

PREVENTION OF POLLUTION OF WATERS BY OIL ORDINANCE 1962.

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No. 27 of 1962.

An Ordinance to provide for certain matters arising out of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and for other purposes.

[Assented to 26th June, 1962.]

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act 1910-1961*, as follows:—

1 This Ordinance may be cited as the *Prevention of Pollution of Waters by Oil Ordinance 1962*. Short title.

2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.^{*} Commencement.

3.—(1.) In this Ordinance, unless the contrary intention appears— Interpretation.

“discharge” means any discharge or escape, howsoever caused;

“intraterritory ship” includes every ship within the jurisdiction except a ship which trades or proceeds to or from a port or ports outside the jurisdiction;

“master” includes every person, except a pilot, in command or charge of a ship;

“mixture containing oil” means a mixture of oil with water or any other substance where the oil in the mixture is not less than one hundred parts of oil in one million parts of the mixture;

“occupier” means—

(a) the person exercising by his servants or agents or otherwise any right of occupation of a place; or

(b) if it has no occupier, the owner of the place, but if the place is a vehicle does not include the occupier of the land on or over which the vehicle stands or moves;

^{*} The date fixed was 27th February, 1963 (see *Government Gazette* No. 9 of 27th February, 1963, p. 40).

“oil” means crude oil, fuel oil, heavy diesel oil and lubricating oil, and includes a mixture containing oil;

“oil residues” means those parts of oil which remain after undergoing a separation process approved by the Port Superintendent;

“place” includes—

(a) every structure and apparatus on, and every thing and vehicle resting on or moving over, any land;

(b) everything resting on or lying under the bed or shores of any navigable waters; and

(c) everything afloat (other than a ship or a floating craft attached to a ship) if it is anchored or attached to the bed or shore of any navigable waters;

“Port Authority” means the Harbours and Marine Branch of the Northern Territory Administration;

“Port Superintendent” means the person for the time being holding, or performing the duties of, the office of Port Superintendent, Harbours and Marine Branch of the Northern Territory Administration;

“ship” includes every vessel used in navigation not ordinarily propelled by oars only;

“tanker” means a ship constructed or adapted for carrying a cargo of oil in bulk;

“the Convention” means the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, and includes that Convention as amended by any amendment accepted by Australia;

“the jurisdiction” means the sea lying within one nautical league of the coast of the Northern Territory, and includes the ports and tidal waters and the navigable inland waters of the Northern Territory.

(2.) For the purposes of this Ordinance, where oil is discharged from a floating craft (other than a ship) that is attached to a ship, the oil shall be deemed to have been discharged from that ship.

(3.) A discharge of oil on to or into lands, waters or a place, having the result that the whole or any part of the oil eventually enters waters within the jurisdiction, is for all purposes of this Ordinance a discharge into the waters within the jurisdiction of the oil or so much of the oil as enters the waters within the jurisdiction.

4 If a discharge of oil into waters within the jurisdiction occurs from a ship or place or from apparatus used for transferring oil from ship to ship or from ship to place or place to ship— Discharge of oil into waters.

- (a) if the discharge is from a ship, both the owner and master of the ship;
- (b) if the discharge is from a place, the occupier of the place; or
- (c) if the discharge is from apparatus used for transferring oil from or to a ship, the person in charge of the apparatus,

shall be guilty of an offence.

Penalty: One thousand pounds.

5.—(1.) Where a person is charged under the last preceding section with an offence as owner or master of a ship it shall be a defence to prove— Special defences.

(a) that the discharge of oil was necessary for the purpose of securing the safety of the ship or of preventing damage to the ship or cargo or of saving life and was a reasonable step to take in the circumstances; or

(b) that the oil escaped—

(i) in consequence of damage to the ship and that after the occurrence of the damage all reasonable steps were taken for stopping or reducing the escape of oil; or

(ii) in consequence of leakage which could not have been avoided or foreseen and that all reasonable steps were taken for prompt discovery of the leakage and for stopping or reducing the escape of oil after the leakage was discovered.

(2.) Where a person is charged under the last preceding section with an offence as the occupier of a place or as the person in charge of apparatus it shall be a defence to prove that the escape of the oil was due to accident which could not have been avoided or foreseen and that all reasonable steps were taken for prompt discovery of the escape of the oil and for stopping or reducing the escape.

6.—(1.) Where a discharge referred to in section four of this Ordinance has occurred, the Administrator may take such action as he deems appropriate— Removal, &c., of oil discharged.

(a) to remove, disperse or destroy the oil discharged;

- (b) to remove, disperse, cleanse or destroy any thing or substance polluted by the oil discharged; or
- (c) to mitigate the effects of pollution caused by the oil discharged,

and may recover all costs and expenses incurred in and about the removal, dispersal, cleansing, destruction or mitigation from either the owner or master of the ship or from the person in charge of the apparatus, as the case may be, and whether or not the owner, master, occupier or person could, if charged with an offence, prove any matter referred to in the last preceding section.

(2.) All costs and expenses incurred under the last preceding sub-section may be recovered in the course of proceedings for the recovery of a penalty in respect of the discharge or may be recovered by separate action in a court of competent jurisdiction but it shall not be a prerequisite for the bringing of the action that proceedings have been undertaken for the recovery of a penalty.

(3.) Nothing in this Ordinance shall affect any rights of the Administrator or of any other person to recover damages at common law in respect of the consequences of a discharge of oil.

Equipment in intraterritorial ships to prevent discharge of oil.

7. The owner of an intraterritorial ship shall ensure that the ship is fitted with such equipment and comply with such requirements as are prescribed for the purpose of preventing the discharge of oil into waters within the jurisdiction.

Penalty: Five hundred pounds.

Ships to keep oil records.

8. The master of an intraterritorial ship shall keep records of—

- (a) every transfer of oil from or to the ship;
- (b) every occasion when oil is discharged from the ship for the purpose of securing its safety or of preventing damage to the ship or cargo or of saving life;
- (c) every occasion on which oil is found to be escaping or to have escaped from the ship in consequence of damage to the ship or by reason of leakage; and
- (d) every operation carried out on board or in connexion with the ship that involves—
 - (i) the ballasting of oil tanks (whether cargo or bunker fuel oil tanks) or the discharge of ballast from or the cleaning of such tanks;

- (ii) the separation of oil from water or from other substances;
- (iii) the disposal of any oil or water or any other substance arising from an operation referred to in the preceding subparagraphs of this paragraph;
- (iv) the disposal of any other oil residues; and
- (v) such other matters as are prescribed.

Penalty: Five hundred pounds.

9 If a discharge of oil occurs into any waters within the jurisdiction—

Discharge to be reported to Port Superintendent.

- (a) from a ship, the master of the ship; or
- (b) from a place, the occupier of the place,

shall inform the Port Superintendent without delay of all details of the discharge.

Penalty: Two hundred pounds.

10.—(1.) The Administrator or a person authorized in writing by him may for the purpose of investigating a discharge or suspected discharge of oil into waters within the jurisdiction—

Investigation of discharge of oil by Administrator.

- (a) go on board and inspect any ship within the jurisdiction;
- (b) inspect all records required to be kept in respect of the ship by this Ordinance or by any law of a Contracting Government to the Convention for the carrying out of the purposes of the Convention;
- (c) if the records are kept in a language other than English, be accompanied and assisted by an interpreter; and
- (d) cause an entry in the records to be copied and require the person by whom the records are kept to certify the copy as a true copy of the entry,

but shall not unnecessarily detain or delay the ship from proceeding on a voyage.

(2.) A person authorized in writing by the Administrator may for the purpose of investigating a discharge or suspected discharge of oil on to land where the whole or any part of the oil may eventually enter waters within the jurisdiction—

- (a) enter and inspect a place;
- (b) inspect all records required to be kept by the Regulations under this Ordinance;
- (c) cause an entry in the records to be copied; and
- (d) require the person by whom the records are kept to certify the copy as a true copy of the entry.

(3.) The right of inspection conferred by the last two preceding sub-sections includes the right to take without payment samples of any substances, in, on or in the vicinity of the ship or place inspected and to require the master of the ship or the occupier of the place or a person representing the master or occupier to certify the taking of the samples and to require the testing of equipment or apparatus used in the ship or on the place in connexion with the handling of oil.

(4.) A person shall not assault, resist, hinder or obstruct a person producing a telegram or other written document referred to in section eighteen of this Ordinance and acting in the exercise of a power conferred by this section or fail to comply with any requirement made under this section.

Penalty: Two hundred pounds.

Oil reception
facilities.

11.—(1.) The Administrator may provide facilities for enabling ships to dispose of oil residues or may join with any other person in providing facilities or may arrange for the provision of facilities by any other person.

(2.) Subject to the next succeeding sub-section, any facilities provided by or by arrangement with the Administrator shall be open to all ships on payment of the prescribed charges and subject to compliance with the prescribed conditions.

(3.) The Port Superintendent may, in his discretion, refuse to make the facilities available—

- (a) for use by tankers;
- (b) for the reception of oil residues disposed of for the purpose of enabling a ship to undergo repairs; or
- (c) for the disposal of ballast water which contains oil and has not been subjected to an effective process for separating the oil from the water.

(4.) The occupier of an oil terminal, oil depot, oil installation or other establishment used for the loading or unloading of oil in bulk and the occupier of an establishment at which ships are repaired or any other work is performed in relation to ships which may involve the disposal of oil residues shall—

- (a) provide facilities of a standard satisfactory to the Administrator for the use of tankers or for the reception of oil residues disposed of for the purpose of enabling ships to undergo repairs;
- (b) maintain the facilities in good order and condition; and
- (c) keep such records as are prescribed.

Penalty: Two hundred pounds.

12.—(1.) Oil shall not be transferred between sunset and sunrise from or to a ship in waters within the jurisdiction unless notice has been given to and permission in writing obtained from the harbour master or from the Port Superintendent.

Restrictions on transfer of oil at night.

(2.) Where a transfer is to be performed at a place where transfers are frequently and regularly carried out, the notice may be a general notice that transfers will be carried out within a period specified in the notice and the permission may be general and subject to such conditions as the harbour master or the Port Superintendent thinks fit.

(3.) If oil is transferred from or to any ship in contravention of this section or if any condition attached to the permission given is not observed, the master of the ship and, where the oil is transferred from or to a place on land, the occupier of the place shall each be guilty of an offence.

Penalty: Two hundred pounds.

13.—(1.) A person appointed by the Administrator to report to him regarding the proper observance of this Ordinance may for that purpose—

Inspection and report.

- (a) go on board a ship;
- (b) enter a place;
- (c) inspect all records required to be kept under this Ordinance;
- (d) cause an entry in the records to be copied;
- (e) require the person by whom the records are kept to certify the copy as a true copy of the entry;
- (f) inspect and test equipment required to be installed under this Ordinance;
- (g) require any person to answer questions as to the observance of this Ordinance; and
- (h) require the production of all books, papers and documents which he considers relevant for the purpose of his report.

(2.) A person shall not assault, resist, hinder or obstruct a person producing a telegram or other written document referred to in section eighteen of this Ordinance and acting in the exercise of a power conferred by this section or fail to comply with a requirement made under this section or in giving any answer required under this section make a statement which is false or misleading.

Penalty: Two hundred pounds.

Exemptions.

14.—(1.) Where the Administrator is satisfied that—

- (a) a requirement prescribed under this Ordinance has been substantially complied with;
- (b) compliance with a prescribed requirement is in the circumstances impracticable or unnecessary; or
- (c) the action taken or provision made as regards a prescribed requirement is as effective as or more effective than actual compliance with the requirements,

he may direct that compliance with the requirement be dispensed with.

(2.) The Administrator may exempt a ship or class of ships from any of the provisions of this Ordinance other than the provisions of section four of this Ordinance.

(3.) Where an exemption has been granted under this section the Administrator may at the same time or any later time impose conditions which he deems appropriate and may vary or revoke the conditions and a breach of any such condition shall incur the same penalties and consequences as a breach of the provision from which the exemption was granted.

(4.) The Administrator may revoke at any time an exemption granted under this section.

Evidence in proceedings.

15. In proceedings under this Ordinance—

- (a) records required to be kept by this Ordinance or by a Contracting Government to the Convention for the carrying out of the purposes of the Convention shall be admissible as evidence of the facts stated in those records;
- (b) a copy of an entry in the records which is certified by the person by whom the records are required to be kept to be a true copy of the entry shall be admissible as evidence of the facts stated in the entry; and
- (c) a document purporting to be a record kept in pursuance of the requirements referred to in this section or purporting to be such a certified copy as is referred to in the last preceding paragraph shall, unless the contrary is proved, be presumed to be such a record or such a certified copy.

Proceedings for offences.

16.—(1.) No proceedings shall be taken for the recovery of a penalty for an offence under this Ordinance without the approval of the Administrator.

(2.) The production of a telegram or statement in writing purporting to be signed by the Port Superintendent is evidence of the approval of the Administrator for the taking of any proceedings.

(3.) The taking of proceedings by an officer or employee of the Port Authority in respect of an offence under this Ordinance shall be deemed to have been approved by the Administrator unless the contrary is proved.

17. In proceedings taken under this Ordinance with the approval of the Administrator it shall be deemed to be proved in the absence of proof to the contrary that—

Proof of certain matters not required.

- (a) a ship is or at the relevant time was an intraterritory ship;
- (b) the defendant is or at the relevant time was the occupier of any place; and
- (c) the defendant is or at the relevant time was the person in charge of any apparatus used for transferring oil to or from a ship.

18. The production of a telegram or other written document purporting to be signed by the Port Superintendent and stating that the Administrator—

Evidence of administrative acts.

- (a) appoints a person to carry out all or any of the inspections referred to in this Ordinance;
- (b) appoints a person to report to him regarding the proper observance of this Ordinance; or
- (c) imposes, varies or revokes a condition, grants an exemption or revokes an exemption under section fourteen of this Ordinance,

is evidence that the Administrator has acted in accordance with the tenor of the statement.

19. The Administrator in Council may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance, and in particular for prescribing matters providing for and in relation to—

Regulations.

- (a) the keeping of records for the purposes of this Ordinance by masters of intraterritory ships or by occupiers of places, oil terminals, oil depots, oil installations or other establishments used for the loading or unloading of oil in bulk or at

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which ships are repaired or any other work is performed in relation to ships which may involve the disposal of oil residues;

- (b) the definition, installation, inspection and testing of equipment required to be fitted to ships for the purpose of preventing the discharge of oil;
 - (c) the fees to be charged and paid in respect of an inspection or test of equipment in a ship; and
 - (d) the fees and conditions to be imposed in respect of the use of facilities provided by the Administrator for enabling ships to dispose of oil residues.
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