



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

Via Electronic Mail – JCharles@lbenergy.com

Mr. Jeff Charles, Vice President of Operations
Limetree Bay Terminals, LLC
1 Estate Hope
Christiansted, VI 00820

Re: Information Request, Reference Number: CAA-02-2022-1455

Dear Mr. Charles:

The Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* (“CAA” or the “Act”), at Section 114, 42 U.S.C. § 7414, authorizes the U.S. Environmental Protection Agency (“EPA”) to require submittal of information to, among other things, assess compliance with the Act and regulations promulgated pursuant to the Act. This Information Request requires Limetree Bay Terminal, LLC (“Limetree”) to submit information related to compliance with applicable CAA requirements at its petroleum storage and loading facility located at 1 Estate Hope, Christiansted, St. Croix, VI.

Pursuant to Section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of EPA is authorized to, among other things, require any person who owns or operates any emission source, or who is subject to any requirement of the CAA, to establish and maintain records, to make reports, to install, use and maintain monitoring equipment and use audit procedures or methods, to sample emissions, and to provide such other information, as he or she may reasonably require for the purpose of determining whether such person is in violation of any provision of the CAA. This authority has been delegated to the Director of the Enforcement and Compliance Assurance Division. As defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), the term “person” includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof.

While EPA seeks your cooperation in this investigation, compliance with the Request for Information is required by law. When you have prepared your response to the Request for Information, please sign the enclosed “Certification of Answers to Request for Information,” and return that Certification to EPA along with your response. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under 18 U.S.C. § 1001. In addition, Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to pursue penalties for failure to comply with a Request for Information. The information you provide may be used by EPA in administrative, civil, or criminal proceedings.

We request that you provide a complete and truthful response to the enclosed Request for Information **within thirty (30) days** of your receipt of this letter. If you are unable to respond to this Request for Information within the thirty (30) day timeframe, please contact Mr. Robert Buettner, whose contact information is provided below. Any request for an extension of time to respond must be submitted in writing and must include a detailed explanation of the reason(s) for the request. EPA will consider the specific circumstances of any extension request, and any extension will only be granted in writing.

You may choose to assert a business confidentiality claim covering all or part of the information submitted. You may not, however, withhold any information on that basis. In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted, you must advise EPA by following the procedures outlined in the Instructions in Part I of Enclosure 1, including the requirement for supporting and substantiating your claim of confidentiality. Note that “emission data,” as defined in 40 C.F.R. § 2.301(a)(2), cannot be claimed as confidential under Section 114(c) of the Act, 42 U.S.C. § 7414(c). If no confidentiality claim accompanies the information received by EPA, it may be made available to the public without further notice to you. EPA may disclose information covered by a confidentiality claim only to the extent allowed by law and in accordance with the applicable procedures set forth in EPA’s public information regulations at 40 C.F.R. §§ 2.201 *et seq.* (See 41 Fed. Reg. 36902 (Sept. 1, 1976)).

Please note that if, after submitting your response, you obtain additional information concerning the matters addressed in this Request for Information, or if you obtain or become aware of information that is different than that previously submitted, you must immediately submit such information to EPA pursuant to this Request for Information.

This Request for Information is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520.

See the enclosed Instructions for information on how to respond to the enclosed questions. Your certified response should be emailed to:

Mr. Robert Buettner, Chief
Air Compliance Branch
U.S. Environmental Protection Agency, Region 2
Buettner.Robert@epa.gov

with copies sent by electronic mail to:

Harish Patel
Patel.Harish@epa.gov

Alex Rivera
Rivera.Alex@epa.gov

Please include the above-cited Reference No. CAA-02-2022-1455 in any and all of your response(s) to this Request for Information. You may address any questions concerning this matter to Mr. Harish Patel in the EPA Region 2 Air Compliance Branch at Patel.Harish@epa.gov or by phone at 212-637-4046, or Erick Ihlenburg, Assistant Regional Counsel, at Ihlenburg.Erick@epa.gov or 212-637-3250. We appreciate and look forward to your prompt response.

Sincerely,

Anderson, Kate
Digitally signed by
Anderson, Kate
Date: 2021.11.10
12:04:18 -05'00'

for

Dore F. LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Catherine Elizee, Environmental Engineer, Limetree Bay Terminals, LLC
CElizee@lbenergy.com

Austin Callwood, Director
US Virgin Islands Department of Planning and Natural Resources
Austin.Callwood@vi.gov

ENCLOSURE 1

INFORMATION REQUEST PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT

The U.S. Environmental Protection Agency (“EPA”) requires the submittal of information regarding operations and compliance of the Limetree Bay Terminals, LLC facility located at 1 Estate Hope, Christiansted, St. Croix, VI.

Part I: Instructions

In preparing your responses, please refer to the following instructions:

1. A complete and separate response should be given for each question. For each question contained in this letter, if information or documents responsive to this information request are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Identify each answer with the number of the question and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.
3. Provide responses to the best of your ability, even if the information sought was never put in writing or if the written documents are no longer available. Consult with all present and past employees and agents who have knowledge of your Facility and whom you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.
5. If additional information or documents responsive to this Request becomes known or available to you after you respond to this Request, EPA hereby requests pursuant to CAA Section 114 that you supplement your response to EPA.
6. If you have reason to believe that an individual other than one employed by you may be able to provide additional details or documentation in response to any question, state that person’s name, last known address, phone number, and the reasons for your belief.
7. If a document is requested but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, number of pages, and all recipients of the document with their addresses.
8. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.
9. If you cannot provide a precise answer to a question, please approximate, but in any such instance state the reason for your inability to be specific.

10. Whenever this Request for Information requests the identification of a natural person or other entity, the person or entity's full name and present or last known address also should be provided.
11. Confidential business information (CBI). All information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Section 114(c) of the CAA, 42 U.S.C. § 7414(c).

If you make a claim of confidentiality for any of the information you submit to EPA, you must address each of the following points:

- a. specifically identify the portions of the information alleged to be entitled to confidential treatment;
- b. identify the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently), and indicate a date, if applicable, after which the information no longer needs to be treated as confidential;
- c. describe the measures taken by you to protect the information claimed as confidential and to guard against the undesired disclosure of the information to others;
- d. describe the extent to which the information has been disclosed to others, and any precautions taken in connection therewith to limit or prevent the disclosure; and
- e. an explanation of pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available.

In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted by you, a cover sheet, stamped or typed legend, or other suitable form of notice must be placed on or enclosed to the document, with language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. To facilitate identification and handling by EPA, please submit your response so that all non-confidential information, including any redacted versions of documents, are in one envelope and all materials for which you desire confidential treatment are in a separate envelope.

All confidentiality claims are subject to EPA review and verification. Please note that if a page, document, group or class of documents claimed by you to be CBI contains information which EPA determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. As part of any CBI substantiation, it is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that the information is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by law, including Section 114 of the CAA and EPA's pre-disclosure notification procedures set forth in 40 C.F.R. § 2.201 *et seq.* If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you. EPA provides no assurances that the information that you assert as confidential business information will not be publicly disclosed.

The criteria EPA will use in determining whether material you claim as CBI is entitled to confidential treatment are set forth at 40 C.F.R. § 2.208(a)-(e), as well as the U.S. Supreme Court's decision in *Food Marketing Institute v. Argus Leader Media* (*Argus*), 139 S. Ct. 2356 (2019), which evaluated the definition of "confidential" as used in Exemption 4 under FOIA. In the *Argus* decision, the Court held that at least where "[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4." *Argus*, 139 S. Ct. at 2366. The definition of "trade secret" under Freedom of Information Act (FOIA) is limited to "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort." *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a "direct relationship" between the information at issue and the production process. *Id.*

Emission data, as defined at 40 C.F.R. § 2.301(a)(2)(i), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. *See* 42 U.S.C. § 7414(c); 40 C.F.R. § 2.301(e). Emission data is defined as:

- (A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;
- (B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and
- (C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

Part II: Definitions

All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. § 7401 *et seq.*, or are defined in the applicable regulations implementing the Act, including any state regulations that are federally enforceable under the Act, in which case the statutory or regulatory definitions shall apply. Specific terms are defined as follows:

1. The terms “document” and “documents” include any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control, or known by you to exist, including originals, all prior drafts, and all non-identical copies.
2. The term “Facility” means the Limetree Bay Terminals, LLC, facility located at 1 Estate Hope, Christiansted, St. Croix, VI 00820.
3. With respect to a corporation, partnership, business trust, association, Commonwealth, municipality, political subdivision of a Commonwealth, and any agency, department, or instrumentality of the United States, or other association or business entity (including a sole proprietorship), the term “identify” means to provide its full name, address, and affiliation with the individual and/or entity associated with the Facility to whom this request is addressed.
4. The term “person” shall include any individual, firm, unincorporated association, partnership, corporation, trust, or other entity. individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.
5. The term “you” shall include any officers, managers, employees, contractors, trustees, successors, assignees, and agents with knowledge of your Facility.
6. The terms “relate to” and/or “pertain to” (or any form thereof) shall mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, recording, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating or relevant to.

Part III: Specific Information Request

Information Request

Except as specifically provided in Part III of Enclosure 1 of this Request for Information, provide the following information regarding the Facility within thirty **(30) days** from the receipt of this Request for Information. Unless otherwise stated, this information shall be submitted in Microsoft Excel, Microsoft Word, or optical character recognition (OCR) Adobe Acrobat PDF format depending on the information requested.

1. The approximate date when the Marine Vapor Collection System (MVCS) was constructed and began operation.
2. A complete and detailed description of any physical or operational changes to the MVCS during the past two (2) years.
3. The typical operation schedule for the MVCS.
4. A copy of the MVCS construction permit, STX-895-AC-PO-18-2, issued by the Virgin Islands Department of Planning and Natural Resources (DPNR) on April 20, 2018.
5. A facility plot plan identifying the location of the MVCS and the associated thermal oxidizer H-1612. Also, provide a schematic of the MVCS showing which loading docks are controlled and how the vent gases are conveyed to the control device.
6. Copies of the performance test reports and manufacturer's specifications for the MVCS and the thermal oxidizer H-1612.
7. A complete and detailed description of any malfunction events that affected the MVCS and thermal oxidizer H-1612, and any corrective actions that were taken from January 1, 2021 through the date of this Request for Information.
8. An electronic spreadsheet containing at least the last six (6) months (from the date of this Request for Information) of continuous parameter monitoring system (CPMS) temperature data, with both the hourly averages and the 3-hour rolling averages.
9. An electronic spreadsheet containing the monthly product throughput for the MVCS and thermal oxidizer H-1612, from January 1, 2021 through the date of this Request for Information.
10. An electronic spreadsheet containing the daily product throughput (barrels) for the MVCS and thermal oxidizer H-1612, from January 1, 2021 through the date of this Request for Information.
11. An electronic spreadsheet containing the monthly and daily propane fuel consumption, from January 1, 2021 through the date of this Request for Information, along with copies of the fuel quality certificates related to the fuel consumed.

12. A statement indicating whether or not the propane used as supplemental fuel for thermal oxidizer H-1612 contains odorants. If so, please indicate which type and how much is added.
13. A complete and detailed description, with supporting documentation, of how Limetree demonstrates compliance with the opacity requirements that are applicable to the MVCS and associated thermal oxidizer H-1612, i.e., the opacity requirements in DPNR's Virgin Islands Air Pollution Control Act Rules and Regulations, at VIRR-12-09-204-2(a)-(c).
14. Copies of all opacity exceedance notifications submitted to DPNR related to thermal oxidizer H-1612, from January 1, 2021 through the date of this Request for Information, and copies of all records of corresponding opacity measurements.
15. Copies of all certifications and other documentation indicating that the MVCS and thermal oxidizer H-1612 are in compliance with the following conditions in construction permit STX-895-AC-PO-18-2:
 - a. Section III.B.1(a) - *Except as allowed by the permit, the MVCS shall be used for loading of gasoline/gasoline blendstocks onto marine vessels after the pumps are placed into commercial operation.*
 - b. Section III.B.1(b) – *All marine vessels connected to the MVCS for gasoline/gasoline blendstocks loading shall be vapor-tight.*
 - c. Section III.B.1(c) – *The MVCS shall be operated and maintained in accordance with the manufacturer's specifications.*
 - d. Section III.B.2(a) – *The thermal oxidizer H-1612 shall be operated and maintained in accordance with the manufacturer's specifications.*
 - e. Section III.B.2(c) – *The thermal oxidizer H-1612 shall be equipped with ultra-low NO_x and CO burners and shall achieve the following emissions limits, based on a vendor guarantee of emission performance:*
 - i. *NO_x shall not exceed 0.02 lb/MMBtu*
 - ii. *CO shall not exceed 0.02 lb/MMBtu*
 - f. Section III.B.2(d) – *The thermal oxidizer H-1612 shall achieve a 99.9 percent VOC DRE at the exhaust.*
 - g. Section III.B.2(e) – *The MVCS shall be equipped with an automatic shutdown to stop loading operations when the stack temperature is below the manufacturer recommended temperature to ensure proper VOC destruction efficiency and it shall be operated at all times when vapors are being routed to the thermal oxidizer.*
16. Copies of all thermal oxidizer H-1612 CPMS calibration records, from 2019 through the present.

ATTACHMENT 1 TO ENCLOSURE 1

CERTIFICATION OF RESPONSE

State/Territory of _____:

County of _____:

I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in response to the Information Request and all documents submitted with this response, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted with this response are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that for one year from the date of the Information Request, I am under an obligation to supplement my response to the Information Request if any additional information relevant to the matters should become known or available to me.

NAME (print or type)

TITLE (print or type)

SIGNATURE

Sworn to before me this ____ day of _____, 2021

Notary Public

shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

“(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section.”

[References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.]

§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as “period of federally assumed enforcement”), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obliga-

tions to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;¹

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located,

and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring de-

¹ So in original. The semicolon probably should be a comma.

vice or method required to be maintained or followed under this chapter²

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or

² So in original. Probably should be followed by a comma.

subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. 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. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the

United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence

(including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,³ or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which

indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term “operator”, as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term “a person” shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term “a person” shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, § 113, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1686; amended Pub. L. 92-157, title III, § 302(b), (c), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93-319, § 6(a)(1)–(3), June 22, 1974, 88 Stat. 259; Pub. L. 95-95, title I, §§ 111, 112(a), Aug. 7, 1977, 91 Stat. 704, 705; Pub. L. 95-190, § 14(a)(10)–(21), (b)(1), Nov. 16, 1977, 91 Stat. 1400, 1404; Pub. L. 97-23, § 2, July 17, 1981, 95 Stat. 139; Pub. L. 101-549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672.)

CODIFICATION

Section was formerly classified to section 1857c-8 of this title.

AMENDMENTS

1990—Pub. L. 101-549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), finding of violation, notice, compliance order, civil action, State failure to enforce plan, and construction or modification of major stationary sources; in subsec. (b), violations by owners or operators of major stationary sources; in subsec. (c), penalties; in subsec. (d), final compliance orders; and in subsec. (e), steel industry compliance extension.

1981—Subsec. (e). Pub. L. 97-23 added subsec. (e).

1977—Subsec. (a)(5). Pub. L. 95-95, § 111(a), added par. (5).

Subsec. (b). Pub. L. 95-95, § 111(b), (c), substituted “shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day of violation, or both, whenever such person” for “may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person” in provisions preceding par. (1), inserted references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), inserted reference to subsec. (d) of this section in par. (4), added par. (5), and, in provisions following par. (5), authorized the commencement of civil actions to

³ So in original. The comma probably should not appear.

recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated factors to be taken into consideration in determining the amount of civil penalties, and authorized awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95-190, §14(a)(10), (11), inserted “or” after “ozone);”, and substituted “7624” for “7620”, “conversion), section” for “conversion) section”, and “orders), or” for “orders) or”.

Subsec. (c)(1). Pub. L. 95-95, §11(d)(1), (2), substituted “any order issued under section 7419 of this title or under subsection (a) or (d) of this section” for “any order issued by the Administrator under subsection (a) of this section” in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95-95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95-190, §14(a)(12), inserted “or” after “section.”.

Subsec. (c)(1)(D). Pub. L. 95-190, §14(a)(13), substituted “1977 subsection” for “1977) subsection” and “penalties), or” for “penalties) or”.

Subsec. (c)(3). Pub. L. 95-95, §11(d)(3), added par. (3).

Subsec. (d). Pub. L. 95-95, §112(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 95-190, §14(a)(14), substituted “to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order” for “an order for any stationary source” and “such requirement” for “any requirement of an applicable implementation plan”.

Subsec. (d)(1)(E). Pub. L. 95-190, §14(a)(15), inserted provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95-190, §14(a)(16), inserted provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95-190, §14(a)(17), substituted “title) upon” for “title upon”.

Subsec. (d)(5)(A). Pub. L. 95-190, §14(a)(18), substituted “an additional period for” for “an additional period of”.

Subsec. (d)(8). Pub. L. 95-190, §14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95-190, §14(a)(20), substituted “in effect” for “issued”, “Federal” for “other”, and “and no action under” for “or”.

Subsec. (d)(11). Pub. L. 95-190, §14(a)(21), substituted “and in effect” for “(and approved by the Administrator)”.

1974—Subsec. (a)(3). Pub. L. 93-319, §6(a)(1), inserted reference to section 1857c-10(g) of this title (relating to energy-related authorities).

Subsecs. (b)(3), (c)(1)(C). Pub. L. 93-319, §6(a)(2), (3), inserted reference to section 1857c-10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92-157, §302(b), inserted “(A)” before “during” and “, or (B)” after “assumed enforcement”.

Subsec. (c)(1)(A). Pub. L. 92-157, §302(c), inserted “(i)” before “during” and “, or (ii)” after “assumed enforcement”.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other

officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

§ 7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,¹ or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

(D) sample such emissions (in accordance with such procedures or methods, at such lo-

¹ So in original.