

South Africa

Marine Pollution (Control and Civil Liability) Act, 1981

Marine Pollution (Control and Civil Liability) Act 6 of 1981: Regulations

Government Notice R1276 of 1984

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[Amended by Marine Pollution (Control and Civil Liability) Act 6 of 1981: Regulations: Amendment (Government Notice R861 of 1995) on 29 June 1995]

[Amended by Marine Pollution (Control and Civil Liability) Act 6 of 1981: Regulations: Amendment (Government Notice R662 of 1997) on 9 May 1997]

The Minister of Transport Affairs, under section 28 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act 6 of 1981), has made the regulations contained in the Schedule hereto.

Chapter I

1. Definitions

In these regulations, unless the context otherwise indicates—

“**the Act**” shall mean the Prevention and Combating of Pollution of the Sea by Oil Act, 1981 (Act 6 of 1981);

“**Club**” shall mean a so-called P and I Club, being a shipowners’ mutual protection and indemnity association;

“**detention officer**” shall mean an officer referred to in regulation 6(1);

“**fishing harbour**” means a fishing harbour as defined in section 1 of the Sea Fisheries Act, 1973 (Act 58 of 1973);

“**harbour**” means a harbour as defined in section 1 of the Transport Services Act, 1981 (Act 65 of 1981);

“**immobilise**” shall mean render any ship having oil on board (whether as cargo or otherwise) or tanker, incapable of sailing or manoeuvring under its own power, as contemplated in section 21(1)(a) of the Act;

“**internal waters**” means the internal waters as defined in section 1 of the Marine Traffic Act, 1981 (Act 2 of 1981);

“**laden ship**”, in relation to the transfer of oil, shall mean the ship or tanker from which oil is transferred;

“**receiver ship**”, in relation to the transfer of oil, shall mean the ship or tanker to which oil is transferred;

“**representative officer**” shall mean an officer referred to in regulation 17(1);

and any other word or expression to which a meaning has been assigned in the Act shall have such meaning.

Chapter II

Issue of certificate of insurance or other financial security

2. Application for a certificate

Every application referred to in [section 14\(1\)\(a\)](#) of the Act shall be accompanied by the following particulars and payment:

- (a) The name and address of the owner of the tanker concerned and also the address of his principal place of business and of his registered office in the Republic;
- (b) a certified copy of the certificate of registry issued in respect of such tanker;
- (c) the original and a certified copy of the contract of insurance or other financial security issued in respect of such tanker;
- (d) the name and address of the person who issued the contract of insurance or other financial security referred to in paragraph (c) and also the address of his principal place of business and of his registered office in the Republic;
- (e) a certificate signed by the person referred to in paragraph (d) and stating—
 - (i) that such contract of insurance or other financial security is in force and that it satisfies the requirements of Article VII of the convention and [section 13](#) of the Act;
 - (ii) the period of validity of such contract of insurance or other financial security;
- (f) an amount of R500.

[paragraph (f) substituted by section 2 of [Government Notice R861 of 1995](#)]

3. Issue of certificate

Each certificate issued by the Director-General shall be in the form of Annexure A: Provided that in relation to a tanker owned by the Government of the Republic and for the time being used for commercial purposes, the Director-General may issue a certificate adhering as closely as practicable to the said form and stating that such tanker is owned by the Government of the Republic and that any liability which may be incurred in connection with such tanker under Article III of the Convention or [section 9\(1\)](#) of the Act will be met by the Government of the Republic to the extent of the aggregate amount referred to in Article V of the Convention or [section 9\(5\)](#) of the Act.

4. Variations, suspensions or cancellations

The owner of a tanker and also the person providing the insurance or other financial security concerned shall forth-with notify the Director-General of any variation, suspension or cancellation of any stipulation or condition on which such insurance or other financial security was obtained or furnished.

Chapter III

Detention of ships and tankers

5. Notice of detention

- (1) When a ship or tanker is to be detained under [section 13\(5\)](#) or [section 19\(1\)\(a\)\(i\)](#) of the Act, a principal officer shall sign and issue a notice of detention of a ship or tanker.
- (2) Such notice shall be in the form laid down in Annexure B.

6. Service of notice of detention

- (1) Subject to subregulation (2), a notice of detention shall be served upon the master of a ship or tanker by the principal officer or a senior member of his staff duly instructed thereto by him.
- (2) Such detention officer shall exhibit the original of the said notice of detention to such master and hand him a copy thereof.
- (3) If for any reason a notice of detention cannot be served upon the master of a ship or a tanker a copy of such notice shall be left or attached by the detention officer at a conspicuous place on such ship or tanker.

7. Return of service

- (1) A detention officer having served a notice in terms of regulation 8 shall forthwith complete a return of service.
- (2) A return of service shall be in the form laid down in Annexure C and shall appear on the reverse side of a notice of detention.
- (3) Upon completing a return of service, the detention officer shall forthwith hand the original notice and return of service to the principal officer and deliver a copy thereof to each of the following persons:
 - (a) The consular representative, if any, of the State in which the ship or tanker is registered;
 - (b) the ship's or tanker's agent, if any;
 - (c) the Commissioner for Customs and Excise or other proper officer of customs at the harbour where the ship or tanker is anchored, moored or berthed;
 - (d) the harbour or other authority, if any, that has jurisdiction or control over the sea where the ship or tanker is anchored, moored or berthed.

8. Steps or arrangements by minister

If the detained or seized ship or tanker is not in a harbour or a fishing harbour, the Minister may take such steps or make such arrangements as he may deem necessary to prevent such ship or tanker from leaving the internal waters or the territorial waters of the Republic.

9. Release from detention or seizure

- (1) When any ship, tanker or goods are to be released from detention or seizure in the circumstances referred to in [section 13\(5\)](#) or [19\(2\)](#) of the Act, the principal officer shall forthwith sign and issue a notice of release from detention or seizure in the form laid down in Annexure D.
- (2) The original notice of release from detention or seizure shall be retained by the principal officer, who shall forthwith cause a copy thereof to be delivered by a detention officer to the master of the ship or tanker concerned and to each person referred to in [regulation 7\(3\)](#) who received a copy of the notice of detention.
- (3) The detention officer shall notify the principal officer in writing of the date and time on and at which he delivered the notice of release from detention or seizure to each person referred to in subregulation (2).

Chapter IV

Immobilisation of ships and tankers

10. Application for permission to immobilise

Any person desiring to immobilise a ship or a tanker shall apply in writing to the Minister for permission to do so and such application shall contain the following information:

- (a) The name of such ship or tanker, its port of registry, its official number, its gross tonnage, the quantity and nature of its cargo and the quantity of oil on board, whether carried as cargo or otherwise;
- (b) the reasons and particulars of the purpose for which such ship or tanker is to be immobilised and a description of the damage, if any, to such ship or tanker;
- (c) the intended period for which such ship or tanker is to be immobilised;
- (d) the name and address of the owner of such ship or tanker and the name and address of his representative in the Republic;
- (e) the name of the Club with which such ship or tanker is entered and the name and address of the representative thereof in the Republic;
- (f) the proposed place where such ship or tanker is to be immobilised and whether it is proposed to anchor such ship or tanker;
- (g) in respect of a tanker carrying, as cargo, oil exceeding 2 000 tons in bulk, a certified copy of the certificate which is carried on board such tanker.

11. Progress reports

The master of an immobilised ship or tanker shall regularly, at least once a day, report to the principal officer the progress of the work being undertaken in connection with the purpose for which such ship or tanker has been so immobilised.

12. Services of tugboats

Whenever the Minister requires the master of an immobilised ship or tanker to employ a tugboat, such master shall permit the master of such tugboat or his representative to board such ship or tanker and to lay out or to prepare the necessary ropes and wires or to advise the master of such ship or tanker on the layout or preparing of such ropes and wires.

Chapter V

Transfer of oil from a ship or tanker to another ship or tanker

13. Application of chapter

The provisions of this Chapter shall not apply to—

- (a) a ship, tanker or warship used exclusively in the service of a State for other than commercial purposes and, in the case of another State, present in the prohibited area with the consent of the Government of the Republic;
- (b) a ship or tanker based in a harbour within the prohibited area and transferring oil obtained from such harbour into the fuel tanks of another ship or tanker for the latter's own use;
- (c) a ship or tanker to which oil is transferred in the manner referred to in paragraph (b).

14. Application for the transfer of oil

- (1) An application for the transfer of oil from a ship or tanker to another ship or tanker within the prohibited area shall be addressed to the Minister through the intercession of the Director-General and must be lodged with the principal officer at the port nearest to where the transfer operation is to take place.
- (2) An application referred to in subregulation (1) shall be in writing and shall contain the following particulars:
 - (a) The reasons for the transfer operation and a description of the damage, if any, to the ship or tanker;
 - (b) the name of the laden ship and the receiver ship, their respective ports of registry, their official numbers, their gross register tons and drafts, the names of their owners and the type and quantity of oil to be transferred;
 - (c) the intended place and date and the estimated duration of the transfer operation;
 - (d) the names and addresses of the agents or representatives in the Republic who will act on behalf of the owner, the cargo owner and the charterer of the laden ship and the receiver ship;
 - (e) the name of the Club with which the laden ship and the receiver ship are entered and the name and address, in the port nearest to the place of transfer, of the representatives of such Club.

15. Certificates and certain deposits or guarantees

If a certificate is carried on board the laden ship or the receiver ship, or if a deposit or guarantee is required under [section 16](#) of the Act, a certified copy of such certificate shall be submitted, or such deposit paid or such guarantee furnished, not less than 48 hours prior to the commencement of the transfer.

16. Certificate of fitness

- (1) Not less than 24 hours prior to the commencement of the transfer operation the owner of the receiver ship or his agent or the master thereof shall certify in writing that such ship is, and will be kept, in a fit state, as regards boilers, machinery, equipment and crew and in all other respects, to undertake the transfer operation and to contend with any emergency that may arise.
- (2) The provisions of subregulation (1) shall apply *mutatis mutandis* to a laden ship that is seaworthy in all respects and that presents no likelihood of a discharge of oil.

17. Representing officers

- (1) The Director-General may designate one or more officers to represent the Department of Transport for the duration of a transfer operation.
- (2) A representing officer shall satisfy himself that such transfer operation is properly planned and conducted in accordance with these Regulations and with due regard to any condition imposed to prevent a discharge of oil and, in the event of a discharge of oil, shall inform the masters concerned what measures to apply and what steps to take so as to control or to disperse the oil discharged.
- (3) A representing officer shall have unhindered access to all working areas on the laden ship and on the receiver ship and shall be kept informed of all activities pertaining to such transfer operation.
- (4) For the duration of such transfer operation a representing officer shall be provided with accommodation and meals on board the ship or tanker of his choice.

18. Appointment of persons to conduct transfer operation

The owners of the ships or tankers concerned shall appoint, subject to the Director-General's approval, one or more suitably qualified and experienced persons to conduct the approach, docking and undocking of such ships or tankers, and to co-ordinate, conduct and supervise the transfer operation.

19. Services of tugboats

The provisions of regulation 12 shall apply *mutatis mutandis* to the master of a laden ship or receiver ship.

20. Precautions prior to and during transfer operation

- (1) A communication system with English as the language medium shall be established between essential personnel on board the laden ship and the receiver ship.
- (2) A signal, to be made on the whistle or siren of the laden ship or the receiver ship, shall be agreed upon, to stop any operation in hand, to secure cargo systems and for the crew to go to emergency stations.
- (3) Prior to the commencement of the transfer operation the fire fighting equipment on board both the laden ship and the receiver ship shall be rigged, tested and made ready for instant use at any place on board or on the sea alongside such ship and pressure on the water mains shall be maintained during the transfer operation.
- (4) Where an inert-gas system is fitted to the laden ship or the receiver ship, full operating procedures shall be followed as for normal cargo operation but, in the event of a failure of such inert-gas system either prior to or during the transfer operation or prior to or during ballast operations, no such operation shall commence or continue until the inert gas system has been restored or an alternative source of inert-gas has been provided.
- (5) The master of a laden ship or receiver ship shall—
 - (a) not less than 24 hours prior to the commencement of the transfer operation, switch off the hull-impressed current cathodic protection system fitted to such ship;
 - (b) plug and render oil-tight all scuppers;
 - (c) provide and keep on board such quantity and type of oil dispersing agent, such quantity and type of dispersant application equipment and such quantity and type of oil absorbing material as may be approved by the Director-General;
 - (d) cause frequent visual checks to be made of the sea and of the ships or tankers, the hoses and the pipelines concerned so as to determine whether any oil is being discharged or is likely to be discharged;
 - (e) fit drip trays to all places on board where oil can be discharged;
 - (f) if any oil is being discharged or is likely to be discharged, report such fact forthwith to the representing officer.

21. Duties of persons conducting transfer operation

A person appointed in terms of regulation 18 shall ensure—

- (a) that all flexible hoses to be used in the transfer operation—
 - (i) are, prior to use, tested for leaks and for pressure not exceeding the operating pressure specified by the manufacturer thereof;
 - (ii) are sufficient in total length to provide for movement of the vessels while docked; and

- (iii) do not exceed the bending radii specified by the manufacturer thereof;
- (b) that the flow rate of the liquid pumped through a flexible hose shall never exceed the maximum specified by the manufacturer of such hose;
- (c) that no ballast water other than ballast water carried in segregated ballast tanks is discharged into the sea.

Chapter VI

Pollution safety certificates

22. Application for pollution safety certificate

An application referred to in [section 24\(3\)](#) of the Act shall be accompanied by the following particulars and documents:

- (a) The full name and address of the owner of the offshore installation and his *domicilium citandi et executandi* in the Republic;
- (b) a copy of the agreement by which such offshore installation was established;
- (c) a description of the nature of such offshore installation and of the purpose for which it was designed and is used or will be used;
- (d) a certified copy of the operating instructions issued by the owner of such offshore installation to users thereof;
- (e) a certified copy of a valid certificate of classification or inspection issued, in respect of such offshore installation, by a ship classification society or similar institution;
- (f) a contingency plan, approved by the Director-General, for combating the pollution caused by any discharge of oil from such offshore installation or from a ship or a tanker or from any other source in the immediate vicinity of such offshore installation, and for preventing the pollution of the sea by any further discharge of oil;
- (g) the name of the club, if any, with which such offshore installation is entered, and the name and address in the Republic of the representative of such Club.

23. Construction and operation of offshore installations

An offshore installation shall—

- (a) be designed for or adapted to the purpose for which it is used or is to be used;
- (b) be constructed in accordance with the appropriate code of practice and of materials complying with the recognised standard specifications;
- (c) be used and operated in accordance with its design requirements and in accordance with the operating instructions issued to users thereof; and
- (d) comply, in its construction, use and operation, with—
 - (i) the requirements of all applicable laws; and
 - (ii) the requirements, where applicable, of a ship classification society or similar institution.

24. Inspection of offshore installations

- (1) The Director-General may require an officer of the Department to inspect an offshore installation and report to him—
 - (a) whether such offshore installation has a valid certificate of inspection or classification as referred to in regulation [22\(e\)](#) on board;
 - (b) whether such offshore installation is used for the purpose for which it was designed;
 - (c) whether such offshore installation is used and operated in accordance with the operating instructions issued to users thereof.
- (2) The master of such offshore installation shall permit such officer to carry out such inspection at any time during office hours or while such offshore installation is in operation.

25. Issue of pollution safety certificate

- (1) If the Director-General is satisfied that the offshore installation concerned complies with the conditions and requirements prescribed by these Regulations in regard to the construction and operation thereof, he shall issue, in respect of such offshore installation, a pollution safety certificate in the form laid down in Annexure E.
- (2) The original pollution safety certificate shall be handed to the owner of such offshore installation.

26. Steps to combat or prevent pollution

Upon a discharge of oil from an offshore installation having been reported to a principal officer in terms of [section 3\(1\)](#) of the Act, the master or the owner of such offshore installation shall, unless such principal officer directs otherwise, take such steps as may be described in the contingency plan referred to in regulation [22\(f\)](#) in order to combat the pollution or to prevent pollution by any further such discharge of oil.

Chapter VII Oil dispersants

[Chapter VII added by section 2 of [Government Notice R662 of 1997](#)]

28. Use of oil dispersants

- (1) Subject to subregulation [\(2\)](#), no oil dispersant may be used in the sea within the prohibited area, unless—
 - (a) it has been approved; and
 - (b) its use in the circumstances has been authorized by an officer of the Department of Environmental Affairs and Tourism.
- (2) Subregulation [\(1\)](#) does not prohibit the use of an approved oil dispersant in emergencies specified in the oil dispersant policy.
- (3) Oil dispersants must be used, and their use recorded, in accordance with the oil dispersant policy and any directions given by an officer of the Department of Environmental Affairs and Tourism in terms of that policy.
- (4) A person who contravenes this regulation is guilty of an offence punishable on conviction by a fine not exceeding R10 000.
- (5) in this regulation—

‘approved’, in relation to an oil dispersant, means approved by the South African Bureau of Standards and having passed the relevant toxicity and efficiency tests prescribed in terms of the oil dispersant policy;

‘contravention’ includes falling or refusing to comply;

‘oil dispersant’ means any chemical substance designed to combat pollution of the sea by oil;

‘oil dispersant policy’ means the Policy on the use of oil spill dispersants in South African waters, compiled by, and obtainable from, the Department of Environmental Affairs and Tourism.

[section 28 added by section 2 of [Government Notice R662 of 1997](#)]

Annexure A

Certificate of insurance or other financial security in respect of civil liability for oil pollution damage

[Editorial note: The forms have not been reproduced]

Annexure B (Regulation 5 of the Regulations relating to the Prevention and Combating of Pollution of the Sea by Oil)

Notice of detention of ship/tanker

[Editorial note: The forms have not been reproduced]

Annexure C (Regulation 7 of the Regulations relating to the Prevention and Combating of Pollution of the Sea by Oil)

Return of service

[Editorial note: The forms have not been reproduced]

Annexure D (Regulation 9 of the Regulations relating to the Prevention and Combating of Pollution of the Sea by Oil)

Notice of release from detention or seizure

[Editorial note: The forms have not been reproduced]

Annexure E (Regulation 25 of the Regulations relating to the Prevention and Combating of Pollution of the Sea by Oil)

Pollution safety certificate

[Editorial note: The forms have not been reproduced]

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