

issue an order requiring such person to cease and desist from continuing such violations or an order suspending or revoking such permit, or both. Any person aggrieved by an order of the Secretary issued pursuant to this subsection may, within sixty days after entry of such order, seek review of such order in the appropriate United States court of appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order. Judicial review of any such order shall be upon the record upon which the determination and order are based.

(c) Automatic revocation

The permit of any person to operate a facility to treat garbage in any State shall be automatically revoked, without action of the Secretary, upon the final effective date of the second conviction of such person pursuant to section 3806 of this title.

(Pub. L. 96-468, § 5, Oct. 17, 1980, 94 Stat. 2230.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3806 of this title.

§ 3805. Civil penalties

(a) Assessment by Secretary

Any person who the Secretary determines, after notice and opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5, is violating or has violated any provision of this chapter or any regulation of the Secretary issued hereunder, other than a violation for which a criminal penalty has been imposed under this chapter, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. Each offense shall be a separate violation. The amount of such civil penalty shall be assessed by the Secretary by written order, taking into account the gravity of the violation, degree of culpability, and history of prior offenses; and may be reviewed only as provided in subsection (b) of this section.

(b) Judicial review

The determination and order of the Secretary with respect thereto imposing a civil penalty under this section shall be final and conclusive unless the person against whom such an order is issued files application for judicial review within sixty days after entry of such order in the appropriate United States court of appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order. Judicial review of any such order shall be upon the record upon which the determination and order are based.

(c) Collection action by Attorney General

If any person fails to pay a civil penalty under a final order of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall institute a civil action to recover the amount assessed in any appropriate district court of the United States. In such collection

action, the validity and appropriateness of the Secretary's order imposing the civil penalty shall not be subject to review.

(d) Payment into United States Treasury

All penalties collected under authority of this section shall be paid into the Treasury of the United States.

(e) Compromise, modification, or remittance

The Secretary may, in his discretion, compromise, modify, or remit, with or without conditions, any civil penalty assessed under this chapter.

(Pub. L. 96-468, § 6, Oct. 17, 1980, 94 Stat. 2231.)

§ 3806. Criminal penalties

(a) Whoever willfully violates any provision of this chapter or the regulations of the Secretary issued hereunder shall be guilty of a misdemeanor and shall be fined not more than \$10,000, or imprisoned not more than one year, or both.

(b) Any person who fails to obey any order of the Secretary issued under the provisions of section 3804 of this title, or such order as modified—

(1) after the expiration of the time allowed for filing a petition in the court of appeals to review such order, if no such petition has been filed within such time; or

(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

(3) after such order, or such order as modified, has been sustained by the courts as provided in section 3804(b) of this title;

shall on conviction be fined not more than \$10,000, or imprisoned for not more than one year, or both. Each day during which such failure continues shall be deemed a separate offense.

(Pub. L. 96-468, § 7, Oct. 17, 1980, 94 Stat. 2231.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3804 of this title.

§ 3807. General enforcement provisions

(a) Injunctions

The Attorney General, upon the request of the Secretary, shall bring an action to enjoin the violation of, or to compel compliance with, any provision of this chapter or any regulation issued by the Secretary hereunder by any person. Such action shall be brought in the appropriate United States district court for the judicial district in which such person resides or transacts business or in which the violation or omission has occurred or is about to occur. Process in such cases may be served in any judicial district wherein the defendant resides or transacts business or wherever the defendant may be found.

(b) Access to premises or facility and books and records; examination; samples

Any person subject to the provisions of this chapter shall, at all reasonable times, upon notice by a duly authorized representative of the

Secretary, afford such representative access to his premises or facility and opportunity to examine the premises or facility, the garbage there at, and books and records thereof, to copy all such books and records and to take reasonable sample of such garbage.

(c) Additional powers

For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 46 and 48 through 50 of title 15, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this chapter and to any person subject to the provisions of this chapter, whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this chapter in any part of the United States.

(Pub. L. 96-468, §8, Oct. 17, 1980, 94 Stat. 2232.)

§ 3808. Cooperation with States

In order to avoid duplication of functions, facilities, and personnel, and to attain closer coordination and greater effectiveness and economy in administration of this chapter and State laws and regulations relating to the feeding of garbage to swine, the Secretary is authorized to enter into cooperative agreements with State departments of agriculture and other State agencies charged with the administration and enforcement of such State laws and regulations and to provide that any such State agency which has adequate facilities, personnel, and procedures, as determined by the Secretary, may assist the Secretary in the administration and enforcement of this chapter and regulations hereunder. The Secretary is further authorized to coordinate the administration of this chapter and regulations with such State laws and regulations whenever feasible: *Provided*, That nothing herein shall affect the jurisdiction of the Secretary under any other Federal law, or any authority to cooperate with State agencies or other agencies or persons under existing provisions of law, or affect any restrictions upon such cooperation.

(Pub. L. 96-468, §9, Oct. 17, 1980, 94 Stat. 2232.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3803, 3804 of this title.

§ 3809. Primary enforcement responsibility

(a) State obligation

For purposes of this chapter, a State shall have the primary enforcement responsibility for violations of laws and regulations relating to the treatment of garbage to be fed to swine and the feeding thereof during any period for which the Secretary determines that such State—

- (1) has adopted adequate laws and regulations regulating the treatment of garbage to be fed to swine and the feeding thereof which laws and regulations meet the minimum standards of this chapter and the regulations hereunder: *Provided*, That the Secretary may not require a State to have laws that are more stringent than this chapter;

- (2) has adopted and is implementing adequate procedures for the effective enforcement of such State laws and regulations; and

- (3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Secretary may require by regulation.

Except as provided in subsection (c) of this section, the Secretary shall not enforce this chapter or the regulations hereunder in any State which has primary enforcement responsibility pursuant to this section.

(b) Inadequate enforcement or administration by State; termination of responsibility by Secretary

Whenever the Secretary determines that a State having primary enforcement responsibility pursuant to this section does not have adequate laws or regulations or is not effectively enforcing such laws or regulations, the Secretary shall notify the State. Such notice shall specify those aspects of the administration or enforcement of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Secretary determines that the State program remains inadequate, the Secretary may terminate, in whole or in part, the State's primary enforcement responsibility under this chapter.

(c) Request of State official

(1) In general

On request of the Governor or other appropriate official of a State, the Secretary may terminate, effective as soon as the Secretary determines is practicable, the primary enforcement responsibility of a State under subsection (a) of this section. In terminating the primary enforcement responsibility under this subsection, the Secretary shall work with the appropriate State official to determine the level of support to be provided to the Secretary by the State under this chapter.

(2) Reassumption

Nothing in this subsection shall prevent a State from reassuming primary enforcement responsibility if the Secretary determines that the State meets the requirements of subsection (a) of this section.

(d) Emergency conditions

Nothing in this section shall limit the authority of the Secretary to enforce this chapter whenever the Secretary determines that emergency conditions exist that require immediate action on the part of the Secretary and the State authority is unwilling or unable adequately to respond to the emergency.

(Pub. L. 96-468, §10, Oct. 17, 1980, 94 Stat. 2233; Pub. L. 104-127, title IX, §914(a), Apr. 4, 1996, 110 Stat. 1186.)

AMENDMENTS

1996—Subsecs. (c), (d). Pub. L. 104-127 added subsec. (c) and redesignated former subsec. (c) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3803, 3804 of this title.