

SEC. 2501. SHORT TITLE.

This subtitle may be cited as the "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996".

SEC. 2502. CERCLA LENDER AND FIDUCIARY LIABILITY LIMITATIONS AMENDMENTS.

(a) In General.--Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

“(n) Liability of Fiduciaries.--

“(1) In general.--The liability of a fiduciary under any provision of this Act for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity.

“(2) Exclusion.--Paragraph (1) does not apply to the extent that a person is liable under this Act independently of the person's ownership of a vessel or facility as a fiduciary or actions taken in a fiduciary capacity.

“(3) Limitation.--Paragraphs (1) and (4) do not limit the liability pertaining to a release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

“(4) Safe harbor.--A fiduciary shall not be liable in its personal capacity under this Act for--

“(A) undertaking or directing another person to undertake a response action under subsection (d)(1) or under the direction of an on scene coordinator designated under the National Contingency Plan;

“(B) undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the vessel or facility;

“(C) terminating the fiduciary relationship;

“(D) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

“(E) monitoring or undertaking 1 or more inspections of the vessel or facility;

“(F) providing financial or other advice or counseling to

other parties to the fiduciary relationship, including the settlor or beneficiary;

``(G) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

``(H) administering, as a fiduciary, a vessel or facility that was contaminated before the fiduciary relationship began; or

``(I) declining to take any of the actions described in subparagraphs (B) through (H).

``(5) Definitions.--As used in this Act:

``(A) Fiduciary.--The term `fiduciary'--

``(i) means a person acting for the benefit of another party as a bona fide--

``(I) trustee;

``(II) executor;

``(III) administrator;

``(IV) custodian;

``(V) guardian of estates or guardian ad litem;

``(VI) receiver;

``(VII) conservator;

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``(VIII) committee of estates of incapacitated persons;

``(IX) personal representative;

``(X) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

``(XI) representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in subclauses (I) through (X); and

``(ii) does not include--

``(I) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a

natural person; or

“(II) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of any other person.

“(B) Fiduciary capacity.--The term ‘fiduciary capacity’ means the capacity of a person in holding title to a vessel or facility, or otherwise having control of or an interest in the vessel or facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

“(6) Savings clause.--Nothing in this subsection--

“(A) affects the rights or immunities or other defenses that are available under this Act or other law that is applicable to a person subject to this subsection; or

“(B) creates any liability for a person or a private right of action against a fiduciary or any other person.

“(7) No effect on certain persons.--Nothing in this subsection applies to a person if the person--

“(A)(i) acts in a capacity other than that of a fiduciary or in a beneficiary capacity; and

“(ii) in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

“(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

“(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

“(8) Limitation.--This subsection does not preclude a claim under this Act against--

“(A) the assets of the estate or trust administered by the fiduciary; or

“(B) a nonemployee agent or independent contractor retained by a fiduciary.”.

(b) Definition of Owner or Operator.--Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)) is amended by adding at the end the following:

“(E) Exclusion of lenders not participants in management.--

“(i) Indicia of ownership to protect security.--The term ‘owner or operator’ does not include a person that is a lender that, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

“(ii) Foreclosure.--The term ‘owner or operator’ does not include a person that is a lender that did not participate in management of a vessel or facility prior to foreclosure, notwithstanding that the person--

“(I) forecloses on the vessel or facility; and

“(II) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the vessel or facility, maintains business activities, winds up operations, undertakes a response action under section 107(d)(1) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, with respect to the vessel or facility, or takes any other measure to preserve, protect, or prepare the vessel or facility prior to sale or disposition,

if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

“(F) Participation in management.--For purposes of subparagraph (E)--

“(i) the term ‘participate in management’--

“(I) means actually participating in the management or operational affairs of a vessel or facility; and

“(II) does not include merely having the capacity to influence, or the unexercised right to control, vessel or facility operations;

“(ii) a person that is a lender and that holds indicia of ownership primarily to protect a security interest in a vessel or facility shall be considered to participate in management only if, while the borrower is still in possession of the vessel or facility encumbered by the security interest, the person--

“(I) exercises decisionmaking control over the environmental compliance related to the vessel or facility, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the vessel or facility; or

“(II) exercises control at a level comparable to that of a manager of the vessel or facility, such that the person has

assumed or manifested responsibility--

``(aa) for the overall management of the vessel or facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

``(bb) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the vessel or facility other than the function of environmental compliance;

``(iii) the term `participate in management' does not include performing an act or failing to act prior to the time at which a security interest is created in a vessel or facility; and

``(iv) the term `participate in management' does not include--

``(I) holding a security interest or abandoning or releasing a security interest;

``(II) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

``(III) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

``(IV) monitoring or undertaking 1 or more inspections of the vessel or facility;

``(V) requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the vessel or facility prior to, during, or on the expiration of the term of the extension of credit;

``(VI) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the vessel or facility;

``(VII) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

``(VIII) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

``(IX) conducting a response action under section 107(d) or under the direction of an on-scene coordinator appointed under the National Contingency Plan,

if the actions do not rise to the level of participating in management (within the meaning of clauses (i) and (ii)).

``(G) Other terms.--As used in this Act:

``(i) Extension of credit.--The term `extension of credit' includes a lease finance transaction--

``(I) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

``(II) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisor (as those terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or with regulations issued by the National Credit Union Administration Board, as appropriate.

``(ii) Financial or administrative function.--The term `financial or administrative function' includes a function such as that of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

``(iii) Foreclosure; foreclose.--The terms `foreclosure' and `foreclose' mean, respectively, acquiring, and to acquire, a vessel or facility through--

``(I)(aa) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

``(bb) a deed in lieu of foreclosure, or similar conveyance from a trustee; or

``(cc) repossession,

if the vessel or facility was security for an extension of credit previously contracted;

``(II) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

``(III) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a vessel or facility in order to protect the security interest of the person.

``(iv) Lender.--The term `lender' means--

``(I) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

``(II) an insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

``(III) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.);

``(IV) a leasing or trust company that is an affiliate of an insured depository institution;

``(V) any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

``(VI) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

``(VII) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

``(VIII) a person that provides title insurance and that acquires a vessel or facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

``(v) Operational function.--The term `operational function' includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

``(vi) Security interest.--The term `security interest' includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person."

SEC. 2503. CONFORMING AMENDMENT.

Section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)) is amended by striking paragraph (9) and inserting the following:

“(9) Definition of owner or operator.--

“(A) In general.--As used in this subtitle, the terms ‘owner’ and ‘operator’ do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

“(B) Security interest holders.--The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 101(20) and the provisions regarding fiduciaries at section 107(n) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subtitle.

“(C) Effect on rule.--Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on the date of enactment of this subparagraph shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 101(20) or any inconsistent provision regarding fiduciaries in section 107(n) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 101(20) and the provisions regarding fiduciaries in section 107(n) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. This subparagraph does not preclude judicial review of any amendment of the final rule made after the date of enactment of this subparagraph.”.

SEC. 2504. LENDER LIABILITY RULE.

(a) In General.--Effective on the date of enactment of this Act, the portion of the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18,344), prescribing section 300.1105 of title 40, Code of Federal Regulations, shall be deemed to have been validly issued under authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and to have been effective

according to the terms of the final rule. No additional judicial proceedings shall be necessary or may be held with respect to such portion of the final rule. Any reference in that portion of the final rule to section 300.1100 of title 40, Code of Federal Regulations, shall be deemed to be a reference to the amendments made by this subtitle.

(b) Judicial Review.--Notwithstanding section 113(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(a)), no court shall have jurisdiction to review the portion of the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18,344) that prescribed section 300.1105 of title 40, Code of Federal Regulations.

(c) Amendment.--No provision of this section shall be construed as limiting the authority of the President or a delegatee of the President to amend the portion of the final rule issued by the Administrator of the Environmental Protection Agency on April 29, 1992 (57 Fed. Reg. 18,344), prescribing section 300.1105 of title 40, Code of Federal Regulations, consistent with the amendments made by this subtitle and other applicable law.

(d) Judicial Review.--No provision of this section shall be construed as precluding judicial review of any amendment of section 300.1105 of title 40, Code of Federal Regulations, made after the date of enactment of this Act.

SEC. 2505. EFFECTIVE DATE.

The amendments made by this subtitle shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act.