 \(Wash.\) 1973, 491 F.2d 1163. Constitutional Law ↪4509\(1\); Navigable Waters ↪3](#)

Under this section, by requiring that certain persons disclose information concerning oil discharges, Congress took steps to ensure the timely discovery of abatable hazards and to facilitate implementation of measures calculated to minimize pollution damage; such policy bears heavily on question of class of persons to whom provisions of this section extend. [U. S. v. Mobil Oil Corp., C.A.5 \(Tex.\) 1972, 464 F.2d 1124. Environmental Law ↪207](#)

This section requiring that person in charge of any facility violating provision, which prohibits discharge of oil into navigable waters of United States in harmful quantities, must report any discharge to the appropriate government agency or face criminal sanctions is not violative of protection against self-incrimination afforded by [U.S.C.A.-Const. Amend. 5. U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728, affirmed 611 F.2d 345. Criminal Law ↪393\(1\)](#)

Word “immediate” in subsec. (b)(5) of this section requiring any person in charge of a vessel or of an onshore facility, as soon as he has knowledge of any discharge of oil or hazardous substance from such vessel or facility, to give immediate notice of discharge to appropriate agency of United States government must be interpreted in light of circumstances of each particular case. [U. S. v. Messer Oil Corp., W.D.Pa.1975, 391 F.Supp. 557. Environmental Law ↪207](#)


[19. ---- Agency to be notified, notification of discharge](#)


Term “appropriate agency of the United States” as used in provision of this section requiring discharges of oil into navigable waters to be immediately reported to such agencies encompasses any federal agency concerned with water and environmental pollution or navigable waters. [U.S. v. Kennecott Copper Corp., C.A.9 \(Ariz.\) 1975, 523 F.2d 821. Environmental Law ↪207](#)

Where the Coast Guard designated the Environmental Protection Agency as the appropriate agency to receive notice of oil discharges, but the Agency in turn redesignated the Coast Guard as the appropriate agency, there was no effective legal requirement that notice be given to the Agency. [U. S. v. Messer Oil Corp., W.D.Pa.1975, 391 F.Supp. 557. Environmental Law ↪207](#)


[20. ---- Persons required to give notification of discharge](#)


An oil corporation which owned a plant wherein simultaneous malfunctions in independent regulatory mechanisms caused tanks to discharge oil into navigable waterway was a “person” within provisions of this section requiring the “person in charge” of a vessel or offshore or onshore facility to notify federal agency of such discharge and granting immunity from criminal prosecution against persons who make the disclosure. [U. S. v. Mobil Oil Corp., C.A.5 \(Tex.\) 1972, 464 F.2d 1124. Environmental Law ↪207](#)


The term “person in charge”, as used in this section requiring any person in charge of a vessel, as soon as he has knowledge of any discharge of oil from the vessel in violation of this chapter, to notify the United States Coast Guard, includes corporations as well as individuals, since subsec. (a)(7) of this section defines the word “person” to include corporations, firms, associations and partnerships as well as individuals, since there is no special definition of the term “person in charge”, and since, even if this section had not defined “person” as including corporation, such an interpretation would be made because the sense and purpose of this section plainly indicate it. [U. S. v. Hougland Barge Line, Inc., W.D.Pa.1974, 387 F.Supp. 1110. Environmental Law](#)  207



Corporation could be “person in charge” of onshore facility, within subsec. (b) of this section requiring “person in charge” of vessel or offshore or onshore facility to notify federal agency of oil discharge into navigable waters of United States or tributaries. [U. S. v. General Am. Transp. Corp., D.C.N.J.1973, 367 F.Supp. 1284. Environmental Law](#)  207


21. ---- Immunity from use in criminal prosecution, notification of discharge

Prosecution for discharge of oil into water which was based on evidence other than the notification or information obtained by exploitation of notification of the spill, given pursuant to former section 1161(b)(4) of this title [now covered by subsec. (b)(5) of this section], was unaffected by provision of former section 1161(b)(4) of this title that the notification and information obtained by exploitation of the notification should not be used in any criminal case against the person making the report. [U. S. v. Republic Steel Corp., C.A.6 \(Ohio\) 1974, 491 F.2d 315. Environmental Law](#)  754


Corporations are entitled to immunity granted by this section from use of notification of oil spill in any criminal case, and corporations have the correlative duty to report spills. [U.S. v. Atlantic Richfield Co., E.D.Pa.1977, 429 F.-Supp. 830, affirmed 573 F.2d 1303. Environmental Law](#)  754


Immunity granted where person in charge of onshore facility notified appropriate federal agency of oil discharge into navigable waterway was “use” immunity only. [U. S. v. General Am. Transp. Corp., D.C.N.J.1973, 367 F.Supp. 1284. Criminal Law](#)  42.3(3)

Within meaning of former section 1161 of this title [now covered by this section] which required “person in charge” of an on-shore facility to immediately report discharges of oil into the surrounding water to the appropriate federal agency, and protected any such person from the use of such notification or information obtained by the exploitation thereof “in any criminal case” against him, a corporate owner operator charged with a violation of the Rivers and Harbors Appropriation Act, section 401 et seq. of this title, was a “person in charge” and was entitled to the immunity provided. [U. S. v. Reynolds Metals Co., S.D.Tex.1973, 359 F.Supp. 338. Environmental Law](#)  207; [Environmental Law](#)  754


Evidence was insufficient for defendant, which was charged with the discharge of refuse matter consisting of titanium dioxide, calcium carbonate and other suspended and dissolved solids into tributary of navigable river when employee negligently failed to close a water tap and reserve tank overflowed during a weekend, to invoke immunity under former section 1161 of this title [now subsec. (b)(5) of this section] from prosecution for the reporting of “oil spills.” [U. S. v. American Cyanamid Co., S.D.N.Y.1973, 354 F.Supp. 1202, affirmed 480 F.2d 1132. Environmental Law](#)  756


Under federal law, evidence admitted at criminal trial of captain of oil tanker which ran aground was not obtained

through nonimmunized portions of statements made in captain's radio notification to United States Coast Guard, so as to have been obtained through source independent of statements immunized under reporting requirement of oil discharges; report of tanker's location was required by statute and thus came under grant of immunity, and, even if portions of transmission were not immunized, nonimmunized portions could not be wholly independent of immunized portions made in same radio transmission. [State v. Hazelwood, Alaska 1993, 866 P.2d 827](#), on remand [912 P.2d 1266](#). [Criminal Law](#)  [394.1\(3\)](#)



There was no evidentiary basis for finding actual existence of independent source for state's evidence underlying prosecution of captain of vessel for misdemeanor in connection with oil spill based upon state's allegation that captain reported grounding of ship to comply with marine casualty regulation, rather than Federal Water Pollution Control Act (FWPCA) so as to render report not immunized, where only evidence in record tending to establish captain's purpose in contacting Coast Guard was his own, uncontroverted affidavit swearing that he reported vessel was aground and leaking oil in order to comply with requirements of FWPCA. [Hazelwood v. State, Alaska App.1992, 836 P.2d 943](#), rehearing denied, affirmed in part , reversed in part [866 P.2d 827](#), on remand [912 P.2d 1266](#). [Criminal Law](#)  [569](#)

[22. ---- Failure to make notification of discharge](#)

Since criminal penalty provision of this section speaks in terms of any person in charge, it would not be inconsistent with the statutory language to hold both an employee and his corporate employer to its penalties for failure to report a known oil spill. [Apex Oil Co. v. U. S., C.A.8 \(Mo.\) 1976, 530 F.2d 1291](#), certiorari denied [97 S.Ct. 84, 429 U.S. 827, 50 L.Ed.2d 90](#). [Environmental Law](#)  [762](#)

Even though employee of corporate seller of fuel oil had duty to oversee filling of storage tank, where buyer's over-ordering was the cause of fuel oil overflowing through vent pipe on roof of tank and running down backside of tank and collecting into depression from which it proceeded to river and such tank was not under seller's control, seller did not violate provision of this section making it a crime for one in charge of onshore facility not to notify federal government of oil discharge into navigable waters. [U. S. v. Mackin Const. Co., Inc., D.C.Mass.1975, 388 F.Supp. 478](#). [Environmental Law](#)  [743](#)

[23. Removal of oil or hazardous substances](#)

Provision of this section defining terms "remove" and "removal" to include removal of oil or hazardous substances from water and shorelines or taking of such other acts as may be necessary to minimize or mitigate damage to public health or welfare does not limit standard of "removability" to actual physical removal from the receiving water body, but sets standard as mitigation of harm through neutralization of a harmful substance. [Manufacturing Chemists Ass'n v. Costle, W.D.La.1978, 455 F.Supp. 968](#). [Environmental Law](#)  [212](#); [Environmental Law](#)  [439](#)

[II. CIVIL PENALTY](#)

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
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
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
[51](#). Civil penalty generally



Clean Water Act's (CWA) penalties for water pollution were not intended to occupy the entire field of pollution remedies. [Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605, 171 L.Ed.2d 570](#), on remand [568 F.3d 1077, States](#)  [18.31](#)

Fact that Rivers and Harbors Appropriation Act of 1899, section 401 et seq. of this title, made criminal the escape of oil from an oil retention pit at a drilling facility, which oil eventually found its way into body of navigable water did not render the "civil penalty" under this section criminal in nature. [U.S. v. Ward, U.S.Okla.1980, 100 S.Ct. 2636, 448 U.S. 242, 65 L.Ed.2d 742](#), rehearing denied [101 S.Ct. 37, 448 U.S. 916, 65 L.Ed.2d 1179](#). [Environmental Law](#)  [223](#)




Penalty imposed by Federal Water Pollution Control Act for leakage of oil or hazardous substance is not criminal in nature and does not serve same purpose as criminal fine and is therefore deductible for income tax purposes. [True v. U.S., D.Wyo.1985, 603 F.Supp. 1370](#), affirmed in part , reversed in part [894 F.2d 1197](#). [Internal Revenue](#)  [3347](#)

Penalty provided by this section which authorizes imposition of penalty for discharging oil into navigable waters of United States in harmful quantities, is civil in nature. [U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728](#), affirmed [611 F.2d 345](#). [Environmental Law](#)  [223](#)

Penalty provided by this section for owner of discharging vessel or facility, as applied to persons who spill oil accidentally, report such spills to the appropriate authorities, and clean it up at their own expense, is not really criminal rather than civil and the penalty does not act only as a punishment but serves the ends of civil regulation. [U.S. v. Atlantic Richfield Co., E.D.Pa.1977, 429 F.Supp. 830](#), affirmed [573 F.2d 1303](#). [Environmental Law](#)  [223](#)

Penalty imposed under this section on owner or operator of vessel or facility from which oil or hazardous substance is discharged in harmful quantities is civil, not criminal penalty. [U. S. v. General Motors Corp., D.C.Conn.1975, 403 F.Supp. 1151](#). [Environmental Law](#)  [762](#); [Environmental Law](#)  [223](#)

[52](#). Notification of discharge, civil penalty

The monetary penalty imposed by this section against any owner or operator of a vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of this chapter is civil and does not trigger the protections afforded by [U.S.C.A.Const. Amend. 5](#) to a criminal defendant; hence, reporting requirement, as used to support a "civil penalty", does not violate the reporter-violator's right under [U.S.C.A.Const. Amend. 5](#) against compulsory self-incrimination. [U.S. v. Ward, U.S.Okla.1980, 100 S.Ct. 2636, 448 U.S. 242, 65 L.Ed.2d 742](#), rehearing denied [101 S.Ct. 37, 448 U.S. 916, 65 L.Ed.2d 1179](#). [Criminal Law](#)  [393\(1\)](#); [Environmental Law](#)  [223](#); [Environmental Law](#)  [207](#)

Penalties assessed against corporation, pursuant to this section, because of spills of petroleum products were "civil"

in nature and, therefore, the use immunity provision of this section did not apply to preclude imposition of such penalties on the basis of information provided by corporation's notification compliance. [U. S. v. Allied Towing Corp., C.A.4 \(Va.\) 1978, 578 F.2d 978. Environmental Law ↪223; Environmental Law ↪207](#)

Corporation, having reported oil spill, was not immune from imposition of "civil" penalty in connection with the spill, regardless of the alleged criminal "nature" of such penalty. [U. S. v. Le Beouf Bros. Towing Co., Inc., C.A.5 \(La.\) 1976, 537 F.2d 149, rehearing denied 541 F.2d 281, rehearing denied 541 F.2d 282, certiorari denied 97 S.Ct. 1688, 430 U.S. 987, 52 L.Ed.2d 383. Environmental Law ↪223](#)

Fact that Congress has seen fit to require discharger of oil to report spill, so that it may be promptly contained, does not necessarily prevent it from establishing civil penalty for that environmentally harmful act, or from permitting penalty to be assessed through use of defendant's notification. [U. S. v. General Motors Corp., D.C.Conn.1975, 403 F.Supp. 1151. Environmental Law ↪223; Environmental Law ↪207](#)

[53. Fault, civil penalty](#)

Under the absolute liability standard involved in this section, neither fault nor defect need be proved, so foreseeability is used not to establish these but rather to affix legal responsibility despite the absence of fault or defect and also to limit the scope of that liability. [U.S. v. Tex-Tow, Inc., C.A.7 \(Ill.\) 1978, 589 F.2d 1310. Environmental Law ↪223](#)

While pipeline company alleged that the purpose of the civil penalty provision of this section is to deter spills and that assessing a substantial civil penalty in the absence of fault would not meet the due process requirement that legislative means bear a reasonable relation to a proper legislative purpose and be neither arbitrary nor discriminatory, penalty provision, permitting assessment of a substantial penalty even in the absence of fault, is rationally related to the economic purpose of this section of placing the financial burden of achieving and maintaining clean water on owners or operators of polluting facilities. [U.S. v. Marathon Pipe Line Co., C.A.7 \(Ill.\) 1978, 589 F.2d 1305. Environmental Law ↪223](#)




Federal Water Pollution Control Act provision under which penalty is imposed for leakage of oil or hazardous substance is one which imposes strict liability on operator for discharge of harmful substances, regardless of fault. [True v. U.S., D.Wyo.1985, 603 F.Supp. 1370, affirmed in part, reversed in part 894 F.2d 1197. Environmental Law ↪223](#)


The civil penalty provision in this section is one of strict liability for oil discharges. [U. S. v. City of New York, S.D.N.Y.1979, 481 F.Supp. 4, affirmed 614 F.2d 1292, certiorari denied 100 S.Ct. 2154, 446 U.S. 936, 64 L.Ed.2d 789. Environmental Law ↪223](#)


[54. Actual injury, civil penalty](#)


Civil penalties could be imposed under amended version of Clean Water Act for accidental discharges of small quantities of oil that violated Environmental Protection Agency (EPA) regulations even if spills did not cause actual injury to environment; EPA was authorized by Act to extend its reach beyond actual injury and thus fines could be imposed for violation of "sheen" regulation, which prohibited discharges of oil in quantities large enough to create sheen on water that "may be harmful" to public health or welfare. [Chevron, U.S.A., Inc. v. Yost, C.A.5 \(La.\) 1990, 919 F.2d 27, rehearing denied 925 F.2d 1461. Environmental Law ↪223](#)

55. Hearing, civil penalty


Proceeding in which “civil penalty” authorized by this section was imposed on lessee of onshore drilling facility from which oil had escaped into navigable water, was not “quasi-criminal” within meaning of Boyd rule so as to implicate protection of [U.S.C.A.Const. Amend. 5](#) against compulsory self-incrimination as regards use of statutory reporting requirements, i.e., obligation to report a discharge or spill, in support of the penalty. [U.S. v. Ward, U.S.Okla.1980, 100 S.Ct. 2636, 448 U.S. 242, 65 L.Ed.2d 742](#), rehearing denied [101 S.Ct. 37, 448 U.S. 916, 65 L.Ed.2d 1179](#). [Criminal Law](#)  [393\(1\)](#); [Environmental Law](#)  [223](#); [Environmental Law](#)  [207](#)


At hearing to determine whether civil penalties should be assessed against owner, operator or person responsible for discharge of oil, defendant must be allowed to offer proof that its oil spill was not harmful despite the presence of a “sheen” on the water; for such purpose, “not harmful” means only that the quantity of oil spilled was de minimis, not that a harmful quantity was spilled but fortunately did not actually cause any harm. [U. S. v. Chevron Oil Co., C.A.5 \(La.\) 1978, 583 F.2d 1357](#). [Environmental Law](#)  [223](#)


Hearing procedures utilized by the Coast Guard in assessing penalty in connection with oil spill from a tank barge did not violate barge owner's due process rights. [U. S. v. Independent Bulk Transport, Inc., S.D.N.Y.1979, 480 F.-Supp. 474](#). [Constitutional Law](#)  [4426](#)

Where Coast Guard complied strictly with subsec. (b)(6) of this title providing that no penalty for oil spill shall be assessed unless owner is given notice and opportunity to be heard, but barge owner neither requested nor attended a hearing, barge owner was not denied due process in connection with assessment of such penalty. [U. S. v. Slade, Inc., E.D.Tex.1978, 447 F.Supp. 638](#). [Constitutional Law](#)  [4323](#)

56. Defenses, civil penalty


Third-party causation defense contained in the provisions of this section dealing with cleanup liability and liquidated damages liability is not to be read into the civil penalty provision. [U.S. v. Tex-Tow, Inc., C.A.7 \(Ill.\) 1978, 589 F.2d 1310](#). [Environmental Law](#)  [223](#)

Fact that a third party may have been sole cause of discharge of oil from broken pipeline into tributary of a creek was not a defense to imposition of civil penalty against pipeline company for violating this section prohibiting discharge of oil into navigable waters of United States in harmful quantities. [U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728](#), affirmed [611 F.2d 345](#). See, also, [U.S. v. General Motors Corp., D.C.Conn.1975, 403 F.Supp. 1151](#). [Environmental Law](#)  [223](#)


Where leak of some 25 to 30 gallons of oil into the East River from barge created a sheen on or discoloration of the water's surface at time of discharge, barge owner had violated this section because such a discharge has been determined by the Secretary of the Interior to be harmful to the environment; owner's subsequent removal of the oil from the water did not relieve it from liability for a civil penalty; operative fact was the discharge and once it occurred environmental harm resulted. [U.S. v. W. B. Enterprises, Inc., S.D.N.Y.1974, 378 F.Supp. 420](#). [Environmental Law](#)  [223](#)


57. Factors considered in assessing, civil penalty

Absolute liability in the case of the civil penalty imposed by this section is not unduly harsh or unreasonable in view of the limited nature of the liability and the flexibility afforded by the statutory directive that the Coast Guard, in set-


ting the amount of the penalty, take into account the charged party's ability to pay and the "gravity of the violation," which has been interpreted by the Coast Guard to include degree of culpability. [U.S. v. Tex-Tow, Inc., C.A.7 \(Ill.\) 1978, 589 F.2d 1310. Environmental Law](#)  223


In calculating civil penalties for which pipeline owner was liable under Clear Water Act (CWA) based on its illegal discharges of oil, amount of penalties was not limited to amount of oil discharged into or upon navigable waters or adjoining shorelines, but rather was to be based upon entire amount of oil released into environment. [U.S. v. Colonial Pipeline Co., Inc., N.D.Ga.2002, 242 F.Supp.2d 1365.](#)


While a penalty automatically attaches at the time of an unlawful discharge of oil or other hazardous substance in violation of this section, it is nevertheless true that any such civil penalty may be compromised and that the gravity of the violation shall be considered in assessing the penalty; and these provisions allow a flexibility which may take into account any defenses which parties may raise in their behalf. [U. S. v. Eureka Pipeline Co., N.D.W.Va.1975, 401 F.Supp. 934. Environmental Law](#)  223

When trial courts are asked to impose penalties for violation of solid waste management statutes, they are to be guided in exercise of their discretion by considering such factors as the size of business involved, effect of the penalty or injunctive relief on its ability to continue operation, gravity of violation, good faith efforts made by the business to comply with applicable statutory requirements, any economic benefit gained by the violations, deterrence of future violations, and fair and equitable treatment of the regulated community. [Carothers v. Capozziello, Conn.1990, 574 A.2d 1268, 215 Conn. 82, on remand. Environmental Law](#)  384

[58. Amount of penalty, civil penalty](#)


Environmental Appeals Board (EAB) acted within its discretion under Clean Water Act by imposing penalty of \$12,655 against owner of facility from which 400 gallons of heating oil had been discharged into navigable waterways, even though owner had partially reimbursed state for costs of cleaning up spill. [Pepperell Associates v. U.S. E.P.A., C.A.1 2001, 246 F.3d 15. Environmental Law](#)  223


Original assessment of \$1,000, rather than maximum \$5,000 penalty, was appropriate civil penalty for discharge of gasoline to be imposed upon pipeline owner, which built and maintained pipeline in accordance with all prevailing governmental rules and regulations and industry practices, which bore no fault in pipeline rupture and discharge, and which immediately corrected leak and pursued available measures to clean up affected area. [U. S. v. Coastal States Crude Gathering Co., C.A.5 \(Tex.\) 1981, 643 F.2d 1125, rehearing denied 647 F.2d 1122, certiorari denied 102 S.Ct. 136, 454 U.S. 835, 70 L.Ed.2d 114. Environmental Law](#)  223


In action by United States against pipeline company to collect \$2,500 civil penalty assessed by Coast Guard under this chapter, amount of the penalty, which was only half of maximum permitted under this chapter, did not exceed authority of the Coast Guard even though the pipeline company was not at fault in the occurrence of the spill where record established that all factors required by this chapter were taken into account in determining size of the penalty. [U. S. v. Texas Pipe Line Co., C.A.10 \(Okla.\) 1979, 611 F.2d 345. Environmental Law](#)  223

Coast guard's assessment of \$1,500 penalty on shipper for discharging between one and 20 gallons of oil into Ohio River during loading operations was neither arbitrary nor capricious, where coast guard considered gravity of violation, appropriateness of penalty to size of shipper's business and effect of penalty on business, and where shipper did not request administrative hearing to contest assessment and presented no evidence that penalty was not appropriate or would force it to go out of business. [U.S. v. Chotin Transp., Inc., S.D.Ohio 1986, 649 F.Supp. 356. Environmental](#)


[Law](#)  [223](#)


Civil penalty of \$2500 imposed by Coast Guard upon pro hac vice owner of barge which spilled oil was valid and binding. [U. S. v. Hollywood Marine, Inc., S.D.Tex.1981, 519 F.Supp. 688. Environmental Law](#)  [223](#)


Under all circumstances, the Coast Guard's decision to assess maximum penalty of \$5,000 for discharge of 1.5 million gallons of oil into sea was neither arbitrary nor capricious. Com. of Puerto Rico [Rico v. SS Zoe Colocotroni, D.C.Puerto Rico 1978, 456 F.Supp. 1327](#), affirmed in part, vacated in part on other grounds [628 F.2d 652](#), certiorari denied [101 S.Ct. 1350, 450 U.S. 912, 67 L.Ed.2d 336. Environmental Law](#)  [223](#)

Fine of \$2,000 for discharge of ten or 15 gallons of oil into river, which caused sheen upon water, was not excessive. [U. S. v. Beatty, Inc., W.D.Ky.1975, 401 F.Supp. 1040. Environmental Law](#)  [223](#)


[59. Reduction of penalty, civil penalty](#)

Decision to assess \$2,500 penalty against pipeline company, from whose pipeline 600 barrels of oil were spilled into tributary of a creek after pipeline was damaged by bulldozer, was supported by substantial evidence; district court had no authority to reduce or eliminate the penalty since it was within the statutorily prescribed limits. [U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728](#), affirmed [611 F.2d 345. Environmental Law](#)  [223](#)


Where stipulated evidence showed that discharge of oil from corporation's facility was solely caused by third-party intruders and not contributed to by any negligence on part of corporation, civil penalty imposed by United States Coast Guard under provisions of this section would be reduced from \$1,200 to nominal penalty of \$1. [U. S. v. General Motors Corp., D.C.Conn.1975, 403 F.Supp. 1151. Environmental Law](#)  [223](#)

Where fine imposed by Coast Guard for discharge of oil into navigable waters was within limits imposed by law, district court had no authority to reduce it or eliminate it. [U. S. v. Beatty, Inc., W.D.Ky.1975, 401 F.Supp. 1040. Environmental Law](#)  [682](#)

[60. Suspension of license, civil penalty](#)

A master's license is not subject to revocation or suspension for violation of the Clean Water Act unless the master, not just the vessel, violates a provision of the Act. [Klatt v. U.S., C.A.9 \(Cal.\) 1992, 965 F.2d 743. Shipping](#)  [6](#)

[61. Punitive damages, civil penalty](#)

Punitive damages for private harms would not have any frustrating effect on the Clean Water Act (CWA) remedial scheme, which would point to preemption. [Exxon Shipping Co. v. Baker, U.S.2008, 128 S.Ct. 2605, 171 L.Ed.2d 570](#), on remand [568 F.3d 1077. States](#)  [18.15](#)

III. COSTS OF REMOVAL


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
[81](#). Waters within section, costs of removal


This section has no effect on claims for cleaning territorial waters of foreign countries; this section does not “speak to” problem of polluting foreign waters, and therefore no presumption of statutory preemption arises. [Matter of Oswego Barge Corp., C.A.2 \(N.Y.\) 1981, 664 F.2d 327](#), rehearing denied [673 F.2d 47](#). [Environmental Law](#)  [170](#)

[82](#). Strict liability, costs of removal


As between federal government and barge owner, issue of fault for oil spill does not determine liability. [Montauk Oil Transp. Corp. v. Tug El Zorro Grande, C.A.2 \(N.Y.\) 1995, 54 F.3d 111](#). [Environmental Law](#)  [223](#)


Owner or operator of vessel that discharges harmful quantities of oil into navigable waters of United States is strictly liable for cost of removal of spilled oil under Federal Water Pollution Control Act. [In re Oriental Republic of](#)

[Uruguay, D.Del.1992, 821 F.Supp. 928. Environmental Law](#)  [214](#)


Discharger of oil or hazardous substances into navigable waters of United States is normally strictly liable for cleanup costs within monetary limits. [Total Petroleum, Inc. v. U.S., Cl.Ct.1987, 12 Cl.Ct. 178. Environmental Law](#)  [214](#)



[83. Causation, costs of removal](#)


Acts of shipowner's agent, in navigating oil barge outside of channel established by the Corps of Engineers, was proximate cause of oil spill which resulted when barge struck unmarked wreck; accordingly, shipowner was liable for actual cost of cleanup under the Federal Water Pollution Control Act. [U.S. v. West of England Ship Owner's Mut. Protection & Indem. Ass'n \(Luxembourg\), C.A.5 \(La.\) 1989, 872 F.2d 1192. Environmental Law](#)  [214](#)

Owner of sunken barge was not liable to the United States for oil cleanup costs where owner was without fault in the breakaway and sinking of the barge and had abandoned the barge to the United States long before collision with the barge by another vessel, which caused the discharge. [Nunley v. M/V Dauntless Colocotronis, E.D.La.1987, 661 F.-Supp. 1096, affirmed in part, reversed in part 863 F.2d 1190, rehearing denied 869 F.2d 1487. Environmental Law](#)  [214](#)

[84. Removal by United States, costs of removal--Generally](#)

Within specified monetary limits and subject to certain exceptions, one being the act of a "third party", a vessel discharging oil in violation of this section and the vessel's owners are liable without fault for the government's cleanup costs. [Burgess v. M/V Tamano, C.A.1 \(Me.\) 1977, 564 F.2d 964, certiorari denied 98 S.Ct. 1520, 435 U.S. 941, 55 L.Ed.2d 537. Environmental Law](#)  [214](#)


In a classic oil spill situation where discharging vessel's liability is less than cost of removal and spill resulted from joint fault of discharging vessel and third party, government is entitled to recover limits of applicable statutory limits from discharger, discharger may recover from joint fault third party amount it may be required to pay, subject to appropriate comparative negligence offset, and government, under maritime tort doctrines, may recover from joint fault third party its proportionate part of any excess removal costs, subject to provisions of Limitation of Liability Act, section 190 et seq. of Title 46, to the extent of such third party's fault. [U. S. v. Bear Marine Services, E.D.La.1980, 509 F.Supp. 710. Environmental Law](#)  [214](#); [Environmental Law](#)  [170](#)


Under circumstances including fact that seriousness of oil spill required urgent, immediate and effective action and where the Coast Guard encountered problems in pinpointing the responsible parties and the owners of the responsible vessel did not take clear and affirmative steps to adhere to their avowed intention to handle finances, subsec. (c) (1) of this section empowering the United States to remove or arrange for the removal of oil, unless it is determined that such removal will be done properly by the owner or operator of the vessel from which the discharge occurs, did not immunize the responsible vessel's owners from making the United States whole for cleanup costs incurred by it. Com. of Puerto Rico [Rico v. SS Zoe Colocotroni, D.C.Puerto Rico 1978, 456 F.Supp. 1327, affirmed in part, vacated in part on other grounds 628 F.2d 652, certiorari denied 101 S.Ct. 1350, 450 U.S. 912, 67 L.Ed.2d 336. Shipping](#)  [79](#)


[85. ---- Actual cost, removal by United States, costs of removal](#)



Polluter's liability to the United States under the Federal Water Pollution Control Act for cost of cleanup cannot ex-


ceed costs of cleanup actually incurred by the [United States. U.S. v. P/B STCO 213, ON 527 979, C.A.5 \(La.\) 1985, 756 F.2d 364. Environmental Law](#)  214

Federal Water Pollution Control Act imposes liability on owner or operator of vessel for actual costs of abating threat of oil discharge, except where owner or operator can prove that discharge was caused solely by act of God, act of war, negligence on part of United States Government, or act or omission of third party without regard to which any such act or omission was or was not negligent. [Kyoei Kaiun Kaisha, Ltd. v. M/V Bering Trader, W.D.Wash.1991, 795 F.Supp. 1054. Environmental Law](#)  214


Under this section, vessel discharging oil is liable, together with its owners, without fault, for the actual cleanup costs incurred by the United States. [U. S. v. Hollywood Marine, Inc., S.D.Tex.1981, 519 F.Supp. 688. Environmental Law](#)  214


This chapter allows for recovery by government of actual costs of removing oil pollution up to prescribed ceiling of \$150 per gross ton of vessel or \$125,000, whichever is greater, and polluting vessel is held strictly liable for damages up to that amount unless he can prove that pollution occurred solely because of act of God, an act of war, an act or omission of third party or because of negligence on part of United States. [In re Hokkaido Fisheries Co., Ltd., D.C.Alaska 1981, 506 F.Supp. 631. Environmental Law](#)  214


In the United States' action against company seeking to recover statutory penalty and damages on grounds that oil which emanated from steel drum-reconditioning plant had been discharged into river, Government established nature and amount of actual costs which it incurred in cleanup operation, that they were fair and reasonable, and that they were incurred in cleaning up oil spill caused by defendant and, thus, United States would be entitled to costs incurred and penalty assessed and in addition would be entitled to prejudgment interests on award of costs incurred only. [U. S. v. Malitovsky Cooperage Co., W.D.Pa.1979, 472 F.Supp. 454. Environmental Law](#)  223; [Environmental Law](#)  214


Government was entitled to recover actual expenses incurred in cleaning oil spill off river, even if expenses were not reasonable. [U. S. v. Beatty, Inc., W.D.Ky.1975, 401 F.Supp. 1040. Environmental Law](#)  214

[86. ----](#) Costs recoverable, removal by United States, costs of removal

Coast Guard could not make salvage claim for actions it took under authority of statute requiring it to abate threats of oil pollution. [U.S. v. EX-USS CABOT/DEDALO, C.A.5 \(Tex.\) 2002, 297 F.3d 378. Salvage](#)  18

Salary and other costs incurred by the Coast Guard in cleanup of oil were recoverable by the United States from the pro hac vice owner of the vessel which spilled the oil. [U. S. v. Hollywood Marine, Inc., S.D.Tex.1981, 519 F.Supp. 688. Environmental Law](#)  214

As regards oil spills, the federal government can incur costs for restoring or replacing a state's natural resources only if it pays these costs directly. [Complaint of Allied Towing Corp., E.D.Va.1979, 478 F.Supp. 398. Environmental Law](#)  214

Where barge discharged harmful quantity of oil into river, as evidenced by film or sheen upon or discoloration of surface of river, and barge owner failed to remove oil from river, and barge owner and its insurer were liable to United States for amount paid to contractor for oil spill clean up, together with other personnel and material costs assumed by Coast Guard. [U. S. v. Slade, Inc., E.D.Tex.1978, 447 F.Supp. 638. Environmental Law](#)  214

87. ---- Lien against vessel, removal by United States, costs of removal

Where total amount claimed by Government in action to recover costs of oil spill cleanup far exceeded amount of financial security which defendant owners of tug and barge allegedly provided to Government, barge and tug owners were not entitled to protective order to prohibit Government from arresting their vessels to secure its claims. [Frederick E. Bouchard, Inc. v. U.S., D.C.Mass.1984, 583 F.Supp. 477. Maritime Liens](#) ↪73

88. Monitoring costs, costs of removal

United States was entitled under Oil Pollution Act (OPA) to recover costs incurred by Coast Guard in monitoring vessel owner's removal of its stranded and leaking vessel holding bunker fuel; Coast Guard's actions fell within OPA sections allowing recover for attempting to mitigate or prevent substantial threat of discharge, monitoring private action to remove discharge, and directing private actions to remove discharge or to mitigate or prevent threat of discharge. [U.S. v. Hyundai Merchant Marine Co., Ltd., C.A.9 \(Alaska\) 1999, 172 F.3d 1187](#), certiorari denied [120 S.Ct. 397, 528 U.S. 963, 145 L.Ed.2d 310. Environmental Law](#) ↪446

Monitoring costs are included in removal costs that the government may seek to recover from a responsible party under the Oil Pollution Act (OPA). [U.S. v. Conoco, Inc., E.D.La.1996, 916 F.Supp. 581. Environmental Law](#) ↪446

89. Prevention costs, costs of removal

Provision of Clean Water Act (CWA) permitting government to secure "any relief" necessary to protect public health and welfare following determination of "imminent and substantial threat" because of actual or threatened discharge of oil authorized government to seek injunctive relief requiring pipeline owner to take all appropriate action to prevent future discharges of oil into navigable waters. [U.S. v. Colonial Pipeline Co., Inc., N.D.Ga.2002, 242 F.Supp.2d 1365.](#)

Start of vessel's engines during emergency on unmooring before receiving signals that mooring lines were clear was partial cause of grounding resulting when mooring line became entangled in propeller and, thus, owners of vessel were liable under Federal Water Pollution Control Act for cost of Coast Guard's activities in preventing threatened oil spill from vessel. [Kyoei Kaiun Kaisha, Ltd. v. M/V Bering Trader, W.D.Wash.1991, 795 F.Supp. 1054. Environmental Law](#) ↪214

90. Limitation of liability, costs of removal--Generally

United States was entitled to assert, as not inconsistent with remedy provided by subsec. (g) of this section which comes into play when discharger proves that discharge was caused solely by an act or omission of third party, a cause of action in maritime tort against negligent third-party nondischarging vessel and its owner to recover oil-spill cleanup costs caused solely by vessel's negligence, under circumstances where conduct occurred without privity or knowledge of owner so that owner was entitled to limitation of personal liability of no more than value of vessel and its freight. [U. S. v. M/V Big Sam, C.A.5 \(La.\) 1982, 681 F.2d 432](#), rehearing denied [693 F.2d 451](#), certiorari denied [103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367. Environmental Law](#) ↪214

For purposes of Clean Water Act limitation of liability for vessel which discharges oil to \$150 per gross ton of the vessel, the vessel's tonnage is that specified on the vessel's certificate of registry, not tonnage determined by the In-

ternational Conventional and Tonnage Measurement of Ships. [Kyoei Kaiun Kaisha, Ltd. v. M/V Bering Trader](#), W.D.Wash.1991, 795 F.Supp. 1046. [Environmental Law](#) 214

In government's suit seeking recovery of oil cleanup costs incurred when barge, in the tow of tug on Mississippi River, was holed when it struck dolphin owned by defendant, defendant could not claim limitations of liability set forth in this section because it was outside protection given dischargers or sole cause third parties. [U. S. v. Bear Marine Services](#), E.D.La.1980, 509 F.Supp. 710. [Environmental Law](#) 214

91. ---- Willful negligence, limitation of liability, costs of removal

Provision of this section dealing with "Willful negligence or willful misconduct" is limited to situations where United States seeks recovery of full amount of removal costs and such amount exceeds limitation provided by this section. [U. S. v. City of Redwood City](#), C.A.9 (Cal.) 1981, 640 F.2d 963. [Environmental Law](#) 214

A negligent shipowner denied relief under section 183 of Title 46 may nevertheless secure limitation against the United States' claim for federal oil pollution removal costs under this section unless its negligence or misconduct was willful. [Steuart Transp. Co. v. Allied Towing Corp.](#), C.A.4 (Va.) 1979, 596 F.2d 609. [Environmental Law](#) 214

When a discharge is not willful, and cost of cleanup exceeds vessel owner's liability limits, government is unable to recover full cost of oil spill cleanup from third-party vessel owner or operator responsible for causing the spill, because, under this section, a third-party vessel owner or operator is liable for cleanup expenses beyond liability limit only when discharge is willful. [Amoco Oil Co. v. U.S.](#), Cl.Ct.1983, 3 Cl.Ct. 785. [Environmental Law](#) 214

92. Offset for voluntary clean-up costs, costs of removal

Parties responsible for oil spill were not entitled to have costs they incurred in initial voluntary cleanup operations credited against award to government of cleanup costs in full amount of tonnage maximum permitted under subsec. (f) of this section. [U.S. v. Dixie Carriers, Inc.](#), C.A.5 (La.) 1984, 736 F.2d 180.


Owner of barge which sank in Chesapeake Bay discharging portion of its cargo of oil was not entitled to offset amount it spent for containment operations against amount it owed to the [United States](#). [Steuart Transp. Co. v. Allied Towing Corp.](#), C.A.4 (Va.) 1979, 596 F.2d 609. [Environmental Law](#) 214


United States was entitled to recover \$121,600 from barge, its owner and owner's insurer for United States' oil pollution cleanup costs resulting from oil spill, which represented limitation on recovery of \$100 per gross ton of barge, with defendants not entitled to credit for their voluntary cleanup costs. [U.S. v. Dixie Carriers, Inc.](#), E.D.La.1983, 560 F.Supp. 796, affirmed 736 F.2d 180. [Environmental Law](#) 214


93. Third party liability, costs of removal--Generally


Tug could not be considered "third party" in order to allow owner of discharging vessel to avoid liability for oil spill which occurred while vessel was in tow of tug. [U. S. v. Hollywood Marine, Inc.](#), C.A.5 (Tex.) 1980, 625 F.2d 524, certiorari denied 101 S.Ct. 2336, 451 U.S. 994, 68 L.Ed.2d 855. [Environmental Law](#) 214


Tugboat, over which owner-operator of tanker had no direct control or supervision, was not "third party" within meaning of this section under which discharging vessel is not liable for costs of cleanup of oil spill caused by act or


omission of third party. [U. S. v. LeBeouf Bros. Towing Co., C.A.5 \(La.\) 1980, 621 F.2d 787](#), rehearing denied [629 F.2d 1350](#), certiorari denied [101 S.Ct. 3031, 452 U.S. 906, 69 L.Ed.2d 406](#). [Environmental Law](#)  [214](#)


Provision of this section which creates an exception for acts or omissions of a “third party” to general rule that a vessel discharging oil in violation of this section and the vessel's owners are liable without fault for the government's cleanup costs must be narrowly construed to encompass only actions entirely outside the ship or, in the case of actors, the actions of strangers; therefore, since a compulsory pilot is at all times subject to the ultimate control of the ship's master, such pilot is not a “third party” as to the shipowners for purposes of the exception. [Burgess v. M/V Tamano, C.A.1 \(Me.\) 1977, 564 F.2d 964](#), certiorari denied [98 S.Ct. 1520, 435 U.S. 941, 55 L.Ed.2d 537](#). [Environmental Law](#)  [214](#)

Grounding of vessel and resulting oil spill was not caused solely by act or omission of third party such that exception to owner's liability under Federal Water Pollution Control Act applied; grounding occurred during maneuver undertaken after vessel's anchor was prematurely dropped, and river pilot who directed maneuver was not “third party” within meaning of statute. [In re Oriental Republic of Uruguay, D.Del.1992, 821 F.Supp. 928](#). [Environmental Law](#)  [214](#)


Oil company could be held liable as culpable third party under Clean Water Act for costs of excavation and removal of oil contaminated ground at site in national forest once used in oil drilling operation, even if Forest Service, as owner/operator of the site, was partially responsible for discharge of oil there. [Quaker State Corp. v. U.S. Coast Guard, W.D.Pa.1989, 716 F.Supp. 201](#). [Environmental Law](#)  [214](#)

Statute, which imposes liability on negligent third party for costs to remove discharged oil or hazardous substance, did not require a suit by the government against owner or operator and proof by owner or operator of third party's negligence before government could sue third party, but government could directly sue allegedly negligent lessee for cost of cleaning oil from covered, abandoned containment pit. [Quaker State Corp. v. U.S. Coast Guard, W.D.Pa.1988, 681 F.Supp. 280](#). [Environmental Law](#)  [658](#)

Tug which was pushing barge when it struck bottom, causing oil spill, was “third-party” against whom government could proceed to recover oil spill cleanup costs under this chapter. [Frederick E. Bouchard, Inc. v. U.S., D.C.Mass.1984, 583 F.Supp. 477](#). [Environmental Law](#)  [214](#)

Towboat which was pushing towing barge when the barge grounded was not a “third party” so as to exonerate the pro hac vice owner of the barge from liability for costs of removing oil spilled as a result of the grounding. [U. S. v. Hollywood Marine, Inc., S.D.Tex.1981, 519 F.Supp. 688](#). [Environmental Law](#)  [214](#)

[94](#). ---- Sole cause of discharge, third party liability, costs of removal

Subsec. (g) of this section comes into play when the discharger proves that the discharge was caused solely by an act or omission of a third party does not bar United States from exercising an in rem remedy under the general maritime law against a third-party nondischarging vessel that caused or contributed to discharge to recover oil-pollution cleanup costs incurred as result of conduct that constitutes a maritime tort, even though subsec. (g) might limit the recovery whether or not the sole-cause act or omission was tortious. [U. S. v. M/V Big Sam, C.A.5 \(La.\) 1982, 681 F.2d 432](#), rehearing denied [693 F.2d 451](#), certiorari denied [103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367](#). [Environmental Law](#)  [214](#)

Provision of this section regarding sole acts of negligence by third parties was included as adjunct to exceptions to

owner/operator liability provided in this chapter. [U. S. v. City of Redwood City, C.A.9 \(Cal.\) 1981, 640 F.2d 963, Environmental Law](#) ↪214

Subsec. (f) of this section allowing discharger to absolve itself of liability for discharge of oil if some other party or event is the sole cause of the discharge are to be strictly construed, and other party or event must, in fact, be sole cause of discharge. [U. S. v. Bear Marine Services, E.D.La.1980, 509 F.Supp. 710, Environmental Law](#) ↪214

[95](#). ---- Causing or contributing to discharge, third party liability, costs of removal

Subsec. (h) of this section governing United States' rights against third parties who cause or contribute to discharge permits Government to seek to recover full costs expended in cleaning up oil spill, so long as cause of spill is not discharging vessel. [U.S. v. T/B Arcadian 95, C.A.5 \(La.\) 1983, 714 F.2d 470, Environmental Law](#) ↪214

[96](#). ---- Contribution, third party liability, costs of removal

Subsec. (h)(1) of this section preserves right of contribution in favor of discharger of oil against third party whose fault contributed to the discharge. [U. S. v. Bear Marine Services, E.D.La.1980, 509 F.Supp. 710, Environmental Law](#) ↪214

[97](#). Recovery of removal costs by owner, costs of removal--Generally


Under Federal Water Pollution Control Act, vessel owners could only recover cleanup costs from federal government in connection with vessel's grounding and subsequent oil spill if government negligence was sole cause of spill, despite claim that term "third party," within meaning of subsection providing that vessel owner's rights against any third party whose acts may have caused or contributed to discharge were not affected, could include government; term "third party" referred to parties other than vessel owner and government. [In re Glacier Bay, C.A.9 \(Alaska\) 1995, 71 F.3d 1447, 164 A.L.R. Fed. 791, Environmental Law](#) ↪214


Where oil company had aerial inspection program and conceded that activity involving heavy equipment or other operations along pipeline of the company was not unique, such program of inspection was not reasonably calculated to detect such damage that it knew was likely to occur and in fact did occur, and trial court could find that oil company shared culpability for oil discharge due to its omission to act, and thus was not entitled to recover removal costs from the United States. [Cities Service Pipe Line Co. v. U.S., C.A.Fed.1984, 742 F.2d 626, Environmental Law](#) ↪214


Failure of owners of property to prepare a spill control and countermeasure plan was not negligence per se but was merely one of many indicia to be considered in determining overall reasonableness of conduct of owners who sought to recover from United States for costs incurred in cleanup and removal of oil discharged into navigable waters of United States from their property. [Chicago, Milwaukee St. Paul & Pacific R. Co. v. U.S., Ct.Cl.1978, 575 F.2d 839, 216 Ct.Cl. 155, United States](#) ↪77

Because insurance carrier, as subrogee of owners-operators who incurred expenses for cleaning up an oil spill, could recover under this section only if owners-operators were entitled to recover, allowing such subrogee to recover through its insured would not extend liability or constitute a waiver of sovereign immunity against the United States additional to that entailed by the statutory language which permits an owner-operator who satisfies specific jurisdictional limitations to bring suit against the United States government in the United States Court of Claims to recover such expenses. [Quarles Petroleum Co., Inc. v. U. S., Ct.Cl.1977, 551 F.2d 1201, 213 Ct.Cl. 15, United States](#) ↪


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
Evidence was sufficient to establish that accident which resulted in oil spill did not result from any negligent conduct on part of vessel operators, thus entitling vessel owners to payment of cleanup costs from government; Coast Guard report indicated that there was no evidence of actionable misconduct on part of vessel's operators. [A/S D/S Svendborg v. U.S., S.D.N.Y.1986, 653 F.Supp. 283](#), on reconsideration [726 F.Supp. 1401](#). [Environmental Law](#)  [214](#)

Petroleum company failed to exercise reasonable care to prevent oil spill which occurred when pipeline spanning creek broke as consequence of unusually heavy flood on creek, and it was thus precluded from recovering cleanup costs, where monitoring effort reasonably calculated to detect erosion from known flood condition would have revealed danger before pipeline ruptured, and failure to shut off flow was substantial cause of spill. [Total Petroleum, Inc. v. U.S., Cl.Ct.1987, 12 Cl.Ct. 178](#). [Environmental Law](#)  [214](#)


Discharger will be precluded from recovering oil spill cleanup costs from United States, if it is at fault in any way, particularly insofar as it failed to take reasonable precautions to prevent spill; indeed, any contributory acts on discharger's part, including those entirely innocent, will preclude recovery. [St. Paul Fire & Marine Ins. Co. v. U.S., Cl.Ct.1984, 4 Cl.Ct. 762](#). [United States](#)  [77](#)


Owner of underground pipeline, seeking to recover from United States costs of clean up of oil spill in navigable waters, failed to show that it was unable to prevent spill through exercise of due care, where pipeline had been damaged by heavy equipment sometime in ten years previously, owner was aware that pipeline might sustain damage from such equipment, and that, on sustaining damage, pipeline would be subjected to continued stress and deterioration, and pipeline was not covered by solid ground, but only by soft and shifting mud of bayou, and owner had no program for inspecting pipeline at points where it was most vulnerable, and did not undertake any available or feasible test for locating and repairing weak spots. [Cities Service Pipe Line Co. v. U.S., Cl.Ct.1983, 4 Cl.Ct. 207](#), affirmed [742 F.2d 626](#).


Plaintiff, which had been fully reimbursed for its cleanup of oil spill by insurer of third party which caused spill, could not sue to recover oil spill cleanup expenses, either on behalf of itself or on behalf of third party's insurer. [Amoco Oil Co. v. U.S., Cl.Ct.1983, 3 Cl.Ct. 785](#). [Environmental Law](#)  [214](#)

Owner of vessel which was in vicinity of discovered oil spill could not recover from United States amount expended for services rendered in cleaning up the spill, where complaint did not allege that payment was made by owner pursuant to any demand or request from individual or agency purporting to act for United States; furthermore, since owner was not owner or operator of vessel from which oil was discharged, it did not possess right to sue government for cost of clean up. [London & Overseas Freighters PLC v. U.S., Cl.Ct.1983, 3 Cl.Ct. 139](#). [United States](#)  [77](#)



[98](#). ---- Act of God, recovery of removal costs by owner, costs of removal

Neither spring runoff of melted snow nor unknown underwater object which was struck by vessel, resulting in oil spill, was an "act of God" within exception to liability of spiller for oil spill cleanup costs, since condition of river could not be considered a disaster where the flow rate was equaled or exceeded on 25% of all the days in that water year, and since the circumstances of the hull rupture could not be considered unanticipated in light of frequency of freshet conditions and danger that they caused, which were well known to those who navigated the river. [Sabine Towing & Transp. Co., Inc. v. U. S., Ct.Cl.1981, 666 F.2d 561, 229 Ct.Cl. 265](#). [Environmental Law](#)  [214](#)


Discharge of oil into river that occurred when thunder storms arrived during transfer of oil to vessel did not come within Clean Water Act's exception for "act of God" so as to enable vessel owner to recover clean up costs from the United States; if crew had monitored radio for weather conditions they could have anticipated and taken precautions against storm. [Liberian Poplar Transports, Inc. v. U.S., Ct.Ct.1992, 26 Cl.Ct. 223. Environmental Law](#)  214


Soil settlement of substructure below oil storage tanks, causing rupture of tanks and consequent oil spill, is not correctly designated "act of God," within meaning of subsec. (i) of this section, allowing discharger to recover oil spill cleanup costs from United States, in certain instances. [St. Paul Fire & Marine Ins. Co. v. U.S., Ct.Ct.1984, 4 Cl.Ct. 762. United States](#)  77


99. ---- Negligence on part of United States, recovery of removal costs by owner, costs of removal

Where collision which resulted in sinking of fishing vessel was caused solely and proximately by negligence of Coast Guard, oil spill which occurred when fishing vessel sank was likewise caused solely by negligence on part of United States, and United States was, therefore, not entitled to clean-up costs resulting from oil spill or to any penalty. [Gaspar v. U. S., D.C.Mass.1978, 460 F.Supp. 656. Environmental Law](#)  223; [Environmental Law](#)  214

100. ---- Act or omission of third party, recovery of removal costs by owner, costs of removal


While existence of deposit of oil may have resulted from act or omission of former owner of the property, act of present owner, whose dredging caused the oil to discharge into waters of the United States, was a contributing cause of the discharge such as to preclude the act or omission of the former owner from being the sole cause thereof and therefore owner's insurer, which paid for cleanup costs of the oil spill, was precluded from seeking recovery from the United States under this section. [Reliance Ins. Co. v. U. S., Ct.Cl.1982, 677 F.2d 844, 230 Ct.Cl. 390. United States](#)  77


Under this section, oil company was entitled to recover expenses it incurred in cleaning up oil that was spilled when unknown vandals, during a labor strike at company's oil terminal, opened valves on two railroad tank cars; company was established to be the owner or operator of onshore facility from which the discharge occurred, and the discharge was also established to have been caused solely by the act of unknown third parties, that is, the discharge occurred despite company's reasonable precautions against vandalism. [Union Petroleum Corp. v. U. S., Ct.Cl.1981, 651 F.2d 734, 228 Ct.Cl. 54. Environmental Law](#)  214


Owners exercised reasonable care to forestall third-party intervention in abandoned meat-packing plant in which burglars opened valves causing oil to seep into navigable waters of United States, where owners had acquired plant only ten days before burglary, valves had been closed and each valve handle protectively removed, entire assemblage was protected against accidental overflow by capped vent pipe, there was perimeter fence around facility and there was outside lighting; thus owners were entitled to be reimbursed by United States for costs incurred in cleanup and removal of the oil. [Chicago, Milwaukee St. Paul & Pacific R. Co. v. U.S., Ct.Cl.1978, 575 F.2d 839, 216 Ct.Cl. 155. Environmental Law](#)  214


Elements of a claim for relief under this section which provides that certain parties may recover from the United States money expended in removing oil spills from navigable waters are: a discharge of a harmful quantity of oil from a facility owned or operated by plaintiff; that the discharge was caused solely by an act or omission of a third party; that the oil was removed in accordance with regulations; and that plaintiff or its subrogee expended money to remove the oil. [Quarles Petroleum Co., Inc. v. U. S., Ct.Cl.1977, 551 F.2d 1201, 213 Ct.Cl. 15. Environmental Law](#)


 [214](#)

Tank barge owner under cumulative effect view rule, was estopped from relitigating cumulative effect of findings in prior suit whereby oil spill at issue was established to have been caused by vessels of corporation controlled by same corporation as tank barge owner; thus, tank barge owner could not recover against United States for clean-up costs resulting from oil spill in navigable waterways of United States, since spill was not caused solely by third party. [Tanker Hygrade No. 18, Inc. v. U.S., Ct.Cl.1975, 526 F.2d 805, 208 Ct.Cl. 488](#), certiorari denied [96 S.Ct. 2624, 426 U.S. 920, 49 L.Ed.2d 373](#). [Judgment](#)  [715\(1\)](#)


It was responsibility of oil company to assure that its tank was soundly constructed or positioned on soil, and that its spill-prevention plan was effective, and, having chosen to delegate that responsibility, oil company could not recover cleanup costs from United States by arguing that its surrogates acted negligently; such surrogates were not third parties, for purposes of subsec. (i) of this section, allowing recovery of cleanup costs for oil spill caused by third party. [St. Paul Fire & Marine Ins. Co. v. U.S., Cl.Ct.1984, 4 Cl.Ct. 762](#). [United States](#)  [77](#)

Owner of oil storage facility, rather than United States, was liable for cost of cleanup of oil spill caused by vandalism, where the oil spill was not caused “solely” by act or omission of third parties, since fencing around facility was not complete, there were no security personnel on duty during nonbusiness hours, permanent ladders on retaining wall surrounding facility provided access over walls, there was no lighting in area where oil spill originated, wheel-handle left on valve from which oil escaped facilitated opening valve, and retaining walls were in disrepair, allowing spilled oil to escape the facility. [Travelers Ins. Co. v. U.S., Cl.Ct.1983, 2 Cl.Ct. 758](#). [Environmental Law](#)  [214](#)

Petroleum terminal owner, which spent over \$25,000 in clean-up activities after vandals dumped 7,000 gallons of oil from tanker truck, could not recover such costs from government under subsec. (i) of this section, allowing recovery for costs of removal of oil spill from government if spill was caused by a third party, in view of fact that owner was not entirely without fault, where, though terminal was in low-crime area, was adequately lighted and was surrounded by security fence, owner's employees had left truck unguarded on portion of the property not secured against oil spills. [Atlantic Richfield Co. v. U.S., Cl.Ct.1982, 1 Cl.Ct. 261](#). [United States](#)  [77](#)

Provision of Clean Water Act (CWA) allowing owner or operator of vessel or onshore facility to recover costs of removing discharged hazardous substance against third party shown to have caused discharge did not apply to permit plant owner to recover from railway costs of accident in which rail car struck above-ground pipeline that delivered hydrochloric acid to plant, causing pipeline to shift onto shoreline of adjacent waterway, inasmuch as no hydrochloric acid escaped from pipeline due to accident. [Tetra Technologies, Inc. v. Kansas City Southern Ry. Co., C.A.5 \(La.\)2005, 122 Fed.Appx. 99, 2005 WL 19506](#), Unreported. [Environmental Law](#)  [214](#)

[101](#). Damage to property, costs of removal

Preexisting liability and remedy against vessel owners for damages to property from oil spills, preserved by par. (1) of subsec. (o) of this section, concerns only damage to property and does not include recovery of oil removal costs, at least where government incurred cleanup costs in exercise of its responsibilities for navigable waters and not in connection with restoring damaged government property. [Matter of Oswego Barge Corp., C.A.2 \(N.Y.\) 1981, 664 F.2d 327](#), rehearing denied [673 F.2d 47](#). [Environmental Law](#)  [214](#)

[102](#). State costs of removal

Since Congress, in enacting this chapter, dealt only with “clean-up” costs incurred by reason of oil spills, it left the

states free to impose “liability” in damages for losses both by the state and by private interests; the state police power is adequate to impose liability without fault for damages to state and private interests. [Askew v. American Waterways Operators, Inc., U.S.Fla.1973, 93 S.Ct. 1590, 411 U.S. 325, 36 L.Ed.2d 280](#), rehearing denied [93 S.Ct. 2746, 412 U.S. 933, 37 L.Ed.2d 162](#), on remand. [States](#) ↪ [18.31](#)

Oil spill cleanup costs recoverable under this chapter include only those actually incurred by the federal, not state, government; therefore, the states are free to recover their cleanup costs under state law. [Complaint of Allied Towing Corp., E.D.Va.1979, 478 F.Supp. 398](#). [Environmental Law](#) ↪ [214](#)

State was not entitled to recover from barge owner the costs incurred by Coast Guard or other federal agencies in their oil cleanup operations necessitated by barge grounding and subsequent oil spill. [Matter of Oswego Barge Corp., N.D.N.Y.1977, 439 F.Supp. 312](#). [Environmental Law](#) ↪ [214](#)


This section imposed no limits on right of State of Virginia to recover from barge owner the entire cost of cleaning up oil which spilled from barge when it sank in Chesapeake Bay and, likewise, this section did not limit recovery by the state for statutory penalties, damage to state oyster beds and injury to wildlife and other natural resources. [Complaint of Stuart Transp. Co., E.D.Va.1977, 435 F.Supp. 798](#), affirmed [596 F.2d 609](#). [Environmental Law](#) ↪ [214](#); [Environmental Law](#) ↪ [223](#)


[IV. PRACTICE AND PROCEDURE](#)


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131. Jurisdiction, practice and procedure



Dismissal under *Burford* abstention was warranted in action by oil and sludge transportation barge owners against Commissioner and Deputy Commissioner of New York State Department of Environmental Conservation in their individual capacities for their actions in imposing summary abatement orders and license revocations prohibiting operation of barges in harbor; New York had established complex system for regulating oil and sewage pollution and decisive issue hinged on proper meaning and reach of state statutes and regulations. [Berman Enterprises, Inc. v. Jorling, C.A.2 \(N.Y.\) 1993, 3 F.3d 602](#), certiorari denied [114 S.Ct. 883, 510 U.S. 1073, 127 L.Ed.2d 78](#). [Federal Courts](#)  [65](#)


United States Claims Court had exclusive jurisdiction over action to recover oil spill cleanup costs from United States. [Platte Pipe Line Co. v. U.S., C.A.10 \(Wyo.\) 1988, 846 F.2d 610](#). [Federal Courts](#)  [1139](#)

District court lacked jurisdiction to review pre-enforcement administrative removal order issued by the Environmental Protection Agency (EPA) under the Clean Water Act (CWA), requiring oil company to take actions in response to initial discharge and subsequent threat of discharge of oil to navigable waters and adjoining shorelines caused by well blowout and oil spill and fire at company's well site. [Pryor Oil Co., Inc. v. U.S., E.D.Tenn.2003, 299 F.Supp.2d 804](#). [Environmental Law](#)  [641](#)


District court's jurisdiction over citizen suit brought under the Clean Water Act was not preempted by prior compliance order of the Environmental Protection Agency (EPA); preemption applies only when the EPA has brought action assessing administrative penalties with public notice, and compliance order was not an order assessing administrative penalties. [Natural Resources Defense Council, Inc. v. Fina Oil & Chemical Co., E.D.Tex.1992, 806 F.Supp. 145](#). [Environmental Law](#)  [226](#)

United States Claims Court has exclusive jurisdiction over actions brought against United States under Federal Water Pollution Control Act to recover costs of cleanup of hazardous substances when discharge of substance was caused solely by negligence on part of [United States, A/S D/S Svendborg v. U.S., S.D.N.Y.1987, 726 F.Supp. 1401](#).

This chapter precluded court from exercising jurisdiction based on Federal Tort Claims Act, section 1346(b) and 2671 et seq. of Title 28, over a pipeline's claims for any expenses incurred in course of cleaning up an oil spill alleged to have been caused when plaintiff's pipeline was ruptured by an employee of an irrigation district operating under a contract with the Department of Interior; rather, claims court has exclusive jurisdiction over pipeline company's claims. [Platte Pipe Line Co. v. U.S., D.C.Wyo.1984, 599 F.Supp. 45](#), affirmed in part, reversed in part [846 F.2d 610](#). [Federal Courts](#)  [1139](#); [United States](#)  [78\(10\)](#)



District court was without jurisdiction to pass on claim to recover costs incurred by refining company in cleaning up fuel oil discharge from barge belonging to a third party; exclusive jurisdiction to hear suit was vested in Court of Claims. [Gulf Refining Co. v. U.S., E.D.Tex.1976, 69 F.R.D. 300](#). [Federal Courts](#)  [1139](#)


132. Declaratory actions, practice and procedure


Oil refining company's action for declaratory judgment on issue of whether it was "owner or operator" of abandoned well site, responsible for cost of clean-up, plus interest and penalties, was within "zone of interest" Clean Water Act was intended to promote. [Quaker State Oil Refining Corp. v. U.S. Coast Guard, W.D.Pa.1987, 671 F.Supp. 1042](#). [Declaratory Judgment](#)  [82](#)


133. Persons entitled to maintain action, practice and procedure


Clean Water Act does not preempt a private right of action for punitive as well as compensatory damages for damage to private rights. [In re Exxon Valdez, C.A.9 \(Alaska\) 2001, 270 F.3d 1215](#), on remand [236 F.Supp.2d 1043](#), vacated and remanded.

Neither section of FWPCA providing for liability to United States Government by owner of vessel for discharge of hazardous substance, nor certificate of financial responsibility to United States issued by association of shipowners providing marine protection and indemnity insurance to members, provided cause of action to states against association. [Montauk Oil Transp. Corp. v. Steamship Mut. Underwriting Ass'n \(Bermuda\) Ltd., S.D.N.Y.1994, 859 F.Supp. 669](#), reconsideration granted, on reconsideration. [Environmental Law](#) 205; [Insurance](#) 3542

Federal Water Pollution Control Act does not allow private parties to bring suit for loss occasioned by vessel's discharge of hazardous substances. [Sekco Energy, Inc. v. M/V MARGARET CHOUEST, E.D.La.1993, 820 F.Supp. 1008](#). [Environmental Law](#) 226



Federal Water Pollution Control Act's (FWPCA's) section which formerly authorized suit against owner of vessel from which oil or hazardous substance is discharged conferred cause of action only on federal government and not on states. [Complaint of Ballard Shipping Co., D.R.I.1991, 772 F.Supp. 721](#). [Environmental Law](#) 657

This chapter did not provide basis for recovery of damages by city for cost of cleaning up illegally dumped hazardous waste, even assuming that generators of the waste themselves discharged hazardous substances within meaning of this chapter, notwithstanding that the monetary relief sought was labeled "costs of removal." [City of Philadelphia v. Stepan Chemical Co., E.D.Pa.1982, 544 F.Supp. 1135](#), reconsideration denied. [Environmental Law](#) 214

In the case of an oil spill, a state may maintain an action for abatement of a public nuisance. [Matter of Oswego Barge Corp., N.D.N.Y.1977, 439 F.Supp. 312](#). [Nuisance](#) 79

Commercial fishermen and clam diggers suffered loss different than public generally and could maintain suit against parties allegedly responsible for spillage of oil into bay, but businessmen who claimed loss of customers indirectly resulting from alleged pollution of coastal waters and beaches could not maintain action against parties allegedly responsible for spillage of oil into bay. [Burgess v. M/V Tamano, D.C.Me.1973, 370 F.Supp. 247](#).


134. Duty of insurer to defend, practice and procedure

Suit brought by State of Kentucky against insured seeking temporary and permanent injunctive relief from discharge of pollutants from point sources into state waters and seeking civil monetary penalties was not a suit seeking "damages on account of property damage" so as to trigger liability insurer's duty to defend; Kentucky solely sought penalties for insured's failure to comply with statutory regulations and did not seek compensation for property damage or personal injury. [Detrex Chemical Industries, Inc. v. Employers Ins. of Wausau, N.D. Ohio 1987, 681 F.Supp. 438](#), on reconsideration [746 F.Supp. 1310](#). [Insurance](#) 2277; [Insurance](#) 2918


135. Complaint, practice and procedure


Allegation that tugboat's log excluded discharge of its bilge water into river during work on lock and dam subcontract sufficiently alleged violation of Clean Water Act's (CWA) prohibition against discharge of enough oil to create sheen upon water and, thus, sufficiently alleged that tugboat's log was false record for purposes of reverse false

claim under False Claims Act (FCA). [Pickens v. Kanawha River Towing, S.D.Ohio 1996, 916 F.Supp. 702](#). [United States](#)  [120.1](#)


Complaint sufficiently alleged existence of joint venture between defendants so as to permit Government to seek recovery of cleanup costs of hazardous wastes pursuant to this section and Toxic Substances Control Act, section 2601 et seq. of Title 15, authorizing recovery of cleanup costs from an owner or operator of an onshore facility. [U. S. v. Burns, W.D.Pa.1981, 512 F.Supp. 916](#). [Environmental Law](#)  [673](#)

[136](#). Indictment or information, practice and procedure

Indictments charging corporation with failing to notify an appropriate agency of the United States government of a known oil spill in violation of this chapter were not deficient for failing to allege knowledge since each count alleged that there was a knowing failure to report. [Apex Oil Co. v. U. S., C.A.8 \(Mo.\) 1976, 530 F.2d 1291](#), certiorari denied [97 S.Ct. 84, 429 U.S. 827, 50 L.Ed.2d 90](#). [Environmental Law](#)  [752](#)


Information alleging defendant's failure to notify Environmental Protection Agency of discharge of oil from its facility was defective, where only regulation in effect at time of offense designated Coast Guard as appropriate agency for receiving notice of oil discharges and there was no regulation in effect at time of offense requiring giving of notice of oil discharges to Agency and therefore defendant could not be convicted of failure to notify the agency. [U. S. v. Messer Oil Corp., W.D.Pa.1975, 391 F.Supp. 557](#). [Environmental Law](#)  [752](#)


[137](#). Immunity, practice and procedure

Prosecution for negligent discharge of oil was not barred by use and derivative use immunity even though defendant's statements to investigators and evidence of intoxication derived from the taking of blood and urine samples was inadmissible under inevitable discovery doctrine where remaining prosecution evidence was admissible under inevitable discovery doctrine and was sufficient to support charge. [Hazelwood v. State, Alaska App.1996, 912 P.2d 1266](#), reversed in part [946 P.2d 875](#), on remand [962 P.2d 196](#). [Criminal Law](#)  [42.6](#)


[138](#). Limitations, practice and procedure


Cost recovery actions under Federal Water Pollution Control Act are governed by six-year statute of limitations for Government contract claims. [U.S. v. Dae Rim Fishery Co., Ltd., C.A.9 \(Alaska\) 1986, 794 F.2d 1392](#). [Environmental Law](#)  [670](#)

Six-year contract limitations period in the general statute of limitations, not three-year period for actions founded upon a tort, governs Federal Water Pollution Control Act actions brought by the United States to recover pollution cleanup costs. [U.S. v. P/B STCO 213, ON 527 979, C.A.5 \(La.\) 1985, 756 F.2d 364](#). [Environmental Law](#)  [214](#)


The government's cause of action for costs expended in removing oil spill under this chapter did not accrue until date oil removal was completed; thus, since less than three years had elapsed from that event until action was filed, government's action was timely. [U.S. v. Barge Shamrock, C.A.4 \(Md.\) 1980, 635 F.2d 1108](#), certiorari denied [102 S.Ct. 125, 454 U.S. 830, 70 L.Ed.2d 107](#). [Limitation Of Actions](#)  [58\(1\)](#)


Six-year statute of limitations under [section 2415 of Title 28](#) governing actions in contract brought by United States or office or agency thereof applied to action by United States to recover expenses incurred in cleaning up oil spill since action was essentially one for restitution and thus was founded upon contract implied in law and since action

was brought within six years of oil spill, action was not time-barred. [U.S. v. Water Quality Ins. Syndicate, S.D.N.Y.1985, 613 F.Supp. 239. Environmental Law](#) 670

Government's claim under Federal Water Pollution Control Act to recover costs of an oil cleanup by Coast Guard allegedly arising from an unlawful discharge by vessel was not barred by laches where there was no detriment or prejudice resulting from the delay in bringing suit. [U.S. v. Shawnee, Inc., S.D.N.Y.1985, 608 F.Supp. 649. Environmental Law](#) 672

Federal five-year statute of limitations for proceedings initiated by Environmental Protection Agency was applicable to citizen's suit for alleged violations of Federal Water Pollution Control Act. [Chesapeake Bay Foundation v. Bethlehem Steel Corp., D.C.Md.1985, 608 F.Supp. 440. Environmental Law](#) 670


Action brought by United States under Federal Water Pollution Control Act to recover funds disbursed by United States to clean up oil spill was not barred by statute of limitations for quasi-contractual actions where it was brought within six years. [U.S. v. Healy Tibbitts Const. Co., N.D.Cal.1985, 607 F.Supp. 540. Environmental Law](#) 671

In an action brought under this section to recover costs of removal of oil spill, applicable statute of limitations was six-year period pertaining to action for money damages brought by the United States; thus, government's cause of action to recover costs filed within six years of when the cause of action accrued was not barred. [U. S. v. C & R Trucking Co., N.D.W.Va.1982, 537 F.Supp. 1080. Environmental Law](#) 670


[139. Estoppel, practice and procedure](#)

Subsec. (f) of this section providing for government's recovery of at least part of oil spill cleanup costs incurred by it did not thereby relieve owner of discharging vessel of his responsibility to clean up oil spill, and thus, communication by Coast Guard to owner of discharging vessel advising that owner was legally obligated to remove spill did not estop government from contesting credit which owner sought against its statutory liability for costs of its initial voluntary cleanup operations. [U.S. v. Dixie Carriers, Inc., C.A.5 \(La.\) 1984, 736 F.2d 180.](#)

[140. Jury trial, practice and procedure](#)

Defendants who were assessed penalty by Coast Guard for discharges of oil into navigable waters were not entitled to civil or criminal jury trial. [U.S. v. Atlantic Richfield Co., E.D.Pa.1977, 429 F.Supp. 830, affirmed 573 F.2d 1303. Jury](#) 19(15)

[141. Comments of counsel, practice and procedure](#)

In prosecution for willfully discharging gasoline into a navigable waterway under this section describing penalty for discharge of "pollutant", unobjected-to summation by prosecutor emphasizing the criminal penalty in this section specifically relating to oil and hazardous substance liability and neglecting this section's civil remedies, though incomplete, was nonetheless accurate, and to the extent that it was improper, it was harmless, despite contention that the government had proceeded under the wrong section. [U.S. v. Hamel, C.A.6 \(Mich.\) 1977, 551 F.2d 107. Criminal Law](#) 1171.1(3)

Even though no evidence was introduced to show availability of 24-hour telephone answering service at one Environmental Protection Agency office to which company belatedly reported oil spill, where there was evidence to show the Coast Guard offices in the area and in Washington, D.C. maintained 24-hour telephone answering service,

prosecutor was properly permitted to refer in closing argument to the existence of constant telephone service to reporting agencies as the one Agency office was not the only appropriate agency to which the spill could have been reported as required by provision of this section. [U.S. v. Kennecott Copper Corp., C.A.9 \(Ariz.\) 1975, 523 F.2d 821. Criminal Law](#) ↪2103

In prosecution for making unauthorized oil discharges into lake and failing to notify federal authorities, government did not make binding judicial admission that defendant could have satisfied notification requirement by merely reporting spills to local authorities when it stated, during opening and closing argument, that it had exercised prosecutorial discretion in not charging defendant with another incident because defendant had at least reported that spill to local authorities. [U.S. v. Knopfle, C.A.9 \(Mont.\) 2004, 93 Fed.Appx. 111, 2004 WL 421777, Unreported. Criminal Law](#) ↪410

142. Presumptions, practice and procedure

In view of fact that the administrative “sheen test” provides a generally valid and useful standard, there is a rebuttable presumption that any oil spill which causes a “sheen” on water is harmful and, therefore, within scope of subsec. (b)(3) of this section which, in relevant part, prohibits the discharge of oil or hazardous substances into or upon the navigable waters of the United States in harmful quantities as determined by the President. [U. S. v. Chevron Oil Co., C.A.5 \(La.\) 1978, 583 F.2d 1357. Environmental Law](#) ↪229

Inasmuch as Congress called “civil” the penalty provided by this section for owner of discharging vessel or facility, court was required to presume that Congress did not intend for immunity from use of notification of spill in any criminal case to apply. [U.S. v. Atlantic Richfield Co., E.D.Pa.1977, 429 F.Supp. 830, affirmed 573 F.2d 1303. Environmental Law](#) ↪223


143. Weight and conclusiveness of administrative interpretation, practice and procedure

Substantial evidence supported finding by Environmental Appeals Board (EAB) that actions of owner of former textile mill, which was being used as light industrial and warehouse rental space, in disconnecting underground storage tank at facility from facility's boiler did not result in that tank being taken out of service, for purposes of determining whether facility was not required under Clean Water Act to prepare a Spill Prevention Control and Countermeasures (SPCC) plan, because its oil storage capacity was below level specified by regulations. [Pepperell Associates v. U.S. E.P.A., C.A.1 2001, 246 F.3d 15. Environmental Law](#) ↪207


In view of fact that the Coast Guard is charged with execution of statutory scheme created by this chapter, great weight must be accorded to its decision concerning assessment of statutory penalties. Com. of Puerto Rico [Rico v. SS Zoe Colocotroni, D.C.Puerto Rico 1978, 456 F.Supp. 1327, affirmed in part, vacated in part on other grounds 628 F.2d 652, certiorari denied 101 S.Ct. 1350, 450 U.S. 912, 67 L.Ed.2d 336. See, also, U.S. v. W.B. Enterprises, Inc., D.C.N.Y.1974, 378 F.Supp. 420. Environmental Law](#) ↪682



144. Instructions, practice and procedure



In action in which it was determined that lessor was entitled to full indemnity from lessee for any amount it was required to pay to state or federal agencies for cleanup of pollution occurring at leased premises as result of lessee's dumping of toxic wastes, instructions stating that every person using ordinary care has right to assume until contrary is or reasonably should be apparent, that every other person will obey the law, that it was for jury to determine whether parties violated federal statute prohibiting discharge of oil or hazardous substances into or upon navigable

waters and similar instruction on Arkansas law were proper. [Caldwell v. Gurley Refining Co., C.A.8 \(Ark.\) 1985, 755 F.2d 645. Indemnity](#) 103


145. Interest, practice and procedure

Bareboat charterer of vessel which collided with oil-carrying barge resulting in oil spill was liable to the government for interest from date claim for cleanup cost was made on it by the government without liability for time lapse between government's expenditure of funds for cleanup and its request for reimbursement of those costs. [U. S. v. M/V Big Sam, E.D.La.1981, 505 F.Supp. 1029](#), reversed on other grounds [681 F.2d 432](#), rehearing denied [693 F.2d 451](#), certiorari denied [103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367. Interest](#) 46(1)


Trial court has discretion to award interest in action to recover statutory penalty and damages for oil spill. [U. S. v. Malitovsky Cooperage Co., W.D.Pa.1979, 472 F.Supp. 454. Environmental Law](#) 223; [Environmental Law](#) 214


Trial court has discretion to award interest in action to recover statutory penalty and damages for oil spill. [U. S. v. Malitovsky Cooperage Co., W.D.Pa.1979, 472 F.Supp. 454. Environmental Law](#) 223; [Environmental Law](#) 214

146. Scope of judicial review, practice and procedure--Generally


In action to collect penalty assessed against defendant for violating this section prohibiting discharge of oil into navigable waters of United States in harmful quantities, district court would not consider affidavit, in which hearing officer explained and justified his decision, but, rather, would only examine record on which the final administrative decision was based. [U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728](#), affirmed [611 F.2d 345. Environmental Law](#) 682

147. ---- Substantial evidence standard, scope of judicial review, practice and procedure


Substantial evidence supported finding by Environmental Appeals Board (EAB) that former textile mill being used as light industrial and warehouse rental space, which had three underground heating oil storage tanks, was a facility which, due to its location, could reasonably be expected to discharge oil in harmful quantities into or upon navigable waters, so that its owner was required under Clean Water Act to prepare a Spill Prevention Control and Countermeasures (SPCC) Plan; facility's location more than 100 yards from navigable water did not preclude such a finding, and it was reasonably predictable that oil spilled at facility would find navigable water, even if path taken by oil that did spill and reach water was not predictable. [Pepperell Associates v. U.S. E.P.A., C.A.1 2001, 246 F.3d 15. Environmental Law](#) 207



Alleged polluter is not entitled to trial de novo in district court upon review of Coast Guard determination that civil penalty should be imposed; Coast Guard's determination must be upheld if supported by substantial evidence in the record and if the assessment is neither arbitrary nor capricious. [U.S. v. Healy Tibbitts Const. Co., C.A.9 \(Cal.\) 1983, 713 F.2d 1469](#). See, also, [Matter of Vest Transp. Co., Inc., D.C.Miss.1977, 434 F.Supp. 748. Environmental Law](#) 682


In reviewing imposition of administrative sanction by Coast Guard upon barge owner for permitting oil spill, court must first examine Coast Guard's findings of fact and conclusions of law, and sustain the findings and order if they are supported by sufficient evidence on the record and are not contrary to law, and must then determine whether the


Coast Guard has abused its discretion in ordering the particular sanction. [U.S. v. Independent Bulk Transport, Inc., S.D.N.Y.1975, 394 F.Supp. 1319. Environmental Law](#)  682

[148.](#) ---- De novo review, scope of judicial review, practice and procedure


In action to collect penalty assessed against defendant for violating this section prohibiting discharge of oil into navigable waters of United States in harmful quantities, the administrative decision was not subject to de novo review, but, rather, judicial review was limited to the administrative record. [U. S. v. Texas Pipe Line Co., E.D.Okla.1978, 528 F.Supp. 728, affirmed 611 F.2d 345. Environmental Law](#)  682

It was the intent of Congress to provide for expeditious administrative procedures for imposing civil penalties for cleanup of discharged oil into navigable waters and to provide for a de novo review of enforcement proceedings before the district court so that court must hear the evidence anew rather than relying on the record of the Coast Guard proceedings. [U. S. v. Delian Cruises, SA, E.D.La.1980, 505 F.Supp. 79. Environmental Law](#)  682; [Environmental Law](#)  223



While court has no power to conduct a de novo trial to establish the correct penalty for violation of this section, it does have power of judicial review under the Administrative Procedure Act, sections 501 et seq. and 701 et seq. of Title 5. [U.S. v. Atlantic Richfield Co., E.D.Pa.1977, 429 F.Supp. 830, affirmed 573 F.2d 1303. Environmental Law](#)  641

Where procedures required by this section with respect to imposition of fine upon bargeowner for permitting oil spill were not met at either hearing stage or appellate stage, those deficiencies could not be cured by trial de novo before district court; ultimate decision was one for administrative discretion. [U.S. v. Independent Bulk Transport, Inc., S.D.N.Y.1975, 394 F.Supp. 1319. Environmental Law](#)  695


[149.](#) Appellate review, practice and procedure

Alleged inconsistencies in subsecs. (f), (g), and (h) of this section regarding liability of discharger and third party for costs of removing pollution of navigable waters caused by discharge of oil or hazardous substances were not reason for court of appeals to refuse to apply such provisions, as unambiguously written, in absence of legislative history contraindicating intent unambiguously stated by subsec. (h) of this section that liabilities established by this section “shall in no way affect any rights” that United States or other persons “may have against any third party whose acts may in any way have caused or contributed to such discharge”. [U.S. v. M/V Big Sam, C.A.5 \(La.\) 1982, 693 F.2d 451, certiorari denied 103 S.Ct. 3112, 462 U.S. 1132, 77 L.Ed.2d 1367. Environmental Law](#)  214

[150.](#) Remand, practice and procedure

Where, at trial of United States' action to recover all costs incurred in cleaning up oil spill on Mississippi River, tug, which all parties acknowledged to be sole cause of collision and of consequent discharge of oil but on part of which parties stipulated there was no willful negligence or willful misconduct, did not have to undertake rebutting presumption of negligence against moving vessel when it strikes fixed or nonmoving object, but, rather, successfully acted on theory, negated on appeal, that liability would be limited, tug had to be given opportunity to defend against negligence and cause would be remanded accordingly. [U.S. v. T/B Arcadian 95, C.A.5 \(La.\) 1983, 714 F.2d 470. Federal Courts](#)  944; [Environmental Law](#)  709

[151.](#) Time to bring suit

United States was not required to wait until after oil removal and natural resource damage assessments (NRDA) were completed to bring suit for civil penalties under Clean Water Act (CWA) against owner, operator, and pilot of vessel that spilled oil, and thus stay of action was not warranted, absent showing that completion of NRDA was necessary to assess damages. [U.S. v. M/V COSCO BUSAN, N.D.Cal.2008, 557 F.Supp.2d 1058](#). [Environmental Law](#)  [223](#)

33 U.S.C.A. § 1321, 33 USCA § 1321

Current through P.L. 111-191 (excluding P.L. 111-148, 111-152, 111-159, and 111-173) approved 6-15-10

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