
CIVIL SUITS / ACTIONS AND OTHER LIABILITY ISSUES

CIVIL ACTIONS

In addition to enforcement actions taken by EPA, the statute also provides for parties to seek relief through the courts. Under Section 326, citizens, states, and local groups have the authority to file civil actions against EPCRA violators.

The actions can take the form of citizen suits, which may be filed by any person on his or her own behalf, or state or local suits filed by any state or local government or by any SERC or LEPC. Civil actions can be filed against individual owners or operators of facilities, the EPA Administrator, a state governor, or a SERC.

The procedures for filing a civil action depend on the violation, the violator, and the party originating the action. Not all persons can file civil actions for all violations. Section 326 lists the proper filing authorities for each type of violation.

CIVIL SUITS

Any person may pursue a civil action against an owner or operator of a facility, the EPA Administrator, a governor, or the SERC. There are specific violations for which each party can be held liable.

A citizen may bring action against an owner or operator of a facility for failure to:

- ✓ Submit a follow-up emergency notice under Section 304(c)
- ✓ Submit an MSDS under Section 311(a)
- ✓ Complete and submit an inventory form under Section 312(a)

A citizen may commence a civil suit against the EPA Administrator for failure to:

- ✓ Publish inventory forms under Section 312(g)
- ✓ Respond to a petition to add or delete a chemical under Section 313(e)(1) within 180 days after receipt of the petition
- ✓ Promulgate trade secret regulations in accordance with Section 322(c)
- ✓ Render a decision in response to a petition under Section 322(d) within nine months after receipt of the petition.

A citizen may also file a civil suit against the EPA Administrator, a governor, or the SERC for failure to make information publicly available in accordance with Section 324(a). Failure to respond to a request for HSIS Survey information under Section 312(e)(3) may also trigger a civil suit against a state governor or the SERC if the information is not provided within 120 days of the receipt of the request.

STATE AND LOCAL GOVERNMENT SUITS

State and local governments have the authority to file suit against owners or operators of facilities for failure to comply with the following sections:

- ✓ Section 302(c) - SERC notification
- ✓ Section 311(a) - Submission of an MSDS or chemical list
- ✓ Section 311(c) - Public availability of inventory reporting information
- ✓ Section 312(a) - Preparation and submission of inventory forms.

A state government may also bring a civil action against the EPA Administrator for failure to provide trade secret information to the state under Section 322(g).

For all violations, no civil action may commence prior to 60 days after the plaintiff has given notice of the alleged violation to the EPA Administrator, the state in which the alleged violation occurred, and the alleged violator [EPCRA Section 326(d)].

OTHER LIABILITY ISSUES

The procedures and penalties associated with violations of reporting requirements and notification failures are specifically outlined in Section 326. The statute does not, however, address possible liability for individual SERC and LEPC members. In general, individual members of the SERC or a LEPC cannot be sued or held liable for a poorly handled emergency situation. Persons who serve on government committees generally have no liability for their actions except for instances of gross negligence. This issue varies from state to state. The best source for more information on specific state liability policies is the Attorney General's office in each respective state.