

LEXSTAT 15 USCS B 2615

UNITED STATES CODE SERVICE
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*** CURRENT THROUGH P.L. 108-6 APPROVED 2/14/03 ***

TITLE 15. COMMERCE AND TRADE

CHAPTER 53. TOXIC SUBSTANCES CONTROL

CONTROL OF TOXIC SUBSTANCES

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

15 USCS B 2615 (2003)

B 2615. †Penalties

(a)†Civil.

† †(1)†Any person who violates a provision of section 15 or 409 [*15 USCS β 2614* or 2689] shall be liable to the United States for a civil penalty in an amount not to exceed \$ 25,000 for each such violation. Each day such a violation continues shall, for purposes of this subsection, constitute a separate violation of section 15 or 409 [*15 USCS β 2614* or 2689].

† †(2)†(A)†A civil penalty for a violation of section 15 or 409 [*15 USCS β 2614* or 2689] shall be assessed by the Administrator by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

† † † (B)†In determining the amount of a civil penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require.

† † † (C)†The Administrator may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

† †(3)†Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

† †(4)†If any person fails to pay an assessment of a civil penalty--

† † † (A)†after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

† † † (B)†after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator,

† †the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in

†3.†Time limits

1.†Generally

† †Although court will defer to EPA's interpretation of regulation, lack of adequate notice resulting from regulation's inherent uncertainty in meaning is mitigating factor that must be taken into account in assessing civil penalty. *Rollins Env'tl. Servs., Inc. v United States EPA* (1991) 290 US App DC 331, 937 F2d 649, 33 Env't Rep Cas 1543, 21 ELR 21353.

† †EPA properly assessed penalty, on basis of what might have happened in absence of appropriate responses and notifications by others rather than what did happen, against company in charge of chemical plant for failing to immediately notify National Response Center when two fires broke out in plant which released chlorine gas into atmosphere. *All Regions Chem. Labs, Inc. v United States EPA* (1991, CA1) 932 F2d 73, 33 Env't Rep Cas 1050, 21 ELR 21193.

† †EPA's Environmental Appeals Board properly assessed penalty of \$ 108,792 against sail boat manufacturer for failure timely to file 7 reports on its use of styrene and acetone, even though manufacturer argues Board abused discretion when it refused to consider manufacturer's environmentally beneficial measures under "other matters as justice may require" rubric under 15 USCS β 2615(a)(2)(B), because EPA permissibly interprets "other matters as justice may require" language to mean that other factors should not be considered unless assessed penalty is otherwise manifestly unjust. *Catalina Yachts, Inc. v United States EPA* (2000, CD Cal) 112 F Supp 2d 965.

2.†Relationship to state law

† †A civil penalty could not be imposed under β 16 of Toxic Substances Control Act (15 USCS β 2615) against public service corporation which had installed transformers containing toxic substances which were subsequently disposed of in violation of Act where, under state law, electrical transformers were electrical installations and hence component parts of building in which they were installed and thus became property of successive owners of building and were therefore not property of public service company when they were disposed of. *United States EPA v New Orleans Public Service, Inc.* (1987, CA5) 826 F2d 361, 26 Env't Rep Cas 1521, 17 ELR 21288.

† †Pennsylvania is not entitled to intervene in civil action brought by EPA against operator of natural gas pipeline system for violations of Toxic Substances Control Act (15 USCS β β 2601 et seq.) and Resource Conservation and Recovery Act (42 USCS β β 6921 et seq.), which action had been stayed pending execution of consent decree, since state did not show, as it had claimed, that decree's cleanup provisions would impair its ability to protect its environment and citizens through enforcement of its own laws. *United States v Texas E. Transmission Corp.* (1991, CA5 Tex) 923 F2d 410, 32 Env't Rep Cas 1822, 18 FR Serv 3d 1239, 114 OGR 582.

3.†Time limits

† †Although 15 USCS β 2615(a)(3) sets deadline on alleged violator's petition for judicial review, Act contains no provision limiting time within which EPA Administrator must initiate administrative action; thus, time limit must be derived from five-year statute of limitations (28 USCS β 2462) generally applicable to civil fines and penalties. *3M Co. v Browner* (1994, App DC) 305 US App DC 100, 17 F3d 1453, 38 Env't Rep Cas 1259, 24 ELR 20544.