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JUDICIAL

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[Page 2517-2519]

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TITLE 42--THE PUBLIC HEALTH AND WELFARE

CHAPTER 116--EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

SUBCHAPTER III--GENERAL PROVISIONS

Sec. 11046. Civil actions

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

[[Page 2518]]

(A) An owner or operator of a facility for failure to do any of the following:

- (i) Submit a followup emergency notice under section 11004(c) of this title.
- (ii) Submit a material safety data sheet or a list under section 11021(a) of this title.
- (iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.
- (iv) Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B) The Administrator for failure to do any of the following:

- (i) Publish inventory forms under section 11022(g) of this title.
- (ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.
- (iii) Publish a toxic chemical release form under 11023(g) \1\ of this title.

 \1\ So in original. Probably should be preceded by ``section''.

(iv) Establish a computer database in accordance with section 11023(j) of this title.

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(v) Promulgate trade secret regulations under section 11042(c) of this title.

(vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

(i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.

(ii) Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii) Make available information requested under section 11021(c) of this title.

(iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged

violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

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

(e) Limitation

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

(f) Costs

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

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of per

[[Page 2519]]

sons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

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

(2) By persons

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

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

References in Text

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

the Code, see Short Title of 1986 Amendment note set out under section 9601 of this title and Tables.

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

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