

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2101 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

119

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

SPILL PREVENTION, PLANNING AND MANAGEMENT
PROGRAM GUIDANCE

Guidance No. OPC 91-1

February 18, 1991

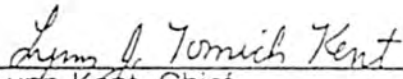
Page 1 of 3 pages

PURPOSE: To clarify the applicability of contingency plan requirements to operations which store, transfer, produce or explore for liquefied natural gas (LNG) or liquefied petroleum gas (LPG).

BACKGROUND: The various definitions which appear in AS 46.04 and 18 AAC 75 have led to some confusion as to which classes of operations which deal with LNG/LPG require oil spill contingency plans. HB 567 made further changes to these definitions, which resulted in the removal of LNG/LPG production facilities from the contingency plan requirement.

APPLICABILITY: This guidance applies to all personnel engaged in the review and approval of oil spill contingency plans and the enforcement of Oil Pollution Control statutes and regulations.

DISCUSSION: Please see attached.


Lynn Kent, Chief
Spill Prevention, Planning and
Management Program

LNG/LPG CONTINGENCY PLAN REQUIREMENTS

The following excerpts from Alaska statute and regulation deal with the applicability of contingency plans to LNG and LPG storage and production facilities:

STATUTES

Definitions - 46.04.900 (as amended by HB 567)

"(8) 'exploration facility' means a platform, vessel, or other facility used to explore for hydrocarbons in or on the waters of the state or in or on land in the state; the term does not include platforms or vessels used for stratigraphic drilling or other operations that are not authorized or intended to drill to a producing formation;

"(9) 'oil' means oil of any kind and in any form, whether crude, refined, or a petroleum by-product, including but not limited to ... liquefied natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

"(10) 'oil barge' means a vessel which is not self-propelled and which is constructed or converted to carry oil as cargo in bulk;

"(11) 'oil terminal facility' means an onshore or offshore facility of any kind ... which is used for the purpose of transferring, processing, refining, or storing oil ... ; ...

"(14) 'pipeline' means the facilities, including piping, compressors, pump stations, and storage tanks, used to transport crude oil and associated hydrocarbons between production facilities or from one or more production facilities to marine vessels;

"(15) 'production facility' means a drilling rig, drill site, flow station, gathering center, pump station, storage tank, well, and related appurtenances or other facilities to produce, gather, clean, dehydrate, condition, or store crude oil and associated hydrocarbons in or on the water of the state or on land in the state and flow lines used to transport crude oil and associated hydrocarbons to the inlet of a pipeline system for delivery to a marine facility, refinery, or other production facility; ...

"(17) 'tank vessel' means a self-propelled waterborne vessel that is constructed or converted to carry liquid bulk cargo in tanks and includes tankers, tankships, and combination carriers when carrying oil ... ;"

REGULATIONS

Definitions - 18 AAC 75.395

"'liquefied petroleum gas' means natural gas converted to a liquid state by pressure and cooling, butane, propane, and other light ends which at 70 degrees F. and

atmospheric pressure revert to the gaseous state."

Contingency Plan Approval Criteria - 18 AAC 75.355

Parts (3) and (4) of 18 AAC 75.355 exempt liquefied petroleum gas (defined above) from the following specific contingency plan requirements:

"(3) except for liquefied petroleum gas, applicants must maintain in their areas of operation sufficient oil discharge containment and removal equipment to rapidly contain the oil discharge identified in 18 AAC 75.325(b)(5) and remove that discharge within a 48-hour period when adverse conditions do not threaten safety of personnel;

"(4) except for liquefied petroleum gas, applicants must provide and maintain exclusion equipment or have the means to protect the areas identified in 18 AAC 75.335(3) and (4); for purposes of establishing minimum capabilities, containment and exclusion equipment will each be considered separately and independently; ... "

Conclusion

From the above it is clear that LNG and LPG are considered "oil" for the purposes of AS 46.04 and 18 AAC 75 and are not exempt from the contingency plan requirement for oil terminal facilities and tank vessels except as provided for in 18 AAC 75.355(3) and (4) above. HB 567, in amending the definitions in 46.04.900, substituted "crude oil and associated hydrocarbons" for "hydrocarbons" in the "production facility" definition. This wording is also used in the definition of "pipeline" in 46.04.900. Therefore, under current statute, LNG/LPG production facilities and pipelines are exempted from the contingency plan requirement unless crude oil is associated with the LNG/LPG.

In summary:

<u>Operation</u>	<u>Product</u>	<u>Amount</u>	<u>C-Plan Required</u>
Oil terminal	LNG/LPG	< 10,000 bbl	No
Oil terminal	LNG/LPG	> 10,000 bbl	Yes
Tank vessel/barge	LNG/LPG	[Any]	Yes
Exploration facility	LNG/LPG	[Any]	Yes
Production facility	LNG/LPG*	[Any]	No
Pipeline	LNG/LPG*	[Any]	No

*Not associated with crude oil.



PHILLIPS PETROLEUM COMPANY

KENAI, ALASKA 99811
DRAWER 66 PHONE: 907 776-8166

NORTH AMERICA EXPLORATION AND PRODUCTION
Kenai Area

Fax number: (907) 776-8527

DATE: 04/27/92

TO: Gail Phillips (r) Dan Sullivan - Fax (907) 465-2294

FROM: L. E. Porter

Number of Sheets Including Cover: 2

REMARKS: I hope this enough information on the Liability issue. Please let me know how things are going. Has DEC replied to Senator Cotten's question regarding the C-Plan and the Certificate of Financial Responsibility. Thanks again for your help.



April 14, 1992

INTER-OFFICE CORRESPONDENCE / SUBJECT:
BARTLESVILLE, OKLAHOMAKenai Plant
Insurance CoverageLarry Porter
Kenai Plant
FAX: ((07) 776-8527

The following is a listing of the insurance coverages purchased for risks associated with operation of the Kenai Plant and the LNG tankers.

Kenai LNG Plant Insurance Coverage (for EPCo's interest)

- 1) Property Damage - Replacement cost insurance to the full value of the plant, subject to a \$1 MM per occurrence deductible.
- 2) Third Party Liability - In excess of \$200 MM including pollution coverage, subject to a \$1 MM per occurrence deductible.

Marathon is responsible for arranging insurance to protect its interest in the Kenai Plant. EPCo does not have any information about Marathon's insurance.

LNG Tanker Coverage (for the 100% interest)

- 1) Protection and Indemnity Coverage (P&I) - Unlimited coverage except for pollution which is limited to \$700 MM, subject to a \$5 MM per occurrence deductible.
- 2) Hull and Machinery including increased value - \$65 MM per vessel subject to a \$5 MM per occurrence deductible.
- 3) War Risk - \$65 MM per vessel, subject to a \$5 MM per occurrence deductible.

Please call with any questions.

Regards,


Michael Kemp

PHILLIPS ALASKA NATURAL GAS CORPORATION

1256 Adams Building
Bartlesville, OK 74004

April 14, 1992

VIA FACSIMILE (907) 465-2294

Ms. Gail Phillips
Alaska House of Representatives
Juneau, AK

Re: Federal Pipeline Safety Act of 1968, LNG
Amendments of 1976

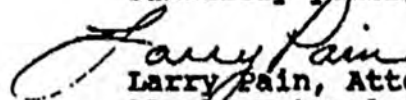
Dear Ms. Phillips:

Mr. Larry Porter of the Kenai LNG Plant operated by Phillips Alaska Natural Gas Corporation has requested that I forward to you a copy of an excerpt from the 1976 Amendments to the Federal Natural Gas Pipeline Safety Act of 1968. The 1976 Amendments adopted a comprehensive system of regulation of the safety aspects of liquid natural gas facilities. These are codified at 49 U.S.C. App. Sections 1671 - 1687.

Enclosed is a copy of 49 U.S.C. App. Section 1674b. This statutory provisions requires operators of LNG facilities to maintain adequate financial responsibility to deal with reasonably foreseeable risks of their operations. If the operator does not maintain adequate financial responsibility, the Secretary of Transportation may at any time give notice to the operator that the adequacy of his financial responsibility has been placed into question. After hearing, the Secretary of Transportation or his or her delegatee (Office of Pipeline Safety) may require the operator to demonstrate and maintain additional financial responsibility at or above amounts determined appropriate by the Secretary [See subsection (b)(3)], by way of insurance, surety bonds, qualification as a self-insurer, or other means.

Please call if you need further information.

Sincerely yours,



Larry Pain, Attorney for Phillips
Alaska Natural Gas Corporation
(918) 661-6355

LP:jk
Enclosure
cc via facsimile: Larry Porter

(C) the characteristics of the LNG to be stored or converted at, or transported by, such facility (for example, whether it is to be in a liquid or semisolid state); and

(D) the public safety factors of the design as compared to alternative designs (particularly the ability under such a design to prevent and contain an LNG spill); and

(8) with respect to standards for the operation and maintenance¹ of any LNG facility—

(A) the conditions, features, and type of equipment and structures which comprise, or which are used in connection with, such facility;

(B) the fire prevention and containment equipment at such facility;

(C) the security measures to be used with respect to the operation of such facility for the prevention of sabotage or other intentional acts which could cause an LNG accident;

(D) maintenance procedures and equipment;

(E) the training of personnel with respect to the equipment, structures, measures, and procedures described in subparagraphs (A), (B), (C), and (D); and

(F) other factors and conditions relating to the safe handling of LNG.

(e) Amendment of standards

At any time after the effective date of standards initially prescribed under subsections (a) and (b) of this section, the Secretary shall, on his own motion or on the motion of any person, amend such standards to the extent he considers necessary to reflect changes in technology or to otherwise carry out the purposes of this section.

(f) Applicability of provisions of section 1672 of this title to standards prescribed under this section

The provisions of the last two sentences of subsection (a)(1) of section 1672 of this title and of subsections (b), (c), and (d) of section 1672 of this title shall apply with respect to standards prescribed under this section in the same manner as they apply to standards prescribed under section 1672 of this title.

(Pub.L. 90-481, § 6, as added Pub.L. 96-129, Title I, § 152(a), Nov. 30, 1979, 93 Stat. 999.)

¹ So in original. Probably should read "maintenance".

Historical and Statutory Notes

References in Text. The Natural Gas Act, referred to in subsec. (a)(3), is Act June 21, 1938, c. 556, 52 Stat. 821, which is classified to section 717 et seq. of Title 15, Commerce and Trade.

Prior Provisions. A prior section 6 of Pub. L. 90-481 was renumbered 8 by Pub. L. 96-129,

Title I, § 152(a), Nov. 30, 1979, 93 Stat. 999, and is classified to section 1675 of this title.

Effective Date. Section effective Nov. 30, 1979, see section 156 of Pub.L. 96-129; set out as a note under section 1671 of this title.

Legislative History. For legislative history and purpose, of Pub.L. 96-129, see 1979 U.S. Code Cong. and Adm. News, p. 1971.

§ 1674b. Financial responsibility for certain LNG facilities

(a) Study regarding risks associated with production, transportation, and storage of LNG and liquid petroleum gas; report to Congress

Not later than 270 days after November 30, 1979, the Secretary shall—

(1) conduct a study of—

(A) the risks associated with the production, transportation, and storage of LNG;

(B) the risks associated with the production, transportation, and storage of liquefied petroleum gas;

(C) the methods of assuring adequate financial responsibility for those engaged in any such activity; and

(2) prepare and transmit to each House of the Congress a report on the results of such study, together with the recommendations of the Secretary for such legislative or administrative action as he considers appropriate.

See 1981 Special Pamphlet for Partially Revised Title 49

(b) Notice of inadequate financial responsibility; hearing; judicial review

(1) Whenever the Secretary has reason to believe that any operator of an LNG facility is not maintaining adequate insurance or otherwise does not have adequate financial responsibility with respect to such facilities, he may issue and serve upon such operator notice thereof, together with a statement of the amount of the financial responsibility that the Secretary would consider adequate.

(2) Any person issued notice under paragraph (1) shall have a right to hearing on the record in accordance with section 554 of Title 5, to be held not later than 30 days after notice under paragraph (1), at which such person has the right to show cause as to why an order should not be issued by the Secretary requiring such person to demonstrate and maintain financial responsibility at or above the amount indicated in the notice under paragraph (1).

(3) After an opportunity for hearing under paragraph (2), the Secretary may, if he determines it is justified in the public interest, order the person issued notice of such hearing to demonstrate and maintain financial responsibility at or above an amount determined appropriate by the Secretary, taking into account any information, data, and views presented in such hearing.

(4)(A) Any person aggrieved by an order issued under paragraph (3) may seek judicial review of such order only by filing a petition for review in the appropriate court of appeals of the United States within 60 days after such order is issued.

(B) Upon receipt of notice of the filing of such petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon such filing, the court may affirm, modify, remand, or set aside the order of the Secretary, and may enforce the order to the extent that such order is affirmed and issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pending its decision. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(C) The judgment and decree of the court shall be final, except that such judgment and decree shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of Title 28.

(c) Methods acceptable for maintenance of financial responsibility

For purposes of subsection (b) of this section, financial responsibility may be maintained by any one of, or a combination of, the following methods acceptable to the Secretary:

- (1) evidence of insurance,
- (2) surety bonds,
- (3) qualification as a self-insurer, or
- (4) other evidence of financial responsibility.

(Pub.L. 90-481, § 7, as added Pub.L. 96-129, Title I, § 153, Nov. 30, 1979, 93 Stat. 1001.)

Historical and Statutory Notes.

Prior Provisions. A prior section 7 of Pub. L. 90-481 was renumbered 9 by Pub. L. 96-129, Title I, § 152(a), Nov. 30, 1979, 93 Stat. 999, and is classified to section 1676 of this title.

Effective Date. Section effective Nov. 30, 1979, see section 156 of Pub.L. 96-129, set out as a note under section 1671 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-129, see 1979 U.S. Code Cong. and Adm. News, p. 1971.

West's Federal Forms

Enforcement and review of decisions and orders of administrative agencies, see § 851 et seq.
Supreme Court, jurisdiction on writ of certiorari, see § 221 et seq.

§ 1675. Judicial review

(a) Person aggrieved; venue

Any person who is or will be adversely affected or aggrieved by any regulation issued under this chapter or any order with respect to an application for a waiver under section 1672(d) of this title may at any time prior to the 90th day after such regulation or order is issued file a petition for a judicial review with the United States Court of Appeals for the District of Columbia or for the circuit wherein such

See 1981 Special Pamphlet for Partially Revised Title 49

Department of Transportation

United States Coast Guard

Washington, D.C. 20593-0001



CERTIFICATE OF FINANCIAL RESPONSIBILITY (WATER POLLUTION)

KNOW ALL PERSONS BY THESE PRESENTS THAT
Vessel Operator

No. 102837 - 09

ARCTIC LNG TRANSPORTATION COMPANY

has established financial responsibility to meet liability under section 311(p) of the Federal Water Pollution Control Act, as amended, which may result from the operation of the vessel named below:

Name of Vessel

ARCTIC TOKYO

Expires FEB 1, 1994

The use of this certificate is subject to the provisions of Part 130 of Title 33 of the Code of Federal Regulations, as it is or may be amended, and the conditions on the reverse of this Certificate. This Certificate is void if there are any erasures or alterations hereon, and is void if the operator named hereon is not the party responsible for operating the vessel.

Robert H. Shell

Assistant Chief, Marine Environmental Response Division
Office of Marine Safety, Security and
Environmental Protection
By Direction of the Commandant, U.S. Coast Guard

Alaska State Legislature

Legislative Research Agency



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

April 1, 1992

MEMORANDUM

TO: Representative Cliff Davidson

FROM: Glenn T. Gray ^{GTG}
Legislative Analyst

RE: Other States' Inclusion of Natural Gas in Oil Spill Laws
Research Request 92.199

You asked if any states exempt natural gas and liquified natural gas (LNG) from oil spill legislation such as requirements for proof of financial responsibility, spill contingency plans and inspections.¹ This memorandum considers only state oil spill statutes; it does not address oil and gas development, hazardous substances, hazardous materials transportation community right-to-know or air pollution laws which may regulate natural gas or LNG.

Information for this memorandum was obtained from the National Conference of State Legislatures (NCSL), state oil spill officials, our own survey of coastal state officials and a search of state statutes. Representatives of other organizations with whom we spoke did not know if states included LNG and natural gas in their oil spill laws. We contacted the U.S. Coast Guard, Environmental Protection Agency (EPA), American Petroleum Association, National Association of Attorneys General, Coastal States Organization, Interstate Natural Gas Association of America, American Gas Association, Panhandle Eastern Corporation and Distrigas Corporation.

Excluding Alaska, oil spill statutes in ten coastal states mention gasses in the definition of oil or hazardous substances. Four of these states specifically include LNG or natural gas in their oil spill statutes: Rhode Island, Washington, California and North Carolina. (California, Washington and North Carolina, however, mention natural gas or LNG only in specific oil spill statutes.) Two states exclude natural gas or LNG from oil discharge statutes: New Hampshire excludes natural gas and synthetic natural gas and Maryland excludes LNG. The remaining four states either mention other kinds of gases or do not indicate a specific type of gaseous substance. Other coastal states may include or exclude natural gas or LNG from the definition of oil or hazardous substances through regulation or policy. The attached table summarizes how states address gas in their spill laws.

¹Natural gas, primarily composed of methane, becomes LNG at a temperature of minus 245 degrees Fahrenheit.

Background

Alaska is the only state which exports LNG, and only four facilities in the United States are capable of processing imported LNG: the Distragas facility in Everett, Massachusetts; the Royal Dutch Shell facility in Cove Point, Maryland; the Sonat facility at Elba Island, Georgia; and the Panhandle Eastern facility in Lake Charles, Louisiana. Because of a poor market for LNG, only the facilities in Massachusetts and Louisiana are currently operating. Louisiana and Georgia do not mention gas in their oil spill statutes, Maryland excludes LNG and Massachusetts indirectly includes natural gas because of references to flammable substances.²

It appears that states focus on crude and refined oil rather than natural gas in their spill statutes. While some states specifically mention natural gas or LNG in their spill laws, most states do not. There is little uniformity among state oil spill laws; while some states only consider oil products in their statutes, other states include hazardous substances.³ When hazardous substances are included in oil spill laws, they are often vaguely defined and many of the state oil spill specialists and attorneys with whom we spoke did not readily know if natural gas was included in the definition. Some states have adopted federal definitions of hazardous substances by reference to federal laws.⁴

States which have intentionally excluded LNG or natural gas from their statutes have apparently done so because LNG and natural gas dissipate into the air when released rather than fouling soil and water.⁵ Some of these states may

²According to Tim Ahbert of the Louisiana Oil Spill Coordinator's Office, state law does not include natural gas in its oil spill laws because natural gas would evaporate rather than spill into waters.

³States may regulate oil and natural gas spills in one or more sections of their statutes, such as water pollution, navigation and hazardous materials transportation.

⁴According to Harry Schultz of the United States Coast Guard oil spill office in Washington, D.C., the federal Oil Pollution Act of 1990 does not address LNG or natural gas. Mike Bothel of the Anchorage EPA office said that LNG or liquid petroleum gas (LPG) is not specifically referred to in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Eric Nelson of the National Association of Attorneys General, said that most states observe the federal CERCLA exclusion of natural gas and LNG in their state statutes.

⁵According to Ken Van Eaton, safety officer for Distragas, natural gas and LNG are not explosive in an open environment. Natural gas, however, will burn if ignited.

address natural gas in other statutes such as the sections concerned with emergency preparedness or transportation of hazardous materials.

Unless a state specifically excludes or includes LNG or natural gas in its definition of oil or hazardous substances, it may not be clear if these substances are covered by the oil spill statutes.⁶ For instance, Texas does not specifically include natural gas in its oil spill statutes but broadly defines oil as "oil of any kind or in any form." According to Barbara Foster of NCSL, Texas considers natural gas as oil although state officials are currently reviewing this interpretation.

States Which Mention Gas in Oil Spill Statutes

An analysis of state statutes reveals that ten coastal states specifically mention gas in their oil spill statutes: Alabama, California, Connecticut, Florida, Maryland, Mississippi, New Hampshire, North Carolina, Rhode Island and Washington. California, North Carolina and Washington, however, do not include LNG or natural gas in the definition of oil in all of their spill statutes. Barbara Foster of NCSL assisted us with our telephone survey of coastal states and identified three additional states, through either regulation or policy, that require natural gas or LNG facilities to comply with oil spill prevention and response requirements. These states are Maine, Massachusetts and Texas. Spill laws in all thirteen states are discussed below and appropriate statutes are attached.

- Alabama excludes "water, gas, or other materials which is injected into a well to facilitate production of oil or gas. . ." in its definition of pollutant in the state water pollution control statute. The law, however, does not specifically include gas or oil in the definition. Alabama statutes do not address facility inspection, financial responsibility or contingency planning.
- The California oil spill section interprets the statutory definition of oil to exclude natural gas and LNG but to include natural gas liquids (such as liquid propane and butane. This definition applies to most state oil spill statutes, but Section 294 of the Harbors and Navigation Code includes natural gas in the list of substances for which spillers have strict liability.
- Connecticut law defines a spill as "the discharge, spillage, uncontrolled loss, seepage, or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous waste" (Sec. 22a-452c). According to Barbara Foster, natural gas

⁶When not specifically mentioned, regulations or policy interpretations often defines whether the definition of oil or petroleum includes natural gas or LNG.

facilities are subject to state financial responsibility and contingency planning regulations.

- Florida uses the term pollutant in its oil spill laws (rather than the terms oil or hazardous substances) and state law defines pollutants as oil of any kind, except liquified petroleum gas (LPG).⁷ According to Barbara Foster, natural gas facilities are included in the requirements for contingency planning and financial responsibility.
- Maine does not specifically include LNG or natural gas in its oil discharge prevention statutes, but according to Barbara Foster, the state considers LNG a petroleum product.
- Maryland specifically excludes LNG and liquified propane from its definition of oil.
- Massachusetts defines oil and hazardous material separately but includes both terms in its oil and hazardous materials spill laws. The state defines a hazardous material as "any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics . . . constitutes a present or potential threat to human health, safety, welfare . . ." Because of the flammability standard, natural gas is considered a hazardous material and therefore spills must be reported, and state officials may inspect any vessel or facility which handles natural gas. There are no state requirements for proof of financial responsibility or contingency planning.
- Mississippi does not mention oil in its definition of pollution in the state air and water pollution statutes. The definition, however, includes the "discharge of any liquid, gaseous, solid, radioactive or other substance or leak into any waters of the state . . ." According to Barbara Foster, natural gas facilities are subject to state pollution laws.
- New Hampshire excludes natural gas, liquified petroleum gas and synthetic natural gas from the definition of oil in the state oil spillage and discharge laws.
- North Carolina does not specifically mention natural gas in its definitions of oil and hazardous substance, but the state statute requiring a state contingency plan mentions facilities which produce or transport natural gas.

⁷Liquified petroleum gas includes butane and propane which are separated from natural gasoline or crude oil.

- Rhode Island includes LNG, propane and butane in its definition of oil. Thus, these substances are presumably included in financial responsibility, contingency planning and facility inspection requirements.
- Texas does not specifically include natural gas in its oil spill statutes but defines oil broadly as "oil of any kind or in any form." As mentioned earlier, Texas considers natural gas as oil although state officials are currently reviewing this interpretation.
- Washington includes LNG, propane and butane in its definition of oil for oil discharge laws but does not include these gases in other oil spill laws (e.g., financial responsibility and contingency plan statutes).

I hope that this information is useful to you. Please contact us if we may be of additional assistance.

Attachments

Coastal States Oil Spill Laws and Natural Gas

States	Terms Used to Describe Pollutants in Oil Spill Laws	Specific References to Gases in Oil Spill Laws	General Category of Spill Laws in Statutes	Statute
Alabama	Pollutant	Excludes gas or other material injected into a well	Water Pollution Control	22-22-1
California	Oil - any kind of petroleum Natural gas spill liability	Includes liquid distillates from unprocessed natural gas Includes natural gas	Government Code Harbors and Navigation Code	8670.3 Sec. 294
Connecticut	Spill - oil, petroleum, chemicals, waste	Includes gaseous products	Environmental Protection	221-452c
Delaware	Oil - petroleum including crude oil	Not mentioned in statute	Oil Pollution Liability	7 Sec. 6202
Florida	Pollutant	Excludes liquified petroleum gas	Pollution Discharge Prevention	376.031
Georgia	Spill or release of material into air or water	Not mentioned in statute	Oil or Hazardous Material Spills	12-14-1
Hawaii	Oil and hazardous substances	Not mentioned in statute	Environmental Response Law	128D-1
Louisiana	Oil - any kind in any form	Not mentioned in statute	Oil Spill Prevention	R.S. 30:2454
Maine	Oil - liquid hydrocarbons	Not mentioned in statute	Oil Discharge Prevention	38 Sec. 542
Maryland	Oil - in any liquid form	Excludes liquified propane & liquified natural gas	Environment	Sec. 4-401
Massachusetts	Oil or hazardous material	Hazardous materials include flammable materials	Officers of the Commonwealth	21E Sec. 2
Mississippi	Pollution - substances which affect water	Includes gaseous substances	Pollution of Waters, Air, Etc.	49-17-5
New Hampshire	Oil - all liquid hydrocarbons	Excludes natural gas, liquified petroleum gas or synthetic natural gas	Oil Spillage or Discharge	146-A:2
New Jersey	Hazardous substances - petroleum	Not mentioned in statute	Waters and Water Supply	58:10-23.11b
New York	Petroleum - in any form	Not mentioned in statute	Navigation Law	Sec.172
North Carolina	Oil or hazardous substances	Not mentioned in definition of oil or hazardous substance Natural gas is included in state contingency plan statute	Hazardous Substances Hazardous Substances	143-215.77 143-215.94HH
Oregon	Oil or hazardous material	Not mentioned in statute	Oil or Hazardous Material Spillage	468B.300 466.605
Rhode Island	Oil - any kind in any form	Includes liquid natural gas, propane and butane	Oil Pollution Control	46-12.5-1
South Carolina	Pollutants - including oil of any kind	Not mentioned in statute	Oil and Gas Exploration, Etc.	48-43-510
Texas	Oil or hazardous substances	Not mentioned in statute	Public Domain	40.003
Virginia	Oil - any kind including liquid hydrocarbons	Not mentioned in statute	Water Control Law	62.1-44.34:14
Washington	Oil - any petroleum related product	Includes liquid natural gas, propane and butane Not mentioned in other state oil spill statutes	Environment - Oil Spill Liability	90.48.315

Sources: State statutes

Prepared by Legislative Research Agency, April 1992 (92.199)

CHAPTER 22.
WATER POLLUTION CONTROL.

Sec.	Sec.
22-22-1. Short title; definitions.	22-22-10. Repealed.
22-22-2. Purpose of chapter; declaration of policy.	22-22-11. Disbursement of funds.
22-22-3 through 22-22-6. Repealed.	22-22-12. Repealed.
22-22-7. Technical and other advisory committees.	22-22-13. Chapter supplementary to other laws; powers of attorney general not affected.
22-22-8. Repealed.	22-22-14. Criminal penalty for violation of chapter, etc.
22-22-9. Powers and duties; enforcement of orders; permits; civil penalties for violations.	

Cross references. — As to pollution control finance authority, see § 22-29-1 et seq.

Automatic stay provisions of Bankruptcy Code did not apply to state's claim seeking injunctive relief and civil penalties against debtor company accused of violating this chapter and chapter 30 of this title,

for the reason that this complaint constituted an equitable action to prevent future harm, rather than an action to enforce a money judgment. *United States v. Ilico, Inc.*, 48 Bankr. 1016 (N.D. Ala. 1985).

Collateral references. — 94 C.J.S., Waters, § 243(4).

§ 22-22-1. Short title; definitions.

(a) This chapter may be cited as the "Alabama Water Pollution Control Act."

(b) For the purposes of this chapter, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

(1) COMMISSION. The Alabama department of environmental management.

(2) WATERS. All waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

(3) POLLUTION. The discharge of a pollutant or combination of pollutants. A pollutant includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. Pollutant does not mean (a) sewage from vessels; or (b) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state, and if the commission determines that such injection

or disposal will not result in the degradation of ground or surface water resources.

(4) SEWAGE. Water-carried human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other waters as may be present.

(5) INDUSTRIAL WASTES. Liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of natural resources.

(6) OTHER WASTES. All other substances, whether liquid, gaseous, or solid, or energy in the form of heat from all other sources including, but not limited to, any vessels or other conveyances traveling or using the waters of this state, except industrial wastes or sewage.

(7) PERSON. Any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

(8) DISCHARGE. The addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other wastes into waters of the state.

(9) DIRECTOR. The director of the Alabama department of environmental management.

(10) CHAIRMAN. The director of the Alabama department of environmental management.

(11) VICE-CHAIRMAN. The director of the Alabama department of environmental management.

(12) WATER IMPROVEMENT COMMISSION. The Alabama department of environmental management.

(13) ALABAMA WATER IMPROVEMENT COMMISSION. The Alabama department of environmental management. (Acts 1971, No. 1260, p. 2175, § 2; Acts 1979, No. 79-277, p. 415, § 1; Acts 1982, No. 82-612, p. 1111, § 11(b).)

Cited in *Burgess Mining & Constr. Corp. v. State ex rel. Baxley*, 55 Ala. App. 61, 312 So. 2d 842, cert. denied, 294 Ala. 16, 310 So. 2d 872 (1975); *Citizens for a Better St. Clair County v. James*, 648 F.2d 246 (5th Cir. 1981).

§ 22-22-2. Purpose of chapter; declaration of policy.

Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, it is hereby declared to be the public policy of this state and the purpose of this chapter to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate

ARTICLE I

General Provisions

Section

8670.1. Citation of act

8670.2. Legislative findings and declarations

8670.3. Definitions

8670.4. Administrator for oil spill response

8670.5. Ensuring full and adequate response to oil spills

§ 8670.1. Citation of act

This chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of the Government Code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be known, and may be cited as, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

Added Stats 1990 ch 1248 § 17 (SB 2040), effective September 24, 1990.

Editor's Notes—For severability of provisions of act, see the 1990 note following Gov C § 8574.1.

§ 8670.2. Legislative findings and declarations

The Legislature finds and declares as follows:

- (a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.
- (b) Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.
- (c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.
- (d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.
- (e) California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.
- (f) Because of the inadequacy of existing cleanup and response measures and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.
- (g) Improvements in the design, construction, and operation of tankers, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.
- (h) A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.
- (i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.
- (j) California government should improve its response and management of oil spills that occur in marine waters.
- (k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.
- (l) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

Added Stats 1990 ch 1248 § 17 (SB 2040), effective September 24, 1990.

Cross References:

Persons required to register with board: Rev & Tax C § 46101.

§ 8670.3. Definitions

Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

- (a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.
- (b) "Barges" means any vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.
- (c) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the

measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, small craft marina, or construction site and does not exceed 20,000 gallons in a single storage tank. For purposes of this chapter, a small craft marina is (1) a small craft storage facility delineated by a project area that was wholly or partially funded by the Harbors and Watercraft Revolving Fund, serving small craft for pleasure or commercial use or (2) any other marina with similar sized boat slips. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(j) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(k) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner or operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(l) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(m) "Pipeline" means any pipeline used at any time to transport oil.

(n) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(o) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(p) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(q) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(r) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(s) "Vessel" means a tanker or barge as defined in this section.

oil spills. The administrator shall consider the effectiveness and engineering feasibility of the technology when establishing the requirements to provide the best achievable protection for coastal and marine resources. (d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology. (e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county. (f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, small craft marina, or construction site and does not exceed 20,000 gallons in a single storage tank. For purposes of this chapter, a small craft marina is (1) a small craft storage facility delineated by a project area that was wholly or partially funded by the Harbors and Watercraft Revolving Fund, serving small craft for pleasure or commercial use or (2) any other marina with similar sized boat slips. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." (g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code. (h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet. (i) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas. (j) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters. (k) (1) "Owner" or "operator" means any of the following: (A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel. (B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility. (C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand. (D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters. (2) "Owner or operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility. (3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility. (l) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law. (m) "Pipeline" means any pipeline used at any time to transport oil. (n) "Responsible party" or "party responsible" means any of the following: (1) The owner or transporter of oil or a person or entity accepting responsibility for the oil. (2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility. (o) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity. (p) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7. (q) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7. (r) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo. (s) "Vessel" means a tanker or barge as defined in this section.

petroleum products are transported by vessel or pipeline. The administrator shall consider the effectiveness and engineering feasibility of the technology when establishing the requirements to provide the best achievable protection for coastal and marine resources. (d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology. (e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county. (f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, small craft marina, or construction site and does not exceed 20,000 gallons in a single storage tank. For purposes of this chapter, a small craft marina is (1) a small craft storage facility delineated by a project area that was wholly or partially funded by the Harbors and Watercraft Revolving Fund, serving small craft for pleasure or commercial use or (2) any other marina with similar sized boat slips. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility." (g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code. (h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet. (i) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas. (j) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters. (k) (1) "Owner" or "operator" means any of the following: (A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel. (B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility. (C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand. (D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters. (2) "Owner or operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility. (3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility. (l) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law. (m) "Pipeline" means any pipeline used at any time to transport oil. (n) "Responsible party" or "party responsible" means any of the following: (1) The owner or transporter of oil or a person or entity accepting responsibility for the oil. (2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility. (o) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity. (p) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7. (q) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7. (r) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo. (s) "Vessel" means a tanker or barge as defined in this section.

reduce sufficiently the risk of significant discharge of

technology are unable to remove consistently the majority of

and beaches are treasured environmental and economic

undue risk from an oil spill.

and response measures and technology, the emphasis

ences of oil spills are to be minimized.

and operation of tankers, terminals, and pipelines;

emergency response stations and personnel; and stronger

to reduce the risks of and from a major oil spill.

y expensive because of the need to clean up discharged

ore ecosystem damage.

ntrol and cleanup technology in order to strengthen the

onse and management of oil spills that occur in marine

aters of the state must meet minimum safety standards

in preventing and responding to petroleum spills and it

gencies of the federal government, including the Coast

ber 24, 1990.

6101.

definitions shall govern the construction of this chapter:

il spill response appointed by the Governor pursuant to

mmercial quantities as cargo but is not equipped with a

chest level of protection which can be achieved through

and those manpower levels, training procedures, and

degree of protection achievable. The administrator's

guided by the critical need to protect valuable coastal

g (1) the protection provided by the measures, (2) the

the cost of the measures.

nistrator use a cost-benefit or cost-effectiveness analysis

g which measures to require. Instead, it is the intent of

able consideration to the protection provided by the

Attorney General in the enforcement of this chapter shall be deposited in the Fish and Wildlife Pollution Cleanup and Abatement Account in the Fish and Game Preservation Fund established pursuant to Section 12017 of the Fish and Game Code.

Added Stats 1986 ch 977 § 4.

§§ 160-170 [(Chapter 5, Dredging) was repealed by Stats 1979 ch 373 § 173.]

§§ 160-170. [Repealed by Stats 1979 ch 373 § 173.]

§ 240 [(Chapter 1) The heading of the chapter was amended to read "Scope of Division" by Stats 1981 ch 714 § 206.]

Cal Jur 3d Ships and Shipping § 64.

§ 240. Applicability of provisions to navigable waters of United States

Cal Jur 3d Ships and Shipping §§ 12, 64.

§ 250 and following sections—general references:

Cal Jur 3d Ships and Shipping §§ 12, 64, 84.

§ 260. Showing of lights on timber rafts on specified rivers at night; Penalty for neglect

43 Cal Jur 3d Logs and Timber § 8.

§ 280 and following sections—general references:

Cal Jur 3d Ships and Shipping §§ 64, 82, 84.

§ 292. Apportionment of losses

When two or more parties have contributed by their fault to cause property damage in a maritime collision or stranding, liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault, and liability for such damage is to be allocated equally

only when the parties are equally at fault or when it is not possible fairly to measure the comparative degree of their fault. United States v. Reliable Transfer Co. (1975) 421 US 397, 44 L Ed 2d 251, 95 S Ct 1708.

§ 293. Absolute liability

Where damage arises out of, or is caused directly and proximately by, the acts of an owner or operator, without the interposition of any external or independent agency which could not reasonably be foreseen, any owner or operator of any vessel engaged in the commercial transportation, storage in a vessel, or transfer of petroleum, fuel oil, or hazardous substances shall be absolutely liable without regard to fault for any property damage incurred by the state or by any county, city or district, or by any person, within the state, and for any damage or injury to the natural resources of the state, including, but not limited to, marine and wildlife resources, caused by the discharge or leakage of petroleum, fuel oil, or hazardous substances from such vessel into or upon the navigable waters of the state.

As used in this section, "owner or operator" means any person owning or operating, or chartering by demise, such vessel; "person" means an individ-

ual, firm, corporation, association, or partnership; and "navigable waters of the state" means all portions of the sea within the territorial jurisdiction of the state and all inland waters navigable in fact.

As used in this section, "hazardous substance" means any substance designated as such pursuant to paragraph (2) of subdivision (b) of Section 1321 of Title 33 of the United States Code.

This section shall be known and may be cited as the Miller Anti-Pollution Act of 1971.

Amended Stats 1980 ch 231 § 1.

Amendments:

1980 Amendment: (1) Amended the first paragraph by substituting (a) "could not reasonably" for "was not or could not" before "be foreseen"; (b) "storage in a vessel, or transfer of petroleum, fuel oil, or hazardous substances" for "of petroleum or fuel oil" after "transportation"; and (c) "fuel oil, or hazardous substances" for "or fuel oil" before "from such vessel"; (2) amended the second paragraph by (a) deleting "the term" after "this section"; (b) substituting the semicolon for "the term" after "such vessel"; and (c) substituting "or partnership; and" for "or partnership, and the term"; and (3) added the third paragraph.

Liability, under § 311(b)(6) of the Federal Water Pollution Control Act (33 USCS § 1321(b)(6)), of owner, operator, or person in charge of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance, 55 ALR Fed 141.

Liability, under § 311(f, g) of the Federal Water Pollution Control Act (33 USCS § 1321(f, g)), to United States of owner or operator of onshore or offshore facility, or vessel, for discharge of oil or hazardous substance, 56 ALR Fed 343.

Liability, under sec. 311(i) of Federal Water Pollution Control Act (33 USCS sec. 1321(i)), of United States to owner or operator of offshore or onshore facility, or vessel, for removal costs of oil or hazardous substance, 59 ALR Fed 282.

§ 294. Strict liability for damages arising out of discharge of natural gas or other specified activities

(a) Any person responsible for natural gas, oil, drilling waste, or exploration, as defined in paragraph (4) of subdivision (g), shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of natural gas, oil, or drilling waste into or onto marine waters, or by any exploration in or upon marine waters, from any of the following sources:

- (1) Any offshore well or undersea site at which there is exploration for or extraction or recovery of natural gas or oil.
- (2) Any offshore facility, oil rig, or oil platform at which there is exploration for, or extraction, recovery, processing, or storage of, natural gas or oil.
- (3) Any vessel offshore in which natural gas, oil, or drilling waste is transported, processed, or stored.
- (4) Any pipeline located offshore in which natural gas, oil, or drilling waste is transported.

(b) A responsible person is not liable to an injured party under this section for any of the following:

- (1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.
- (2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

- (3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.
- (4) Natural seepage not caused by a responsible party.
- (5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.
- (6) Damages which arise out of, or are caused by, a discharge which is authorized by a state or federal permit.
- (c) Upon motion and sufficient showing by a person deemed to be responsible under this section, the court shall join to the action any other person who may be responsible under this section.
- (d) In determining whether a party is a responsible person under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.
- (e) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses, to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.
- (f) This section does not prohibit any person from bringing an action for damages caused by natural gas, oil, or drilling waste, or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.
- (g) As used in this section, the following definitions apply:
- (1) "Damages" are damages for any of the following:
- (A) Injury or harm to real or personal property.
 - (B) Business loss, including loss of income.
 - (C) Costs of cleanup, removal, or treatment of natural gas, oil, or drilling waste.
 - (D) Cost of wildlife rehabilitation.
- (E) When the injured party is the state, or a city, county, or district, in addition to any injury described in subparagraphs (A) to (D), inclusive, damages include all of the following:
- (i) Injury to natural resources or wildlife, and loss of use and enjoyment of public beaches and other public resources or facilities, within the jurisdiction of the state, city, county, or district.

- (ii) Costs incurred to monitor the cleanup of the natural gas, oil, or drilling waste.
- (iii) Loss of taxes.
- (iv) Costs to assess damages to natural resources, wildlife, or habitat.
- (2) "Injured party" means any person who suffers damages from natural gas, oil, or drilling waste, which is discharged or leaks into marine waters, or from offshore exploration. The state, or a city, county, or district, may be an injured party.
- (3) "Natural gas" includes natural gas, liquified natural gas, and natural gas byproducts. "Natural gas" does not include natural gas carried in a vessel for use as fuel in that vessel.
- (4) "Exploration" means boring and soil sampling.
- (5) "Oil" and "drilling wastes" include, but are not limited to, petroleum, refined or processed petroleum, petroleum byproducts, oil sludge, oil refuse, oil mixed with wastes, and chemicals or other materials used in the exploration, recovery, or processing of oil. "Oil" does not include oil carried in a vessel for use as fuel in that vessel.
- (6) "Person" means an individual, proprietorship, firm, partnership, joint venture, corporation, or other business entity, or an association or other organization.
- (7) "Responsible person" means any of the following:
- (A) The owner or transporter of natural gas, oil, or drilling waste which causes an injury covered by this section.
 - (B) The owner, operator, or lessee of, or person who charters by demise, any offshore well, undersea site, facility, oil rig, oil platform, vessel, or pipeline which is the source of natural gas, oil, drilling waste, or is the source or location of exploration which causes an injury covered by this section.
- "Responsible party" does not include the United States, the state, or any public agency.
- (h) Liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.
- (i) Section 3291 of the Civil Code applies to actions brought under this section.
- (j) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or theory of law.

Added Stats 1986 ch 1498 § 2. Amended Stats 1987 ch 56 § 99.

Amendments:

1987 Amendment: Routine code maintenance.

Note—Stats 1986 ch 1498 provides:

SECTION 1. The Legislature hereby finds and declares as follows:

- (a) Offshore oil and natural gas exploration, production, processing, recovery, and transportation pose a serious threat to the state's coastal environment.
- (b) Earthquakes, violent storms, and dense fog are common off the California coast, and must be anticipated by any person engaging in offshore oil or gas exploration, recovery, or transportation. Certain areas of the California coast are well known to be particularly dangerous, and accidents can be avoided by not locating offshore wells, facilities, or pipelines in these areas.

interest in such real estate over which the commissioner's lien is entitled to priority. Upon presentation of a certificate of lien, the town clerk shall endorse thereon his identification and the date and time of receipt and forthwith record it in accordance with section 42a-9-409.

(c) Except as provided in subsection (a), such lien shall take precedence over all transfers and encumbrances recorded on or after June 3, 1985, in any manner affecting such interest in such real estate or any part of it on which the spill occurred or from which the spill emanated, or real estate which has been included, within the preceding three years, in the property description of such real estate and is contiguous to such real estate. This subsection shall not apply to real estate which consists exclusively of residential real estate, including but not limited to, residential units in any common interest community, as defined in section 47-202.

(d) In the case of all other real estate, including real estate which consists exclusively of residential real estate, including but not limited to, residential units in any common interest community, as defined in section 47-202, the lien shall take precedence over any transfer or encumbrance recorded after the commissioner files with the town clerk notice of intent to file a lien on the land records in the town in which the real estate is located.

(e) When any amount with respect to which a lien has been recorded under the provisions of this section has been paid or reduced, the commissioner, upon request of any interested party, shall issue a certificate discharging or partially discharging such lien, which certificate shall be recorded in the same office in which the lien was recorded. The town clerk shall note the recording of the certificate of discharge upon the original notice of lien. Any action for reduction or discharge of such lien or any appeal therefrom shall be in accordance with the provisions of sections 49-35a to 49-35c, inclusive, except that the forms prescribed in section 49-35a shall be modified as the court deems appropriate. Any action for the foreclosure of such lien shall be brought by the attorney general in the name of the state in the superior court for the judicial district in which the property subject to such lien is situated, or, if such property is located in two or more judicial districts, in the superior court for any one such judicial district, and the court may limit the time for redemption or order the sale of such property or make such other or further decree as it judges equitable.

(P.A. 84-535, S. 2; P.A. 85-443, S. 2, 5; P.A. 87-475, S. 3.)

History: P.A. 85-443 divided section into Subsecs. and amended Subsec. (a) to apply section to amounts paid after June 3, 1985, instead of October 1, 1984; inserted new provisions as Subsec. (b) to require filing of the lien in the town clerk's office; amended Subsec. (c) to give the lien precedence over transfers and encumbrances to property on which the spill occurred or emanated from three years prior to the spill except residential real estate; inserted new provisions as Subsec. (d) to give the lien precedence over all transfers after filing, and amended Subsec. (e) to authorize the commissioner to issue a certificate partially discharging the lien; P.A. 87-475 amended Subsec. (a) by making the lien apply only to real estate on which a spill occurred, or from which it emanated and adding provision limiting the lien to prospective transfers only, amended Subsec. (b) by requiring that town clerk make certain endorsements and amended Subsec. (e) by requiring the town clerk to note any discharge on the original lien notice.

Sec. 22a-452b. Exemption. Notwithstanding any provision of the general statutes, a mortgagee who acquires title to real estate by virtue of a foreclosure or tender of a deed in lieu of foreclosure, shall not be liable for any assessment, fine or other costs imposed by the state for any spill upon such real estate beyond the value of such real estate, provided such spill occurred prior to the date of acquisition of title to such real estate by such mortgagee.

(P.A. 85-443, S. 3, 5.)

Sec. 22a-452c. Definition of spill. For the purposes of sections 22a-452a and 22a-452b, "spill" means the discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous waste.

(P.A. 85-443, S. 1, 5.)

CHAPTER 62. OIL POLLUTION LIABILITY

Sec.	Sec.
6201. Findings; purpose.	6208. Liability.
6202. Definitions.	6209. Financial responsibility.
6203. Pollution of waters and lands prohibited.	6210. Notification; designation; advertisement.
6204. Removal of illegal discharge.	6211. Claims settlement.
6205. Enforcement.	6212. Adjudication by Secretary.
6206. Service of process on owners or operators of vessels or facilities who are nonresidents or corporations not incorporated in Delaware.	6213. Appeal to Board.
6207. Damages; claimants.	6214. Appeal from Board.
	6215. Subrogation.
	6216. Rules and regulations.

§ 6201. Findings; purpose.

(a) The General Assembly finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society and as a source of public use and private commerce in fishing, crabbing and gathering other marine life used and useful in food production and other commercial activities.

(b) The General Assembly further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interest with the least possible conflicts in such diverse uses.

(c) The General Assembly further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and storage of such products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine related activities; and to the beauty of the Delaware coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth and that such state interests outweigh any restrictions or burdens imposed by the General Assembly upon those engaged in transferring oil, petroleum products and their by-products and related activities.

(d) The General Assembly intends by the enactment of this legislation to exercise the police power of the State through the Department of Natural Resources and Environmental Control by conferring upon said Department the exclusive power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide proce-

dures whereby persons suffering damage from such occurrences may be promptly made whole; and to guarantee that all persons using the waters of the State for the transportation or transfer of oil, petroleum products and their by-products meet minimum requirements of financial responsibility.

(e) The General Assembly further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the State's interest in such preservation outweighs any burdens of absolute liability imposed by the General Assembly upon those engaged in transferring oil, petroleum products and their by-products and related activities. (61 Del. Laws, c. 127, § 1.)

§ 6202. Definitions.

The following words and phrases shall have the meanings ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) "Claim" shall mean a demand in writing for damages.

(2) "Claimant" shall mean anyone who asserts a claim.

(3) "Cleanup costs" shall mean costs of reasonable measures taken, after an incident has occurred, to prevent, minimize or mitigate further oil pollution from that incident.

(4) "Discharge" shall mean any emission, intentional or unintentional, and shall include spilling, leaking, pumping, pouring, emptying or dumping.

(5) "Facility" shall mean a structure or group of structures (other than a vessel or vessels) including trucks, pipelines, bulk storage tanks and tank cars, used for the purpose of transporting, producing, processing, storing, transferring or handling oil.

(6) "Guarantor" shall mean the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

(7) "Incident" shall mean any occurrence or series of occurrences, involving 1 or more vessels, facilities or any combination thereof, which causes or poses any threat of oil pollution in or upon the waters and lands of the State.

(8) "Oil" shall mean petroleum, including crude oil or any fraction or residue therefrom.

(9) "Oil pollution" shall mean any discharge of oil that results in a film on, emulsion in or sludge beneath the waters of the State or its shoreline.

(10) "Operator" shall mean:

a. In the case of a vessel, a charterer by demise or any other person who is responsible for the operation, manning, victualing and supplying of the vessel; or

b. In the case of a facility, any person responsible for the operation of the facility by agreement with the owner.

(11) "Owner" shall mean any person holding title to, or, in the absence of title, any other indicia of ownership of a vessel or facility, but does not include a person having only a security interest in, or security title to, a

vessel or facility, under a contract of conditional sale, an equipment trust, a chattel or corporate mortgage, a lease which is the functional equivalent of an extension of credit or any similar instrument.

(12) "Person" shall mean an individual, firm, corporation, association or partnership.

(13) "Person in charge" shall mean the individual immediately responsible for the operation of a vessel or facility.

(14) "Refinery" shall mean a terminal which receives crude oil for the purpose of refinement.

(15) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(16) "Ship" shall mean any vessel carrying oil in bulk as cargo.

(17) "Terminal" shall mean a facility, located within the boundaries of the State which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility or onshore pipeline.

(18) "Vessel" shall mean every description of watercraft or other artificial contrivance used, or capable of being used, as a means of water transportation.

(19) "Waters of the State" shall mean those waters within the boundaries of the State as defined in § 201 of Title 29, including those waters of the territorial sea which are in direct contact with the coast of Delaware and extending from the line of ordinary low water seaward for a distance of 3 geographical miles. (61 Del. Laws, c. 127, § 1.)

§ 6203. Pollution of waters and lands prohibited.

The discharge of oil which causes an incident is prohibited. (61 Del. Laws, c. 127, § 1.)

§ 6204. Removal of illegal discharge.

Any person determined by the Secretary to be responsible for causing an incident shall immediately undertake to remove such oil pollution to the Secretary's satisfaction. If the person responsible fails immediately to undertake to remove the oil pollution to the Secretary's satisfaction, the Secretary may undertake the removal of such oil pollution and may retain agents and contractors for such purpose who shall operate under the direction of the Secretary. The Secretary may authorize a third person, affected by such oil pollution, to expend funds to remove said oil pollution at the expense of the person responsible for same. All moneys expended by the Secretary under this section and recovered under § 6205 of this title are hereby appropriated to the Department of Natural Resources and Environmental Control to carry out the purposes of this chapter. (61 Del. Laws, c. 127, § 1.)

§ 6205. Enforcement.

(a) Any person who violates a provision of this chapter or any rule or regulation promulgated thereunder shall be liable in any court of competent jurisdiction for a civil penalty of not less than \$1,000 nor more than \$10,000 for each day of violation. Any civil penalties collected under this section are hereby appropriated to the Department to carry out the purposes of this chapter.

(b) The Secretary may seek appropriate relief, including injunctive relief, in any court of competent jurisdiction to prohibit and prevent such violation or violations from continuing.

(c) The Secretary may also bring an action in any court of competent jurisdiction for the collection of expenses incurred by the Department resulting from the violation of this chapter or any rule or regulation promulgated thereunder. (61 Del. Laws, c. 127, § 1; 65 Del. Laws, c. 319, § 1.)

§ 6206. Service of process on owners or operators of vessels or facilities who are nonresidents or corporations not incorporated in Delaware.

(a) Any nonresident who, either in person or through others, owns or operates a vessel or facility in or upon the lands or waters of this State or any nonresident who, either in person or through others, owns or operates a vessel or facility outside the State, which while located outside the State causes an incident in or upon the lands or waters of the State shall be deemed thereby to have submitted himself to the jurisdiction of the courts of this State and to have appointed and constituted the Secretary of State of this State or his designee as his agent for the acceptance of legal process in any action under this chapter. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3112 of Title 10.

(b) Any corporation, not incorporated in this State, which itself or through others owns or operates a vessel or facility in or upon the lands or waters of this State or any such corporation which itself or through others owns or operates a vessel or facility outside the State which, while outside the State, causes an incident in or upon the lands or waters of this State, shall be deemed thereby to have sufficient contacts with this State to have submitted itself to the jurisdiction of the courts of this State. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3111 of Title 10. (61 Del. Laws, c. 127, § 1.)

es.
osit motor fuel in
egistered, without
lay.
enses of facilities.
responsibility.
charge.
of remedies and
on for damages under

376.30-376.319,
state preemption,
contractors; indemnity

of the department
integrity plan.
ainment and integrity plan

76.317,
tion and Production Board
ation; purposes; funding
program inspection and

vention and Control Act
1-376.17, 376.19-376.21
tant Spill Prevention and

s. 79, ch. 83-310.

with respect to pollution

nd declares that the high
coast of the state is as a
ecreation.

finds and declares that
s a matter of the highest
at such use can only be
ning the coastal waters
and public lands adjacent
to a pristine condition in
multiple use accommodation
broadest possible protection
ests.

finds and declares that
tants between vessels
d vessels, between ad-
d between terminal facilities
ne state and state waters

d escapes of pollutants
ures involved in the trans-
n of such products pose
mage to the environment
s of shore front property
n, to citizens of the state

and other interests deriving livelihood from marine-
related activities, and to the beauty of the Florida coast;
(f) Such hazards have frequently occurred in the
past, are occurring now, and present future threats of
potentially catastrophic proportions, all of which are
expressly declared to be inimical to the paramount inter-
ests of the state as herein set forth; and

(c) Such state interests outweigh any economic bur-
dens imposed by the Legislature upon those engaged
in transferring pollutants and related activities.

(4) The Legislature intends by the enactment of ss.
376.011-376.21 to exercise the police power of the state
by conferring upon the Department of Natural
Resources power to:

(a) Deal with the hazards and threats of danger and
damage posed by such transfers and related activities;
(b) Require the prompt containment and removal of
pollution occasioned thereby; and

(c) Establish a fund to provide for the inspection and
supervision of such activities and guarantee the prompt
payment of reasonable damage claims resulting there-
from.

(5) The Legislature further finds and declares that
the preservation of the public uses referred to herein is
of grave public interest and concern to the state in pro-
tecting its general welfare, preventing diseases, promot-
ing health, and providing for the public safety and that
the state's interest in such preservation outweighs any
burdens of liability imposed by the Legislature upon
those engaged in transferring pollutants and related
activities.

(6) The Legislature further declares that it is the
intent of ss. 376.011-376.21 to support and complement
applicable provisions of the Federal Water Pollution Con-
trol Act, as amended, specifically those provisions relat-
ing to the national contingency plan for removal of pollu-
tants.

History.—s. 2, ch. 70-244; s. 2, ch. 74-336.

376.031 Definitions.—When used in ss. 376.011-
376.21, unless the context clearly requires otherwise,
the term:

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fah-
renheit.

(2) "Board" means the board of arbitration.

(3) "Damages" means the documented extent of any
destruction to or loss of any real or personal property,
or the documented extent of any destruction of the envi-
ronment and natural resources, including all living things
except human beings, as the direct result of the dis-
charge of a pollutant.

(4) "Department" means the Department of Natural
Resources.

(5) "Director" means the executive director of the
Department of Natural Resources.

(6) "Discharge" includes, but is not limited to, any
spilling, leaking, seeping, pouring, emitting, emptying,
or dumping which occurs within the territorial limits of
the state or outside the territorial limits of the state and
affects lands and waters within the territorial limits of the
state.

(7) "Discharge cleanup organization" means any
group, incorporated or unincorporated, of owners or

operators of waterfront terminal facilities in any port or
harbor of the state, and any other person who may elect
to join, organized for the purpose of containing and
cleaning up discharges of pollutants through coopera-
tive efforts and shared equipment and facilities. For the
purposes of ss. 376.011-376.21, any third-party
cleanup contractor or any local government shall be rec-
ognized as a discharge cleanup organization, provided
such contractor or local government is properly certified
by the department.

(8) "Fund" means the Florida Coastal Protection
Trust Fund.

(9) "Other measurements" means measurements
set by the department for products transferred at termi-
nals which are other than fluid or which are not com-
monly measured by the barrel.

(10) "Owner" means any person owning a terminal
facility; "operator" means any person operating a termi-
nal facility, whether by lease, contract, or other form of
agreement.

(11) "Person" means any individual, partner, joint ven-
ture, corporation; any group of the foregoing, organized
or united for a business purpose; or any governmental
entity.

(12) "Person in charge" means the person on the
scene who is in direct, responsible charge of a terminal
facility or vessel from which pollutants are discharged,
when the discharge occurs.

(13) "Pollutants" includes oil of any kind and in any
form, gasoline, pesticides, ammonia, chlorine, and deriv-
atives thereof, excluding liquefied petroleum gas.

(14) "Pollution" means the presence in the outdoor
atmosphere or waters of the state of any one or more
substances or pollutants in quantities which are or may
be potentially harmful or injurious to human health or
welfare, animal or plant life, or property or which may
unreasonably interfere with the enjoyment of life or prop-
erty, including outdoor recreation.

(15) "Registrant" is a terminal facility required to pos-
sess a valid registration certificate to operate as a termi-
nal facility.

(16) "Technical feasibility" or "technically feasible"
means that given available technology, a restoration
project can be successfully completed.

(17) "Terminal facility" means any waterfront or off-
shore facility of any kind, other than vessels not owned
or operated by such facility, and directly associated
waterfront or offshore appurtenances including pipe-
lines located on land, including submerged lands, or on
or under the surface of any kind of water, which facility
and related appurtenances are used or capable of being
used for the purpose of drilling for, pumping, storing,
handling, transferring, processing, or refining pollutants,
including, but not limited to, any such facility and related
appurtenances owned or operated by a public utility or
a governmental or quasi-governmental body. A vessel
shall be considered a terminal facility only in the event
of a ship-to-ship transfer of pollutants, and only that
vessel going to or coming from the place of transfer and
the terminal facility. For the purposes of ss. 376.011-
376.21, the term "terminal facility" shall not be construed
to include waterfront facilities owned and operated by
governmental entities acting as agents of public

convenience for operators engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants; however, each operator engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such a governmental entity shall be construed as a terminal facility.

(18) "Transfer" or "transferred" includes onloading or offloading between terminal facility and vessel, vessel and vessel, or terminal facility and terminal facility.

(19) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.

History.—s. 3, ch. 70-244; s. 1, ch. 71-243; s. 3, ch. 74-336; s. 1, ch. 80-382; s. 80, ch. 83-310; s. 37, ch. 85-81; s. 10, ch. 90-54.

376.041 Pollution of waters and lands of the state prohibited.—The discharge of pollutants into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state in the manner defined by ss. 376.011-376.21 is prohibited.

History.—s. 4, ch. 70-244; s. 4, ch. 74-336.

376.051 Powers and duties of the Department of Natural Resources.—

(1) The powers and duties conferred by ss. 376.011-376.21 shall be exercised by the Department of Natural Resources and shall be deemed to be an essential governmental function in the exercise of the police power of the state. The Department of Environmental Regulation is directed to cooperate with the Department of Natural Resources and to offer consultative services, enforcement, prosecution, and technical advice to the department. The department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate in said request.

(2) The powers and duties of the department under ss. 376.011-376.21 shall extend to the boundaries of the state described in s. 1, Art. II of the State Constitution.

(3) Registration certificates and spill prevention and response certificates required under ss. 376.011-376.21 shall be issued from the department subject to such terms and conditions as are set forth in ss. 376.011-376.21 and as set forth in rules promulgated by the department as authorized herein.

(4) Whenever it becomes necessary for the state to protect the public interest under ss. 376.011-376.21, it shall be the duty of the department to keep an accurate record of costs and expenses incurred and thereafter diligently to pursue the recovery of any sums so incurred from the person responsible or from the Government of the United States under any applicable federal act.

(5) The department may bring an action on behalf of the state to enforce the liabilities imposed by s. 376.12. The Department of Legal Affairs shall represent the department in any such proceeding.

(6) Within 120 days of July 1, 1983, the department shall adopt rules providing for the coordination of the respective duties of the Department of Environmental Regulation and the Department of Natural Resources with respect to the implementation of ss. 376.011-376.21. Such rules shall specifically establish proce-

dures that determine which of the two agencies shall respond in cases of specific types of pollutant discharges, and such rules shall establish minimum response times. The rules shall also specify and procedures for the expenditures of Florida Conservation Trust Fund moneys for pollution incidents that require action by the Department of Environmental Regulation.

History.—s. 5, ch. 70-244; s. 2, ch. 71-137; s. 5, ch. 74-336; s. 82, ch. 83-310; s. 11, ch. 90-54.

376.06 Operation of terminal facility without required registration prohibited; penalty.—

(1) No person shall operate or cause to be operated a terminal facility as defined in s. 376.031, except product facilities and marine fueling facilities, as defined in s. 376.301, without a registration certificate issued by the department. Any person who violates this section in violation of the terms and requirements of such certification commits a noncriminal infraction. The civil penalty for such infraction is \$500. Any person charged by the department with a noncriminal infraction under this section may:

(a) Pay the civil penalty, either by mail or in person, within 10 days of the date of receiving the citation;

(b) Elect to appear for a hearing before the county court in the county where the terminal facility is located. The date, time, and location of the hearing shall be indicated on the citation. If the court determines that the infraction has been proven beyond a reasonable doubt, the court may impose the civil penalty prescribed in this subsection and may also impose court costs and other applicable charges.

(2) Registration certificates shall be issued on an annual basis and shall expire on December 31 annually subject to such terms and conditions as the department may determine are necessary to carry out the purposes of ss. 376.011-376.21.

(3) As a condition precedent to the issuance or renewal of a registration certificate, the department shall require satisfactory evidence that the applicant has implemented, or is in the process of implementing, state and federal plans and regulations for prevention, control, and abatement of pollution when a discharge occurs.

(4) Registration certificates issued to any terminal facility shall include vessels used to transport pollutants between the facility and vessels within state waters.

(5) The department shall require, in connection with the issuance of a terminal facility registration certificate, the payment of a reasonable fee for processing applications for registration certificates. This fee shall be in addition to the excise tax imposed by s. 206.9935(1). The fee shall be reasonably related to the administrative costs of verifying data submitted pursuant to obtaining the certificates and reasonable inspections; however, the fee shall not exceed \$1,000 per terminal facility per year.

(6) Every owner or operator of a terminal facility subject to the provisions of this section shall obtain a registration certificate. The department shall issue a registration certificate upon the showing that the registrant can provide all required equipment to prevent, contain, and remove discharges of pollutants.

CHAPTER 14

US MATERIAL SPILLS OR RELEASES

Sec.

d or released
material; pro-
and regula-
Natural Re-
Environmental

Protection Division of spill or
release; division development
of procedures to notify other
governmental agencies.
12-14-4. Civil penalties; procedures for
imposing penalties.

apter became retained the Chapter 13 designation, but
the chapter enacted by Ga. L. 1988, p. 354
has been redesignated as Chapter 14 and
the Code sections have been renumbered
accordingly.
- Two 1988
to this title.
-5, the chap-
p. 2072 has

er, the term:

he Board of Natural Resources of the State of

s the director of the Environmental Protection
tment of Natural Resources.

the Environmental Protection Division of the
al Resources.

erial" means any material or substance in a liq-
form which is:

onous to human, plant, or animal life;

dic;

combustible;

reactive; or

ste.

it is not limited to gasoline, crude oil, fuel oil,
il, sludge, oil refuse, oil mixed with wastes, and
related product.

s an individual, trust, firm, joint-stock com-
nership, association, county, municipal corpo-

Georgia 1488

12-14-2 OIL OR HAZARDOUS MATERIAL SPILLS OR RELEASES 12-14-4

ration, political subdivision, interstate body, the state and any agency
or authority thereof, and the federal government and any agency
thereof.

(7) "Spill or release" means the discharge, deposit, injection, dump-
ing, spilling, emitting, releasing, leaking, or placing of any hazardous
material into the air or into or on any land or water of the state, except
from an underground storage tank and all plumbing and piping relat-
ing thereto or except high-level or low-level radioactive waste from a
federally licensed nuclear facility or as authorized by state or federal
law or a permit from the division. This term shall also mean the
discharge of oil into waters of this state which will cause a significant
film or sheen upon or discoloration of the surface of such waters or
adjoining shorelines or cause a sludge or emulsion to be deposited
beneath the surface of such waters or upon adjoining shorelines. Acci-
dental discharges of oil made by an individual during maintenance of
that individual's personal vehicle or farm machinery shall be exempt.
(Code 1981, § 12-14-1, enacted by Ga. L. 1988, p. 354, § 1.)

12-14-2. Reporting of spilled or released oil or hazardous material; promulgation of rules and regulations by Board of Natural Resources.

Oil or hazardous material spilled or released shall be reported under
Code Section 12-14-3. The board is authorized to promulgate rules and
regulations necessary for the enforcement of this chapter. (Code 1981,
§ 12-14-2, enacted by Ga. L. 1988, p. 354, § 1.)

12-14-3. Notification of Environmental Protection Division of spill or release; division development of procedures to notify other governmental agencies.

(a) Any person owning or having control over any oil or hazardous
material who has knowledge of a spill or release shall immediately notify
the division through the Department of Natural Resources Emergency
Operations Center as soon as that person knows of the spill or release.

(b) The division shall develop procedures to provide notice to other
state, federal, or local governmental agencies. (Code 1981, § 12-14-3,
enacted by Ga. L. 1988, p. 354, § 1.)

12-14-4. Civil penalties; procedures for imposing penalties.

(a) Any person knowingly violating any provision of this chapter or
rules or regulations established pursuant to this chapter shall be liable
for a civil penalty of not more than \$1,000.00 per day. Each day during
which the violation continues may be considered a separate violation.

or persons who are the source of other contamination, in any case where in the governor's opinion the existing laws are not adequate to assure the public health and safety; provide for the care and treatment of the persons; supplement the provisions of sections 325-32 to 325-37 concerning compulsory immunization of persons against disease and institute additional compulsory immunization programs; provide for the isolation or closing of property which is a source of contamination or is in a dangerous condition in any case where, in the governor's opinion, the existing laws are not adequate to assure the public health and safety, and designate as public nuisances acts, practices, conduct, or conditions which are dangerous to the public health or safety or to property; authorize that public nuisances be summarily abated, and if need be that the property be destroyed, by any police officer or authorized person, or provide for the cleansing or repair of property, and if the cleansing or repair is to be at the expense of the owner, the procedure therefor shall follow as nearly as may be the provisions of section 322-2, which are made applicable; further, authorize without the permission of the owners or occupants, entry on private premises for any of such purposes.

[am L 1986, c 339, §4]

Revision Note

Only the paragraphs amended are compiled in this Supplement.

§128-18 Immunities; rights.

Case Notes

County immune when engaged in disaster relief, whether or not governor issues disaster proclamation. 6 H. App. 582, 733 P.2d 1224.

§128-23 Determination of compensation. Whenever the governor requisitions and takes over any property or the temporary use thereof, the owner, or other person entitled thereto, shall be paid as compensation for the property or use, such sum as the governor determines to be fair and just, within twenty days after it has been requisitioned and taken; provided that the compensation for temporary use may be paid in monthly or lesser installments. If any person is unwilling to accept, as full and complete compensation for the property or use, the sum determined by the governor, the person shall be paid seventy-five per cent of the sum determined by the governor, and shall be entitled to sue the State for such additional sum as, when added to the sum already received by the person, the person may consider fair and just compensation for such property or use, in the manner provided by chapter 661; provided that the suit is instituted within two years after the requisition in the case of the taking of real property in fee simple, or within one year after the requisition in all other cases, subject, to sections 657-13 to 657-15 which are hereby made applicable to such a suit; except that no more than six months shall be allowed for the bringing of a suit after the appointment of a guardian of the property of the person under disability, or the removal of the disability, or after the appointment of personal representatives; provided further that recovery shall be confined to the fair market value of the property or its fair rental value, as the case may be, without any allowance for prospective profits, punitive or other damages. Whenever the owner of

property, or other person entitled to compensation on account of the requisitioning of property or the use thereof, is under a disability, or has died, and no guardian, or personal representative has been appointed, the State acting through the attorney general, may apply for the appointment of a guardian of the property of the person, or for the appointment of a personal representative. [L 1951, c 268, pt of §2; RL 1955, pt of §359-21; HRS §128-23; am L 1976, c 200, pt of §1; am L 1986, c 339, §5]

Hawaii

CHAPTER 128D ENVIRONMENTAL RESPONSE LAW

SECTION

- 128D-1 DEFINITIONS
- 128D-2 ENVIRONMENTAL RESPONSE REVOLVING FUND
- 128D-3 REPORTABLE QUANTITIES; DUTY TO REPORT
- 128D-4 STATE RESPONSE AUTHORITIES; USES OF FUND
- 128D-5 RECOVERY OF COSTS
- 128D-6 LIABILITY
- 128D-7 STATE CONTINGENCY PLAN; RULES
- 128D-8 CIVIL PENALTIES
- 128D-9 INJUNCTIVE RELIEF
- 128D-10 KNOWING RELEASES
- 128D-11 RECORDKEEPING REQUIREMENTS
- 128D-12 CONFIDENTIALITY OF INFORMATION
- 128D-13 REPORTING REQUIREMENTS
- 128D-14 PUBLIC PARTICIPATION
- 128D-15 EMPLOYEE PROTECTION
- 128D-16 REPEALED
- 128D-17 JUDICIAL REVIEW
- 128D-18 APPORTIONMENT AND CONTRIBUTION
- 128D-19 ADMINISTRATIVE REVIEW OF ORDERS
- 128D-20 DE MINIMIS SETTLEMENTS
- 128D-21 CITIZEN'S SUITS
- 128D-22 EXEMPTION FROM DUPLICATIVE REGULATION
- 128D-23 EXEMPTION FROM STATE AND COUNTY PERMITS

Note

Chapter title amended by L 1990, c 298, pt of §18.

§128D-1 Definitions. As used in this chapter, unless the context otherwise requires:

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, P.L. 96-510 (42 U.S.C. §§9601-9675), as amended.

"Clean Water Act" means the Federal Water Pollution Control Act of 1972, P.L. 92-500 (33 U.S.C. §§1251-1387), as amended.

"Contractual relationship" means relationships involving land contracts, deeds or other instruments transferring title or possession.

"Department" means the department of health.

"Director" means the director of health.

"Environment" means any waters, including surface water, ground water, or drinking water supply, any land surface or any subsurface strata, or any ambient air within the State of Hawaii or under the jurisdiction of the State.

"Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance or pollutant

or contaminant has been deposited, stored, disposed of, or placed, or otherwise comes to be located; but does not include any consumer product in consumer use.

"Fund" means the environmental response revolving fund.

"Hazardous substance" includes any substance designated pursuant to section 311(b)(2)(A) of the Clean Water Act; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to §3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Clean Water Act; any hazardous air pollutant listed under section 112 of the Clean Air Act, as amended (42 U.S.C. §§7401-7626); any imminently hazardous chemical substance or mixture regulated under section 7 of the Toxic Substances Control Act, as amended (15 U.S.C. §§2601-2671), oil, trichloropropane, and any other substance or pollutant or contaminant designated by rules adopted pursuant to this chapter.

In adopting rules, the director shall consider any substance or mixture of substances, including but not limited to feedstock materials, products, or wastes, which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial present or potential hazard to human health, to property, or to the environment when improperly stored, transported, released, or otherwise managed.

"National contingency plan" means the national contingency plan published under section 311(c) of the Clean Water Act or revised pursuant to section 105 of CERCLA.

"Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the State of Hawaii, any county, or by the United States to the extent that the latter are subject to state law.

"Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes, crude oil or any fraction or residue.

"Owner" or "operator" means (1) in the case of a vessel, any person owning, operating, or chartering by demise the vessel, (2) in the case of an onshore facility or an offshore facility, any person owning or operating the facility, and (3) in the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of a state or local government, any person who owned, operated, or otherwise controlled activities at the facility immediately beforehand. "Owner" or "operator" does not include a person or financial institution who holds or held a lien, encumbrance, security interest, or loan agreement that attaches or is attached to the facility, vessel, or real property; provided that the person or financial institution makes or made no decision or takes or took no action that causes or caused or contributes or contributed to a release or threatened release of a hazardous substance from or at a facility, vessel, or real property.

"Person" means any individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, political subdivision of the State, or, to the extent they are subject to this chapter, the United States or any interstate body.

"Pollutant or contaminant" means any element, substance, compound, or mixture, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism either directly from the environment or

indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance or pollutant or contaminant into the environment, (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant); but excludes:

- (1) Any release which results in exposure of persons solely within a workplace, with respect to a claim which such exposed persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (3) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. §2011), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 U.S.C. §2210;
- (4) Any release resulting from the normal application of fertilizer;
- (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act;
- (6) Releases from sewerage systems collecting and conducting primarily domestic wastewater; or
- (7) Any release permitted by any federal, state, or county permit or other legal authority.

"Remedy" or "remedial action" means those actions consistent with permanent correction taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance or pollutant or contaminant into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment.

- (1) The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches; clay cover, neutralization, cleanup of released hazardous substances or pollutants or contaminants or associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health or welfare or the environment.
- (2) The term includes the costs of permanent relocation of residents and businesses and community facilities where the director determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition offsite of hazardous substances or pollutants or contaminants, or may otherwise be necessary to protect the public health or welfare.
- (3) The term does not include the offsite transport of hazardous substances or pollutants or contaminants, or the storage, treatment, destruction, or secure disposition offsite of such hazardous substances or pollutants or

MINERALS—ENVIRONMENTAL QUALITY

constitute a separate violation. Prohibit the collection, transportation, or commingling with solid waste by any person for disposal of solid waste, unless it can be demonstrated that lead acid batteries had been mixed or commingled, and/or disposed and unless it can be demonstrated that it is environmentally feasible to remove and recover such waste collected, transported, and/or disposed.

Recycling. At least equal to the number of new batteries, if offered by customers, shall be collected, transported, or presented for recycling.

At least equal to the number of new batteries purchased, used lead acid batteries shall be collected, transported, or presented for recycling. A person accepting batteries in exchange for new batteries shall be allowed a period not to exceed 90 days for collection.

Prohibition for recycling. No person shall knowingly and intentionally place, discard, or dispose of white goods except in a collection or recycling facility and in accordance with the regulations of the department for the collection, transportation, and/or disposal of white goods on the effective date of this act or any extension authorized under such act.

Procedure requiring any person selling or disposing of white goods in the retail sale of white goods shall be required to provide the purchaser of the options and

the collection, transportation, or disposal of solid waste by any person engaged in the collection, transportation, or disposal of solid waste, unless it can be demonstrated that it is environmentally feasible to remove and recover such white goods disposed.

It is the policy of the state to set goals to phase out the potential, which can be feasibly eliminated from the solid waste stream for sale, use, or disposal. The provisions for

MINERALS—ENVIRONMENTAL QUALITY

R.S. 30:2423

establishment of a list of recyclable materials. No rules and regulations adopted by the secretary shall apply to any materials prior to their entering into the solid waste stream.

B. The department shall, at least annually, review the list of recyclable items. This review shall consider the available recycling technologies, markets, cost, and any other factors as deemed to be appropriate when compiling and reviewing the list of recyclable items.

C. The secretary may require each solid waste management facility to provide for a drop-off location for source separated recyclable materials if deemed necessary to meet the purposes and goals of this Chapter.

D. On or after January 1, 1991, no person shall knowingly and intentionally distribute, sell, or offer for sale in this state any plastic bottle sixteen ounces or larger, or rigid plastic containers eight ounces or larger unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Rigid plastic bottles or rigid plastic containers with labels and basecaps of a different material shall be coded by their basic material. The code shall conform to the code developed by the Society of the Plastics Industry.

E. On or after January 1, 1991, no container shall knowingly and intentionally be sold or offered for sale in this state that is connected to other containers by a separate holding device constructed of plastic rings unless such rings are composed of such material which is capable of being recycled or degraded in one hundred twenty days or less.

Added by Acts 1989, No. 185, § 1, eff. Sept. 1, 1989.

§ 2423. Publicly owned aluminum materials; prohibitions; penalties

A. No person engaged in the business of recycling may purchase or have in his possession aluminum materials consisting of official highway signs or signals that provide traffic information, control, or directions or highway guard rails unless such purchase or possession is accompanied by an act of sale from the public entity which owns such materials.

B. Any person found to be in violation of this Section may be liable for a civil penalty, to be assessed by the secretary, an assistant secretary, or the court, of not more than five hundred dollars.

Added by Acts 1990, No. 682, § 1.

CHAPTER 19. OIL SPILL PREVENTION AND RESPONSE ACT

PART I. GENERAL PROVISIONS

Section

- 2451. Title.
- 2452. Legislative findings.
- 2453. Legislative intent.
- 2454. Definitions.

PART II. ADMINISTRATION

- 2455. Office of the Louisiana oil spill coordinator.
- 2456. General powers and duties of the coordinator.
- 2457. Regulatory authority; coordinator.
- 2458. Interagency council.

PART III. STATE OIL SPILL CONTINGENCY PLAN

- 2459. State oil spill contingency plan.
- 2460. Contingency plan provisions.

PART IV. OIL SPILL PREVENTION AND RESPONSE

- 2461. Coordinator; notification.

Section

- 2462. Administration of oil spill response and cleanup.
- 2463. Notification and response.
- 2464. Response coordination.
- 2465. Assistance and compensation.
- 2466. Qualified immunity for response actions.
- 2467. Equipment and personnel.
- 2468. Refusal to cooperate.
- 2469. Derelict vessels and structures.
- 2470. Registration of terminal facilities.
- 2471. General terms.
- 2472. Information.
- 2473. Issuance.
- 2474. Suspension.
- 2475. Contingency plans for vessels and facilities.
- 2476. Entry into port.
- 2477. Audits, inspections, and drills.

PART V. LIABILITY OF PERSONS RESPONSIBLE

- 2478. Financial responsibility.

Section

2479. Limitation of liability.
2480. Presumption of natural resources damages.
2481. Defenses.
2482. Claims against third parties.

PART VI. OIL SPILL CONTINGENCY FUND

2483. Oil Spill Contingency Fund.
2484. Uses of fund.
2485. Oil spill contingency fee.
2486. Determination of fee.
2487. Administration of fee.
2488. Liability of the fund.

Section

2489. Reimbursement of fund.
2490. Awards exceeding fund.

PART VII. REMEDIES AND ENFORCEMENT

2491. Exclusive remedies.
2492. Enforcement.

PART VIII. MISCELLANEOUS PROVISIONS

2493. Federal funds.
2494. Interstate compacts.
2495. Institutions of higher education.
2496. Exclusive authority.

PART I. GENERAL PROVISIONS

§ 2451. Title

This Chapter may be cited as the "Oil Spill Prevention and Response Act."
Added by Acts 1991, 1st Ex.Sess., No. 7, § 1, eff. April 23, 1991.

Historical and Statutory Notes

In this section as enacted in 1991, the short title was enclosed in quotation marks pursuant to the statutory revision authority of the Louisiana State Law Institute.

Title of Act:

An Act to enact Chapter 19 of Subtitle II of Title 30 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 30:2451 through 2496, and to enact R.S. 36:4(M); to enact the Oil Spill Prevention Response Act; to provide for oil spill prevention and response in certain waters

of the state and the administration, and coordination thereof; to provide relative to liability for removal costs and damages; to provide for responder immunity; to provide for enforcement and adjudication; to provide penalties; to create the Oil Spill Contingency Fund and to provide for the levy, collection, and expenditure of revenues thereof; to create the office of the Louisiana oil spill coordinator and the powers, duties, functions, and responsibilities thereof; to create the interagency council and its membership and responsibilities; and to provide for related matters. Acts 1991, 1st Ex.Sess., No. 7.

§ 2452. Legislative findings

A. Louisiana is subject to greater exposure to a major oil spill disaster than any other state. This is the result of the large volumes of stored oil, numerous production platforms and miles of pipelines, large numbers of inland barges, and heavy tanker traffic, including the Louisiana Offshore Oil Port which receives fifteen percent of the oil imported into the United States. This exposure, coupled with the limited adequate highway accessibility to the coast and remote inland areas for rapid transport of oil spill equipment and few areas suitable for staging facilities, creates great potential for a major oil spill event and its consequences in a state which has twenty-six percent of the nation's commercial fisheries, has the nation's highest marine recreational fishery catches, leads the nation in fur production and the world in alligator production, and has more overwintering waterfowl than any other state. Commercial and recreational marine fisheries are concentrated within a few miles inshore and offshore of the coastline where oil from a major coastal spill would concentrate.

B. Added to the high exposure and inaccessibility of large portions of the coast and inland areas is the vulnerability of Louisiana's nearshore and wetland environments. The numerous shallow interconnecting waterways and gentle slope of the coastal areas would allow deep penetration of oil into the state's estuaries. The vast expanses of Louisiana's soft unconsolidated marshes lying just a few inches above sea level would, in the event of an oil spill, soak up large amounts of oil.

Added by Acts 1991, 1st Ex.Sess., No. 7, § 1, eff. April 23, 1991.

Historical and Statutory Notes

In this section as enacted in 1991, in the third sentence, "accessibility" was changed to "access-

bility" pursuant to the statutory revision authority of the Louisiana State Law Institute.

§ 2453. Legislative intent

A. The legislature finds and declares that the release of oil into the environment presents a real and substantial threat to the public health and welfare, to the environment, the wildlife and aquatic life, and to the economy of the state. Further, the legislature declares that the purpose of this Chapter is to assist the legislature in fulfilling its duties to protect, conserve, and replenish the natural resources of this state in accordance with Article IX, Section 1 of the Constitution of Louisiana.

B. The legislature declares that it is the intent of this Chapter to support and complement the Oil Pollution Act of 1990 (P.L. 101-380)¹ and other federal law, specifically those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resources trustees. The legislature intends this Chapter to be interpreted and implemented in a manner consistent with federal law.

Added by Acts 1991, 1st Ex.Sess., No. 7, § 1, eff. April 23, 1991.

¹ See, inter alia, 26 U.S.C.A. § 9509 and 33 U.S.C.A. § 2701 et seq. Also see 33 U.S.C.A. § 1321(d) and 42 U.S.C.A. § 9605.

§ 2454. Definitions

In this Chapter:

- (1) "Barrel" means forty-two United States gallons at sixty degrees Fahrenheit.
- (2) "Coastal waters" means the waters and bed of the Gulf of Mexico within the jurisdiction of the state of Louisiana, including the arms of the Gulf of Mexico subject to tidal influence, estuaries, and any other waters within the state if such other waters are navigated by vessels with a capacity to carry ten thousand gallons or more of oil as fuel or cargo.
- (3) "Coordinator" means the Louisiana oil spill coordinator.
- (4) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate.
- (5) "Damages" means and includes any of the following:
 - (a) Natural resources—damages for injury to, destruction of, loss of, or loss of use of, natural resources as defined in this Section, including the reasonable costs of assessing the damages, which shall be recoverable by the state of Louisiana.
 - (b) Immovable or corporeal movable property—damages for injury to, or economic loss resulting from destruction of, immovable or corporeal movable property, which shall be recoverable by a person who owns or leases that property. For purposes of this Chapter, "immovable property" shall have the same meaning as "immovables" as provided in C.C. Art. 462. For purposes of this Chapter, "corporeal movable property" shall have the same meaning as "corporeal movables" as provided in C.C. Art. 471.
 - (c) Subsistence use—damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.
 - (d) Revenues—damages equal to the net loss of taxes, royalties, rents, fees, or net profit share due to the injury, destruction, or loss of immovable or corporeal movable property, or natural resources, which shall be recoverable by the state of Louisiana.
 - (e) Profits and earning capacity—damages equal to loss of profits, or impairment of earning capacity due to the injury, destruction, or loss of immovable or corporeal movable property, or natural resources, which shall be recoverable by those persons entitled to recovery under Subparagraph (b) or (c) of this Paragraph.

(f) Public services—damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, recoverable by the state of Louisiana or any of its political subdivisions.

(6) "Deepwater port" is a facility licensed in accordance with the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524).

(7) "Discharge of oil" means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters of the state or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters of the state.

(8) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the coordinator properly certifies the organization.

(9) "Emergency" means an emergency declared by the governor in accordance with state law.

(10) "Facility" means any structure, group of structures, equipment, or device other than a vessel which is used for one or more of the following purposes: exploration for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

(11) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(12) "Fund" means the Oil Spill Contingency Fund.

(13) "Harmful quantity" means that quantity of oil the discharge of which is determined by the coordinator to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(14) "Hotline" means the emergency telephone number established in accordance with the provisions of this Chapter to respond to a threatened or unauthorized discharge of oil.

(15) "Marine terminal" means any terminal facility within the state of Louisiana used for transferring crude oil to or from vessels.

(16) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. §§ 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.).

(17) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(18) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) and which is subject to the provisions of that Act.

(19) "Oil spill" shall have the same meaning as "discharge of oil" as defined in this Section.

(20) "Owner" or "operator" means:

(a) Any person owning, operating, or chartering by demise a vessel; or

(b)(i) Any person owning a terminal facility, excluding a political subdivision of the state that as owner transfers possession and the right to use a terminal facility to another person by lease, assignment, or permit; or

(ii) A person operating a terminal facility by lease, contract, or other form of agreement.

(21) "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a threatened or unauthorized discharge of oil occurs or a particular duty arises under this Chapter.

(22) "Person responsible", "responsible person", or "responsible party" means:

(a) The owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate.

(b) In the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment.

(c) Any other person, but not including a person or entity who is rendering care, assistance, or advice in response to a discharge or threatened discharge of another person, who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

(23) "Plan" means the state oil spill contingency plan.

(24) "Pollution" means the presence of harmful quantities of oil in waters of the state or in or on adjacent shorelines, estuaries, tidal flats, beaches, or marshes.

(25) "Removal costs" means, with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this Chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources.

(26) "Tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that:

(a) Is a vessel of the United States.

(b) Operates on the navigable waters.

(c) Transfers oil or hazardous material in a place subject to the jurisdiction of the state of Louisiana.

(27) "Terminal facility" means any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge from the facility could threaten waters of the state, including but not limited to any such facility owned or operated by a public utility or a governmental or quasi-governmental body.

(28) "Unauthorized discharge of oil" means any actual or threatened discharge of oil not authorized by a federal or state permit.

(29) "Vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

Added by Acts 1991, 1st Ex.Sess., No. 7, § 1, eff. April 23, 1991.

Historical and Statutory Notes

In this section as enacted in 1991, in subpar. 20(b), item designations were changed from Arabic numerals to lower case roman numerals; and in par. 26, periods were substituted for a semi-colon and "; or" at the ends of subpara. 26(a)

and 26(b), respectively, all changes pursuant to the statutory revision authority of the Louisiana State Law Institute.

Library References

Words and Phrases (Perm.Ed.)

AND NAVIGATION Title 38

ph deleted "exclusive" pre-
deal"; in present 5th para-
her handling of"; and dele-
raph, which read:

further finds and declares
ities of oil are being stored
ge facilities; that leaks and
s from such facilities pose a
the quality of the waters of
the ground water resources;
a quality of these waters is
ance; and that their protec-
design and installment of
underground storage facil-
maintenance and remedial
g facilities."

title 37-B §§ 741 to 743

ine in Maine's submerged
s, state obligation and the
Maine L.Rev. 105 (1985).

between this subchapter and
and Pipe Line Corp. v. Envi-
mission (1973) Me., 307 A.2d
94 S.Ct. 532, 414 U.S. 1035,

ing Water Quality Improve-
A. §§ 1321 et seq. did not
states from imposing other-
axes upon interstate and for-
rive effect to state action to
olution. Portland Pipe Line
ntal Imp. Commission (1973)
peal dismissed 94 S.Ct. 532,
Ed.2d 326.

OIL DISCHARGE PREVENTION Ch. 3

38 § 542

3. Prompt containment and removal of pollu-
tion

Two prime objectives of this subchapter are
speedy settlement of third-party claims and im-

mediate cleanup of oil spills. Portland Pipe Line
Corp. v. Environmental Imp. Commission (1973)
Me., 307 A.2d 1, appeal dismissed 94 S.Ct. 532,
414 U.S. 1035, 38 L.Ed.2d 326.

§ 542. Definitions

The following words and phrases as used in this subchapter shall, unless a
different meaning is plainly required by the context, have the following meaning:

1. Barrel. "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
2. Repealed. Laws 1973, c. 625, § 277.
3. Board. "Board" shall mean the Board of Environmental Protection.
4. Discharge. "Discharge" means any spilling, leaking, pumping, pouring,
emitting, emptying or dumping.
5. Fund. "Fund" means the Maine Coastal and Inland Surface Oil Clean-up
Fund.

6. Oil. "Oil" means oil, petroleum products and their by-products of any
kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil
refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons
regardless of specific gravity.

7. Oil terminal facility. "Oil terminal facility" means any facility of any
kind and related appurtenances, located in, on or under the surface of any land
or water, including submerged lands, which is used or capable of being used for
the purpose of transferring, processing or refining oil, or for the purpose of
storing the same, but does not include any facility used or capable of being used
to store no more than 500 barrels, nor any facility not engaged in the transfer of
oil to or from waters of the State. A vessel shall be considered an oil terminal
facility only in the event of a ship to ship transfer of oil, but only that vessel
going to or coming from the place of ship to ship transfer and a permanent or
fixed oil terminal facility.

8. Operate or operator. "Operate or operator" shall mean any person
owning or operating an oil terminal facility whether by lease, contract or any
other form of agreement.

9. Person. "Person" shall mean any natural person, firm, association, part-
nership, corporation, trust, the State of Maine and any agency thereof, govern-
mental entity, quasi-governmental entity, the United States of America and any
agency thereof and any other legal entity.

10. Transferred. "Transferred" shall include both onloading and offloading
between terminal and vessel and vessel to vessel.

10-A. Repealed. Laws 1985, c. 496, § A, 7, eff. June 28, 1985.

11. Vessel. "Vessel" includes every description of watercraft or other contri-
vance used, or capable of being used, as a means of transportation on water,
whether self-propelled or otherwise and shall include barges and tugs.
1969, c. 572, § 1; 1971, c. 618, § 12; 1973, c. 625, § 277; 1977, c. 375, §§ 2 to 4; 1983, c.
785, § 10, eff. March 1, 1985; 1985, c. 496, §§ A, 6, 7, eff. June 28, 1985.

for annual drills, sometimes unannounced, to determine the adequacy of response plans and the preparedness of the response teams;

F. The establishment from time to time of control districts comprising sections of the Maine coast and the establishment of rules and regulations to meet the particular requirements of each such district;

G. Requirements for the safety and operation of vessels, barges, tugs, motor vehicles, motorized equipment and other equipment relating to the use and operation of terminals, facilities and refineries and the approach and departure from terminals, facilities and refineries;

H. Such other rules and regulations as the exigencies of any condition may require or such as may reasonably be necessary to carry out the intent of this subchapter, and

I, J. Repealed. Laws 1985, c. 496, § A, 10, eff. June 28, 1985.

K. Operation and inspection requirements for interstate and intrastate oil pipelines excluding natural gas and artificial gas pipelines.

5. Facility response plans. Every facility subject to licensing under this section shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484,¹ or a statement that a plan is not required under federal law.

6. Vessel response plans. Every tank vessel, as defined under 56 United States Code, Section 2101, entering state waters shall file with the department a copy of any oil discharge response plan submitted to the President of the United States under the federal Oil Pollution Act of 1990, Public Law 101-380, Section 4202, 104 Stat. 484,¹ or a statement that a plan is not required under federal law.

1989, c. 546, § 9, eff. July 10, 1989; 1989, c. 868, § 1, eff. April 19, 1990; 1991, c. 454, §§ 2 to 4, eff. June 21, 1991.

¹ 33 U.S.C.A. § 2701 et seq.

Historical and Statutory Notes

Amendments

1989 Amendments. Laws 1989, c. 546, § 9, in subsec. 4, added par. K.

Laws 1989, c. 868, § 1, in subsec. 4, par. E, inserted reference to periodic unannounced drills.

1991 Amendment. Laws 1991, c. 454, § 2, in subsec. 4, par. A, included inspections of oil terminal facilities.

Laws 1991, c. 454, § 3, in subsec. 4, par. E, substituted reference to the state marine oil spill contingency plan under § 546-A of this title for reference to periodic, unannounced drills to determine adequacy of response plans and preparedness of response teams, and added provision that the plans include provision for annual drills, sometimes unannounced, to determine frequency of response plans and preparedness of response teams.

Laws 1991, c. 454, § 4, added subsecs. 5 and 6.

§ 546-A. State marine oil spill contingency plan

1. Plan. The commissioner shall develop by December 31, 1991 a preliminary state marine oil spill contingency plan. The commissioner shall hold a public hearing in the process of developing the plan. The commissioner shall consult and coordinate with other agencies and organizations developing information for oil spill response planning to prevent a duplication of effort and the creation of incompatible data and data bases.

2. Worst-case scenarios. The marine oil spill contingency plan must address a range of scenarios, including spills of 100,000 gallons, 1,000,000 gallons and 6,000,000 gallons and the worst-case scenario in each major port area in both favorable and adverse conditions. The worst-case scenario in each major port area is the loss of an entire vessel of the following capacities:

- A. Portland: 30,000,000 gallons;
- B. Penobscot Bay and Penobscot River: 11,000,000 gallons;
- C. Portsmouth, New Hampshire: 13,000,000 gallons;

submit another certificate stating that any construction or development will be done according to the plan. A subdivision developer shall obtain approval of the plan at the time of approving and recording of the subdivision plat. In addition to any other penalty provided in this subtitle, if a developer violates his certificate, then every permit issued pursuant to the certificate is void. (1989, ch. 236, § 2.)

Effect of amendment.

The 1989 amendment, effective Oct. 1, 1989, deleted "registered" preceding "professional engineer" in the third sentence of (a).

As the rest of this section was not amended, it is not reprinted in this Supplement.

§ 4-311. Riparian right to use water for agriculture not lost when land taken by condemnation in Severn River Watershed.

Any person who has the riparian right to use water in the Severn River Watershed for agricultural purposes may not lose this right because the State or local government or any of their units condemns the person's land. (An. Code 1957, art. 66C, § 411AN; 1973, 1st Sp. Sess., ch. 4, § 1; 1987, ch. 306, § 3; 1988, ch. 6, § 1.)

Effect of amendment. — The 1988 amendment, approved Feb. 18, 1988, and effective from date of passage, deleted the comma fol-

lowing "purposes" and substituted "condemns the person's" for "condemn his."

§ 4-313.1. Penalties for violations of § 4-302.1 (b) (1), (c) or (d).

(a) *Administrative civil penalties.* — (1) The Department shall impose an administrative civil penalty on a person who owns or operates a sewage treatment plant that is in violation of § 4-302.1 (b) (1), (c), or (d) of this subtitle. (2) The person accused of the violation shall have the right to a hearing but may waive that right in writing.

(3) The penalty imposed under this subsection shall be:

- (i) \$5 for each pound of phosphorus discharged monthly in violation of § 4-302.1 (b) (1) of this subtitle; and
- (ii) \$2 for each pound of nitrogen discharged monthly in violation of § 4-302.1 (c) or (d) of this subtitle.

(b) *No waiver, reduction, or use of penalty to assist in upgrading sewage treatment plant.* — (1) Except as provided in paragraph (2) of this subsection, a penalty imposed under this section may not be:

- (i) Waived;
- (ii) Reduced; or
- (iii) Used to assist the penalized person in upgrading a sewage treatment plant.

(2) A penalty imposed under this section may be waived if the phosphorus or nitrogen discharged in violation of § 4-302.1 of this subtitle is due to an act of God or, if it could not reasonably have been anticipated by the owner or

operator of the sewage treatment plant, a power outage or a massive leakage of any pollutant that contaminates the wastewater being treated.

(c) *Penalties to be deposited in Maryland Clean Water Fund.* — The Department shall deposit the penalties collected under this subsection in the Maryland Clean Water Fund created under § 9-320 of this article.

(d) *Collection of penalties on monthly basis.* — The Department shall collect the penalties required to be imposed under subsection (a) of this section on a monthly basis beginning on:

(1) February 15, 1989 for violations of § 4-302.1 (b) (1) of this subtitle; and

(2) November 15, 1991 for violations of § 4-302.1 (c) or (d) of this subtitle.

(e) *Penalties are in addition to other penalties provided by law.* — The penalties required to be imposed under this section are in addition to any other penalties provided by law. (1988, ch. 538.)

Editor's note. — Section 2, ch. 538, Acts 1988, provides that "the phosphorus and nitrogen removal requirements of this act are intended to be the minimum removal requirements at sewage treatment plants covered under this act, and nothing in this act may be construed to prevent or delay the implementation of more stringent removal requirements at these plants or at any other plants discharging into the Patuxent River."

Section 3 of ch. 538 provides that "the provisions of this act regarding phosphorus removal do not apply until July 1, 1990 to any sewage treatment plant that on Jan. 1, 1988 is not meeting a 1.0 milligram per liter phosphorus removal level and that was conducting a pilot program for the biological nutrient removal of phosphorus under an agreement with, and under the authorization of, the Department of the Environment."

Section 4 of ch. 538 provides that:

"(a) The provisions of this act regarding nitrogen removal at the Parkway Sewage Treatment Plant do not apply if, on or before Oct. 1,

1991, the Parkway Plant begins biological nutrient removal so as to achieve a level of nitrogen removal of not more than 7.0 milligrams per liter of wastewater effluent during the period of Apr. 1 through Oct. 15;

"(b) This exemption applies only if the operator of the Parkway Plant achieves the lowest level of nitrogen removal technically possible with biological nitrogen removal and makes every reasonable attempt to lower the level with the biological nutrient removal process to 3.0 milligrams per liter during Apr. 1 through Oct. 15; and

"(c) If substantial State funding (at least 50% of the cost) is made available to accomplish the chemical removal of nitrogen to a level of 3.0 milligrams per liter of wastewater effluent, the exemptions in this section do not apply and the Parkway Plant shall be required to meet the nitrogen requirements of this section within 2½ years of the notification of funding availability."

Section 5 of ch. 538 provides that the act shall take effect July 1, 1988.

Subtitle 4. Water Pollution Control and Abatement.

§ 4-401. Definitions.

(a) *In general.* — In this subtitle, the following words have the meanings indicated.

(b) *Discharge.* — "Discharge" means the addition, introduction, leaking, spilling, or emitting any oil to State waters or the placing of any oil in a location where it is likely to reach State waters.

(c) *Oil.* — (1) "Oil" means oil of any kind and in any liquid form including:

- (i) Petroleum;
- (ii) Petroleum by-products;
- (iii) Fuel oil;

- (iv) Sludge containing oil or oil residues;
- (v) Oil refuse;
- (vi) Oil mixed with waste;
- (vii) Crude oils;
- (viii) Aviation fuel;
- (ix) Gasoline;
- (x) Kerosene;
- (xi) Light and heavy fuel oils;
- (xii) Diesel motor fuels;
- (xiii) Asphalt; and

(xiv) Regardless of specific gravity, every other nonedible, nonsubstituted liquid petroleum fraction unless that fraction is specifically identified as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.

(2) "Oil" does not include:

- (i) Liquefied propane;
- (ii) Liquefied natural gas; or
- (iii) Any edible oils.

(d) *Oil storage facility*. — (1) "Oil storage facility" means any installation, structure or premises, above ground or underground, in which oil is stored.

(2) "Oil storage facility" does not include any tank on a farm or private residence which stores 1,100 gallons or less of oil for noncommercial or personal use.

(e) *Person responsible for discharge*. — "Person responsible for the discharge" includes:

- (1) The owner of the discharged oil;
- (2) The owner, operator, or person in charge of the oil storage facility, vessel, barge, or vehicle involved in the discharge at the time of or immediately before the discharge; and
- (3) Any other person who through act or omission causes the discharge.

(f) *Underground oil storage tank*. — (1) "Underground oil storage tank" means one or more tanks including underground pipes connected to tanks, with a volume of 10 percent or more beneath the surface of the ground.

(2) "Underground oil storage tank" does not include a:

- (i) Tank on a farm or private residence which stores 1,100 gallons or less of oil for noncommercial or personal use;
- (ii) Septic tank;
- (iii) Pipeline facility, including gathering lines regulated under:
 - 1. The Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq.; or
 - 2. The Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq.;
- (iv) Intrastate pipeline facility regulated under State laws comparable to the provisions of the law referred to in subparagraph (iii) of this paragraph;
- (v) Surface impoundment, pit, pond, or lagoon;
- (vi) Stormwater or wastewater collection system;
- (vii) Flow-through process tank;

(viii) Storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor; or

(ix) Pipe connected to any tank described in subparagraphs (i) through (viii) of this paragraph. (An. Code 1957, art. 96A, § 24; 1973, 1st Sp. Sess., ch. 4, § 1; 1976, ch. 183, § 1; 1980, ch. 27; 1982, ch. 240, § 4; 1987, ch. 306, § 3; 1989, chs. 709, 808; 1990, chs. 66, 67; 1991, ch. 55, § 1; ch. 183.)

Effect of amendment. — Chapter 709, Acts 1989, effective July 1, 1989, proposed to add (f) and (g) which were virtually identical to present (c) and (d).

Chapter 808, Acts 1989, effective July 1, 1989, in (b), substituted "oil" for "pollutant" twice and "reach State waters" for "pollute"; and rewrote (c), (d), and (e).

Neither of the 1989 amendments to this section referred to the other, but effect has been given to ch. 808 as the one signed later by the Governor.

Chapter 66, Acts 1990, approved Apr. 24, 1990, and effective from date of passage, inserted "barge" in (e) (2).

Chapter 67, Acts 1990, effective July 1, 1990, reenacted (a) without change and added (f).

Chapter 55, Acts 1991, approved Apr. 9, 1991, and effective from date of enactment, in (c) (1) (xiv), inserted the commas following "Response" and "Compensation" and substituted "42 U.S.C. § 9601 et seq." for "42 U.S.C. 9601."

Chapter 183, Acts 1991, effective July 1, 1991, reenacted (a) without change; and deleted former (f) (2) (x).

Editor's note.

Section 11, ch. 55, Acts 1991, provides that "except for §§ 5, 6, 7, and 8 of this Act, the provisions of this Act are intended solely to correct technical errors in the law and that there is no intent to revive or otherwise affect law that is the subject of other acts, whether those acts were signed by the Governor prior to or after the signing of this Act."

§ 4-402. Declaration of public policy.

Quoted in *Board of Educ. v. Mayor of Riverdale*, 320 Md. 384, 578 A.2d 207 (1990).

§ 4-405. Powers and duties of Department generally.

(a) *In general*. — For the purposes of this subtitle, the Department of the Environment shall have and may exercise the following powers and duties:

(1) General supervision over the administration and enforcement of this subtitle and all rules, regulations, and orders promulgated pursuant to it;

(2) Develop comprehensive programs and plans for prevention, control, and abatement of pollution of the waters of the State by oil or sediment;

(3) Advise, consult, and cooperate with other units of the State, the federal government, other state and interstate agencies, affected groups, political subdivisions, and industries to further the purposes of this subtitle;

(4) Accept and administer loans and grants from the federal government and other sources, public or private, to carry out any of its functions;

(5) Encourage, participate in, finance, or conduct studies, investigations, research, and demonstrations relating to water pollution and its causes, prevention, control, and abatement;

(6) Collect and disseminate information relating to water pollution and its prevention, control, and abatement;

(7) Adopt, modify, repeal, and promulgate, after due notice and hearing, and enforce rules and regulations implementing or effectuating its powers and duties;

MA 1991 Pocket

21E § 2

OFFICERS OF THE COMMONWEALTH

liable under section five. The term shall also include, without limitation, studies, services and investigations to plan, manage and direct assessment, containment and removal actions, to determine and recover the costs thereof, and to otherwise accomplish the purposes of this chapter.

"Act of God", an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight. A natural disaster is unanticipated when it is of a type unexpected given the area, the season, and the past history of conditions.

"CERCLA", the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42USC Sec. 9601 et seq.

"Chief municipal officer," the city manager in any city having a city manager, the mayor in any other city; the town manager in any town having a town manager, the board of selectmen in any other town.

"Commissioner", the commissioner of the department of environmental protection.

"Contain" or "Containment", actions taken in response to a release or threat of release of oil or hazardous material into the environment to prevent or minimize such release so that it does not migrate or otherwise cause or threaten substantial danger to present or future public health, safety, welfare or the environment. The term shall also include security measures, including, without limitation, the building of fences for the purpose of limiting and restricting access to a site or vessel where there has been a release or there is a threat of a release of oil or hazardous materials.

"Department", the department of environmental protection.

"Disposal site," any structure, well, pit, pond, lagoon, impoundment, ditch, landfill or other place or area, excluding ambient air or surface water, where uncontrolled oil or hazardous material has come to be located as a result of any spilling, leaking, pouring, abandoning, emitting, emptying, discharging, injecting, escaping, leaching, dumping, discarding or otherwise disposing of such oil or hazardous material. The term shall not include any site containing only oil or hazardous materials which: are lead-based paint residues emanating from a point of original application of such paint; resulted from emissions from the exhaust of an engine; are building materials still serving their original intended use or emanating from such use; or resulted from a release of source, byproduct or special nuclear material from a nuclear incident, as those terms are defined in 42 USC Sec. 2014, if such release was subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42 USC Sec. 2210.

"Environment", waters, land, surface or subsurface strata, or ambient air of the commonwealth.

"Exposure," any contact, ingestion, inhalation or assimilation of or with oil or hazardous materials, including irradiation.

"FWPCA", the Federal Water Pollution Control Act, 33USC Sec. 1251 et seq.

"Hazardous material", material including but not limited to, any material, in whatever form, which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed. The term shall not include oil. The term shall also include all those substances which are included under 42USC Sec. 9601(14), but it is not limited to those substances.

"Imminent hazard," a hazard which poses a significant or otherwise unacceptable risk of harm to health, safety, public welfare, or the environment if it were present even for a short period of time.

"Oil", insoluble or partially soluble oils of any kind or origin or in any form, including, without limitation, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially

OFFICERS OF THE COMM

insoluble derivatives of mineral waste oil, and shall not include

"Owner" or "Operator", (1) chartering by demise such vessel; such site, and (3) in the case of otherwise controlled activities term shall not include a person or site holds indicia of ownership site.

"Person", any agency or political entity, any state, public or private corporation, stock company, partnership, agent of such person, and an

"Priority disposal site", a site where, for the purpose of public safety, public welfare or the protection of a building being used

"Release", any spilling, leaking, emitting, discharging, injecting, escaping, leaching, or emissions from the exhaust of a nuclear reactor, nuclear material from a nuclear incident, such release is subject to regulation by the Nuclear Regulatory Commission, fertilizer, and (4) the applica

"Remove" or "Removal", the removal of oil or hazardous material from the environment, such as the removal of release of oil or hazardous material, or the removal, or mitigate damage which may result from a release

"Respond" or "Response", the removal, removal and removal.

"Response action contract", a contract to contain or remove oil or hazardous material, the date of this definition between the contractor and the

"Response action contract", a contract, joint venture or association, joint venture or contract with the commonwealth, acting as a subcontractor to perform services relating to

"Site", any building, structure, pipe into a sewer or public water supply, ditch, landfill, storage, other place or area where oil is or placed, or otherwise used in product in consumer use or

"Statement of claim" a statement describing a particular site where a person is liable for residential addresses, to the property of such person or persons from such person or persons that neither failure to state nor shall invalidate such statement naming other persons so

OF THE COMMONWEALTH

without limitation, studies, services, assessment, containment and removal of, and to otherwise accomplish the

aster or other natural phenomenon of
r, the effects of which could not have
are or foresight. A natural disaster is
en the area, the season, and the past

Response, Compensation, and Liability

any city having a city manager, the
any town having a town manager, the

partment of environmental protection. response to a release or threat of release to prevent or minimize such release so as to prevent substantial danger to present or future environment. The term shall also include the building of fences for the purpose of preventing further release where there has been a release or there is a threat of release.

tal protection.

lagoon, impoundment, ditch, landfill or surface water, where uncontrolled oil or result of any spilling, leaking, pouring, injecting, escaping, leaching, dumping, hazardous material. The term shall not include materials which: are lead-based paint application of such paint; resulted from the building materials still serving their use; or resulted from a release of source, nuclear incident, as those terms are defined in requirements with respect to financial regulatory Commission under 42 USC Sec. 2210

subsurface strata, or ambient air of the

on or assimilation of or with oil or hazard-

Control Act, 33USC Sec. 1251 et seq.

ut not limited to, any material, in whatever
centration, chemical, corrosive, flammable,
acteristics, either separately or in combina-
utes a present or potential threat to human
when improperly stored, treated, transport-

The term shall not include oil. The term are included under 42USC Sec.9601(14), but it

a significant or otherwise unacceptable risk to the environment if it were present even for a

any kind or origin or in any form, including, oil or sludge, asphalt, insoluble or partially

OFFICERS OF THE COMMONWEALTH

insoluble derivatives of mineral, animal or vegetable oils. The term shall not include waste oil, and shall not include those substances which are included in 42USCsec.9601(14).

"Owner" or "Operator", (1) in the case of a vessel, any person owning, operating or chartering by demise such vessel, (2) in the case of a site, any person owning or operating such site, and (3) in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment. The term shall not include a person, who, without participating in the management of a vessel or site holds indicia of ownership primarily to protect his security interest in said vessel or site.

"Person", any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association or other entity, and any officer, employee, or agent of such person, and any group of persons.

"Priority disposal site", a disposal site which constitutes a substantial hazard to health, safety, public welfare or the environment and a disposal site located within five hundred feet of a building being used as a school.

"Release", any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, but excludes: (1) emissions from the exhaust of an engine, (2) release of source, by product, or special nuclear material from a nuclear incident, as those terms are defined in 42USC Sec. 2014, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under 42USC Sec. 2210, (3) the normal application of fertilizer, and (4) the application of pesticides consistent with their labelling.

"Remove" or "Removal", the cleanup or removal of released oil or hazardous materials from the environment, such actions as may be necessarily taken in the event of the threat of release of oil or hazardous materials into the environment, the disposal of removed oil or hazardous material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health, safety, welfare or the environment, which may result from a release or threat of release.

"Respond" or "Response" or "Response action", assess, assessment, contain, containment, remove and removal.

"Response action contract", any contract relating to the provision of services to assess, contain or remove oil or hazardous material which is entered into on or after the effective date of this definition between the commonwealth or any agency thereof, and a response action contractor.

"Response action contractor" or "contractor", an individual, partnership, corporation, association, joint venture or other commercial entity which enters into a response action contract with the commonwealth or any agency thereof and includes any such entity acting as a subcontractor to the primary response action contractor where such entity is performing services relating to the response action contract.

"Site", any building, structure, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any other place or area where oil or hazardous material has been deposited, stored, disposed of or placed, or otherwise come to be located. The term shall not include any consumer product in consumer use or any vessel.

"Statement of claim" or "statement", an instrument signed by the commissioner, describing a particular site or sites and naming the person or persons then deemed by the commissioner to be liable under this chapter with respect to each such site and their residential addresses, to the extent known to the commissioner, and declaring a lien upon the property of such person or persons for the payment of amounts due or to become due from such person or persons to the commonwealth under this chapter; provided, however that neither failure to state any such address nor the designation of an incorrect address shall invalidate such statement; and provided, further, that successive statements naming other persons so deemed to be liable, may be issued.

Anderson, Phillips, Kinsaleff, Liability Insurance coverage for pollution claims. 59 Miss L J 699, Winter, 1989.

Milner & Waggoner, Overview of Major Federal Environmental Acts and Regulations for the General Practitioner. 60 Miss L J 1, Spring, 1990.

§ 49-17-5. Definitions.

For the purposes of Sections 49-17-1 through 49-17-43, the following words and phrases shall have the meanings ascribed to them in this section:

(1) Water.

- (a) "Pollution" means such contamination, or other alteration of the physical, chemical or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance or leak into any waters of the state unless in compliance with a valid permit issued therefor by the Permit Board.
- (b) "Wastes" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state.
- (c) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
- (d) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing or holding wastes.
- (e) "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems.
- (f) "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the state, and such coastal waters as are within the jurisdiction of the state, except lakes, ponds or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C. 1251 et seq.).
- (g) "Underground water" means an underground source of drinking water as defined within the regulations of the Federal Safe Drinking Water Act.

(2) Air.

- (a) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor, or any combination thereof, produced by processes other than natural.
- (b) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristic, and of a duration which are materially injurious or can be reasonably expected to become materially injurious to human, plant or animal

life or to property, or which unreasonably interfere with enjoyment of life or use of property throughout the state or throughout such area of the state as shall be affected thereby.

- (c) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.
- (d) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at, or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.
- (e) "Air-cleaning device" means any method, process or equipment, the primary function of which is to remove, reduce or render less noxious air contaminants discharged into the atmosphere.
- (f) "Area of the state" means any city or county or portion thereof, or other substantial geographical area of the state as may be designated by the Mississippi Commission on Environmental Quality.
- (g) "Federal Clean Air Act" means the Federal Clean Air Act, 42 U.S.C. 7401 et seq., as amended.

(3) General.

- (a) "Commission" means the Mississippi Commission on Environmental Quality acting through the Office of Pollution Control of the Department of Environmental Quality.
- (b) "Person" means the state or other agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or the United States or any officer or employee thereof.
- (c) "Pollution Emergency Fund" means the fund established under Section 49-17-68.
- (d) "General permit" means a permit for categories of sources that involve similar wastes and have similar monitoring requirements and restrictions.

SOURCES: Laws, 1991, ch. 561, § 2, eff from and after July 1, 1991.

§ 49-17-19. Standards of air and water quality.

In order to carry out the purposes of Sections 49-17-1 through 49-17-43, the commission may set ambient standards of air and water quality for the state or portions thereof. Such ambient standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such air and of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other legitimate uses. Such ambient standards may be amended from time to time as determined to be necessary by the commission. In order to carry out the purposes of Sections 49-17-1 through 49-17-43, the commission may also set emission standards for the purpose of controlling air contamination, air pollution and the sources thereof. In

to fresh produce. Rehearings and appeals from a decision of the director shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties or administrative actions under this chapter. The director shall adopt rules, in accordance with RSA 541-A, relative to administrative fines which shall be scaled to reflect the scope and severity of the violation. The sums obtained from the levying of administrative fines under this chapter shall be forwarded to the state treasurer to be deposited into the general fund.

HISTORY

Source. 1991, 356:38, eff. July 1, 1991.

CHAPTER 146-A

OIL DISCHARGE OR SPILLAGE IN SURFACE WATER OR GROUNDWATER

[New Sections]

146-A:16 Orders; Injunctions.

146-A:17 Willful Failure to Comply.

HISTORY

Revision note. Inserted "Discharge or" preceding "Spillage" and substituted "Surface Water or Groundwater" for "Public Waters" in the chapter heading in view of the amendments to this chapter by 1991, 92.

146-A:1 Declaration of Purpose. The purpose of this chapter is to cope with the problem of pollution from the spillage or discharge of oil, recognizing the damage resulting to vegetation, marine, animal and bird life from such pollution. It is the intent of this chapter to provide procedures that will expedite the cleanup of oil spillage, mitigate the adverse effects of oil discharges, encourage preventive measures, and provide financial assistance to victims of such discharges and to encourage private organizations to assist in these efforts.

HISTORY

Source. 1971, 266:1. 1987, 377:1. 1991, 92:1, eff. May 13, 1991.

Amendments—1991. Inserted "or discharge" preceding "of oil, recognizing" and substituted "such pollution" for "oil spillage" following "life from" in the first sentence, deleted the former second sentence, and substituted "oil discharges" for "leaking underground storage tanks, to" preceding "encourage preventive measures", inserted "and" thereafter and substituted "discharges" for "leaks" following "victims of such" in the present second sentence.

ANNOTATIONS

Cited

Cited in 1987 Op Atty Gen 76.

146-A:2 Definitions. For the purpose of this chapter the following words shall have the following meanings, unless the context otherwise requires:

[No change in paragraph I.]

I-a. "Discharge" or "spillage" means the release or addition of any oil to land, groundwater or surface water; [Added 1991, 92:2, eff. May 13, 1991.]

I-b. "Federal On-Scene Coordinator" means the federal official pre-designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan; [Added 1991, 92:2, eff. May 13, 1991.]

I-c. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations; [Added 1991, 92:2, eff. May 13, 1991.]

I-d. "National Contingency Plan" means the National Contingency Plan prepared and published under section 311(d) of the Federal Water Pollution Control Act (33 U.S.C. section 1321(d), as amended by the Oil Pollution Act of 1990, Pub. L. 101-380, 104 Stat. 484 (1990)); [Added 1991, 92:2, eff. May 13, 1991.]

[No change in paragraph II.]

III. "Oil" means petroleum products and their by-products of any kind, and in any form including, but not limited to, petroleum, fuel, sludge, crude, oil refuse or oil mixed with wastes and all other liquid hydrocarbons regardless of specific gravity and which are used as motor fuel, lubricating oil, or any oil used for heating or processing. The term "oil" shall not include natural gas, liquified petroleum gas or synthetic natural gas regardless of derivation or source; [Amended 1991, 92:3, eff. May 13, 1991.]

[No changes in paragraphs IV and V.]

VI. "Person" shall mean individual, partnership, joint venture, corporation, association or any group of the foregoing or the United States of America, any agency thereof and any other legal entity; [Amended 1991, 92:4, eff. May 13, 1991.]

VI-a. "Removal costs" means the costs of containment, removal, cleanup, restoration, and remedial or corrective action or measures that are incurred after a spillage or discharge of oil has occurred or, in any case in which there is a threat of a spillage or discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident; [Added 1991, 92:5, eff. May 13, 1991.]

VI-b. "Surface water" means streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, watercourses, and other bodies of water, natural or artificial; [Added 1991, 92:5, eff. May 13, 1991.]

[No changes in paragraphs VII-XI.]

HISTORY

Source. 1971, 266:1. 1979, 463:4. 1981, 119:1, 3. 1985, 287:1, 2; 401:5. 1986, 182:3, 4. 1987, 377:12. 1988, 271:8. 1991, 92:2-5, eff. May 13, 1991.

WATERS AND WATER SUPPLY

ved from the Spill Fund tax on petroleum
onies appropriated by law from the General
nd. The payment of any legal defense and
is be contingent on such an appropriation.

law, despite comprehensive system for dealing
with hazardous waste created through passage of
Solid Waste Management Act (§ 13:1E-1 et seq.),
the Major Hazardous Waste Facilities Siting Act
(§ 13:1E-49 et seq.) and the Spill Compensation
and Control Act (§ 13:1E-23.11 et seq.) and prom-
ulgation of regulations thereunder, since neither
statutes nor regulations discuss question of pre-
emption, and since ordinance only prohibits stor-
age of PCBs in certain well-defined environmen-
tally sensitive areas. *Rollins Environmental Ser-
vices (NJ), Inc. v. Logan Tp.*, 199 N.J. Super. 70,
488 A.2d 258 (L.1984).

Legislature envisioned that spill act would be
enforced in conjunction with federal law and with
any other applicable law, and even if federal
legislation could be construed to preempt part of
spill fund, nonpreempted areas would sustain its
continued validity. *Exxon Corp. v. Hunt*, 4
N.J. Tax 294 (1982) affirmed 190 N.J. Super. 131,
462 A.2d 193, affirmed 97 N.J. 526, 481 A.2d
271, affirmed in part, reversed in part on other
grounds 106 S.Ct. 1103, 475 U.S. 355, 89 L.Ed.2d
364, appeal after remand 109 N.J. 110, 534 A.2d

1. Costs of removal
*Lansco, Inc. v. Department of Environmental
Protection*, 138 N.J. Super. 275, 350 A.2d 520 (Ch.
1975) affirmed 145 N.J. Super. 433, 368 A.2d 363
[main volume] certification denied 73 N.J. 57, 372
A.2d 322.

2. Water supply
Claims for direct and indirect damages caused
by discharge of hazardous substances are within
scope of proper spill fund spending under Com-
prehensive Environmental Response, Compensation
and Liability Act explicitly exempting from
its provisions state tax on petrochemical industries
in order to finance certain measures, and spill
fund tax may also be collected and used to pay for
petroleum spills, income or property value losses
caused by damage resulting from discharge of
hazardous substances and cost of restoration or
replacement of natural resources damaged or de-
stroyed by discharge. *Exxon Corp. v. Hunt*, 4
N.J. Tax 294 (1982) affirmed 190 N.J. Super. 131,
462 A.2d 193, affirmed 97 N.J. 526, 481 A.2d
271, affirmed in part, reversed in part on other
grounds 106 S.Ct. 1103, 475 U.S. 355, 89 L.Ed.2d
364, appeal after remand 109 N.J. 110, 534 A.2d

ly indicates otherwise, the following terms shall have the
as the chief executive of the New Jersey Spill Compensation
and Control Act indicated by underline; deletions by strikeouts

WATERS AND WATER SUPPLY

58:10-23.11b

b. "Barrel" means 42 United States gallons or 159.09 liters or an appropriate
equivalent measure set by the director for hazardous substances which are other
than fluid or which are not commonly measured by the barrel;

c. "Board" means a board of arbitration convened by the administrator to settle
disputed disbursements from the fund;

d. "Cleanup and removal costs" means all costs associated with a discharge,
incurred by the State or its political subdivisions or their agents or any person with
written approval from the department in the: (1) removal or attempted removal of
hazardous substances, or (2) taking of reasonable measures to prevent or mitigate
damage to the public health, safety, or welfare, including, but not limited to, public
and private property, shorelines, beaches, surface waters, water columns and bottom
sediments, soils and other affected property, including wildlife and other natural
resources, and shall include costs incurred by the department for the indemnification
and legal defense of contractors pursuant to subsection a. of section 7 of this act,
subject to the appropriation by law of moneys from the General Fund to the fund to
defray these costs;

e. "Commissioner" means the Commissioner of Environmental Protection;

f. "Department" means the Department of Environmental Protection;

g. "Director" means the Director of the Division of Taxation in the Department
of the Treasury;

h. "Discharge" means any intentional or unintentional action or omission result-
ing in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or
dumping of hazardous substances into the waters or onto the lands of the State, or
into waters outside the jurisdiction of the State, when damage may result to the
lands, waters or natural resources within the jurisdiction of the State;

i. "Fair market value" means the invoice price of the hazardous substances
transferred, including transportation charges, but where no price is so fixed, "fair
market value" shall mean the market price as of the close of the nearest day to the
transfer, paid for similar hazardous substances, as shall be determined by the
taxpayer pursuant to rules of the director;

j. "Fund" means the New Jersey Spill Compensation Fund;

k. "Hazardous substances" means the "environmental hazardous substances" on
the environmental hazardous substance list adopted by the department pursuant to
section 4 of P.L. 1983, c. 315 (C. 34:5A-4); such elements and compounds, including
petroleum products, which are defined as such by the department after public
hearing, and which shall be consistent to the maximum extent possible with, and
which shall include, the list of hazardous substances adopted by the federal Environ-
mental Protection Agency pursuant to section 311 of the federal Water Pollution
Control Act Amendments of 1972, Pub.L. 92-500, as amended by the Clean Water
Act of 1977, Pub.L. 95-217 (33 U.S.C. § 1251 et seq.) and the list of toxic
pollutants designated by Congress or the EPA pursuant to section 307 of that act,
and the list of hazardous substances adopted by the federal Environmental Protec-
tion Agency pursuant to section 101 of the "Comprehensive Environmental Re-
sponse, Compensation and Liability Act of 1980," Pub.L. 96-510 (42 U.S.C. § 9601 et
seq.); provided, however, that sewage and sewage sludge shall not be considered as
hazardous substances for the purposes of this act;

l. "Major facility" includes, but is not limited to, any refinery, storage or transfer
terminal, pipeline, deep-water port, drilling platform or any appurtenance related to
any of the preceding that is used or is capable of being used to refine, produce,
store, handle, transfer, process or transport hazardous substances. A vessel shall
be considered a major facility only when hazardous substances are transferred
between vessels.

A facility shall not be considered a major facility for the purpose of this act unless
it has total combined aboveground or buried storage capacity of:

- (1) 50,000 20,000 gallons or more for hazardous substances which are other than
petroleum or petroleum products, or
- (2) 400,000 200,000 gallons or more for hazardous substances of all kinds.

Last additions in text indicated by underline; deletions by strikeouts

For the purposes of this definition, "storage capacity" shall mean only that total combined capacity which is dedicated to, used for or intended to be used for storage of hazardous substances of all kinds. Where appropriate to the nature of the facility, storage capacity may be determined by the intended or actual use of open land or unenclosed space as well as by the capacities of tanks or other enclosed storage spaces;

m. "Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State;

n. "Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

o. "Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents;

p. "Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form, including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in this State; however, any compound designated by specific chemical name on the list of hazardous substances adopted by the department pursuant to subsection 3 k. shall not be considered petroleum or a petroleum product for the purposes of this act, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

q. "Taxpayer" means the owner or operator of a major facility subject to the tax provisions of this act;

r. "Tax period" means every calendar month on the basis of which the taxpayer is required to report under this act;

s. "Transfer" means onloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any onloading of or offloading from a major facility;

t. "Vessel" means every description of watercraft or other contrivance that is practically capable of being used as a means of commercial transportation of hazardous substances upon the water, whether or not self-propelled;

u. "Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State;

v. "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency.

Amended by L. 1984, c. 142, § 1, eff. Sept. 6, 1984; L. 1986, c. 59, § 2, eff. July 28, 1986; L. 1986, c. 143, § 1, eff. Nov. 12, 1986, operative Nov. 12, 1986.

Section 58:10-23.11b. Hazardous substance cleanup fund. To provide for the establishment of a fund to be used for the cleanup of hazardous substances, the following provisions shall apply:

1. The fund shall be established in the State Treasury.

2. The fund shall be used for the cleanup of hazardous substances in accordance with the provisions of this act.

3. The fund shall be subject to the provisions of the State Treasury Act.

4. The fund shall be subject to the provisions of the State Budget Act.

5. The fund shall be subject to the provisions of the State Finance Act.

6. The fund shall be subject to the provisions of the State Tax Act.

7. The fund shall be subject to the provisions of the State Audit Act.

8. The fund shall be subject to the provisions of the State Records Act.

9. The fund shall be subject to the provisions of the State Archives Act.

10. The fund shall be subject to the provisions of the State Library Act.

11. The fund shall be subject to the provisions of the State Museum Act.

12. The fund shall be subject to the provisions of the State Park Act.

13. The fund shall be subject to the provisions of the State Recreation Act.

14. The fund shall be subject to the provisions of the State Sports Act.

15. The fund shall be subject to the provisions of the State Arts Act.

16. The fund shall be subject to the provisions of the State Cultural Act.

17. The fund shall be subject to the provisions of the State Historical Act.

18. The fund shall be subject to the provisions of the State Monuments Act.

19. The fund shall be subject to the provisions of the State Parks Act.

20. The fund shall be subject to the provisions of the State Recreation Act.

21. The fund shall be subject to the provisions of the State Sports Act.

22. The fund shall be subject to the provisions of the State Arts Act.

23. The fund shall be subject to the provisions of the State Cultural Act.

24. The fund shall be subject to the provisions of the State Historical Act.

25. The fund shall be subject to the provisions of the State Monuments Act.

26. The fund shall be subject to the provisions of the State Parks Act.

27. The fund shall be subject to the provisions of the State Recreation Act.

28. The fund shall be subject to the provisions of the State Sports Act.

29. The fund shall be subject to the provisions of the State Arts Act.

30. The fund shall be subject to the provisions of the State Cultural Act.

31. The fund shall be subject to the provisions of the State Historical Act.

32. The fund shall be subject to the provisions of the State Monuments Act.

33. The fund shall be subject to the provisions of the State Parks Act.

34. The fund shall be subject to the provisions of the State Recreation Act.

35. The fund shall be subject to the provisions of the State Sports Act.

36. The fund shall be subject to the provisions of the State Arts Act.

37. The fund shall be subject to the provisions of the State Cultural Act.

38. The fund shall be subject to the provisions of the State Historical Act.

39. The fund shall be subject to the provisions of the State Monuments Act.

40. The fund shall be subject to the provisions of the State Parks Act.

41. The fund shall be subject to the provisions of the State Recreation Act.

42. The fund shall be subject to the provisions of the State Sports Act.

43. The fund shall be subject to the provisions of the State Arts Act.

44. The fund shall be subject to the provisions of the State Cultural Act.

45. The fund shall be subject to the provisions of the State Historical Act.

46. The fund shall be subject to the provisions of the State Monuments Act.

47. The fund shall be subject to the provisions of the State Parks Act.

48. The fund shall be subject to the provisions of the State Recreation Act.

49. The fund shall be subject to the provisions of the State Sports Act.

50. The fund shall be subject to the provisions of the State Arts Act.

51. The fund shall be subject to the provisions of the State Cultural Act.

52. The fund shall be subject to the provisions of the State Historical Act.

53. The fund shall be subject to the provisions of the State Monuments Act.

54. The fund shall be subject to the provisions of the State Parks Act.

55. The fund shall be subject to the provisions of the State Recreation Act.

56. The fund shall be subject to the provisions of the State Sports Act.

57. The fund shall be subject to the provisions of the State Arts Act.

58. The fund shall be subject to the provisions of the State Cultural Act.

59. The fund shall be subject to the provisions of the State Historical Act.

60. The fund shall be subject to the provisions of the State Monuments Act.

61. The fund shall be subject to the provisions of the State Parks Act.

62. The fund shall be subject to the provisions of the State Recreation Act.

63. The fund shall be subject to the provisions of the State Sports Act.

64. The fund shall be subject to the provisions of the State Arts Act.

65. The fund shall be subject to the provisions of the State Cultural Act.

66. The fund shall be subject to the provisions of the State Historical Act.

67. The fund shall be subject to the provisions of the State Monuments Act.

68. The fund shall be subject to the provisions of the State Parks Act.

69. The fund shall be subject to the provisions of the State Recreation Act.

70. The fund shall be subject to the provisions of the State Sports Act.

71. The fund shall be subject to the provisions of the State Arts Act.

72. The fund shall be subject to the provisions of the State Cultural Act.

73. The fund shall be subject to the provisions of the State Historical Act.

74. The fund shall be subject to the provisions of the State Monuments Act.

75. The fund shall be subject to the provisions of the State Parks Act.

76. The fund shall be subject to the provisions of the State Recreation Act.

77. The fund shall be subject to the provisions of the State Sports Act.

78. The fund shall be subject to the provisions of the State Arts Act.

79. The fund shall be subject to the provisions of the State Cultural Act.

80. The fund shall be subject to the provisions of the State Historical Act.

81. The fund shall be subject to the provisions of the State Monuments Act.

82. The fund shall be subject to the provisions of the State Parks Act.

83. The fund shall be subject to the provisions of the State Recreation Act.

84. The fund shall be subject to the provisions of the State Sports Act.

85. The fund shall be subject to the provisions of the State Arts Act.

86. The fund shall be subject to the provisions of the State Cultural Act.

87. The fund shall be subject to the provisions of the State Historical Act.

88. The fund shall be subject to the provisions of the State Monuments Act.

89. The fund shall be subject to the provisions of the State Parks Act.

90. The fund shall be subject to the provisions of the State Recreation Act.

91. The fund shall be subject to the provisions of the State Sports Act.

92. The fund shall be subject to the provisions of the State Arts Act.

93. The fund shall be subject to the provisions of the State Cultural Act.

94. The fund shall be subject to the provisions of the State Historical Act.

95. The fund shall be subject to the provisions of the State Monuments Act.

96. The fund shall be subject to the provisions of the State Parks Act.

97. The fund shall be subject to the provisions of the State Recreation Act.

98. The fund shall be subject to the provisions of the State Sports Act.

99. The fund shall be subject to the provisions of the State Arts Act.

100. The fund shall be subject to the provisions of the State Cultural Act.

Last additions in text indicated by underline; deletions by strikeouts

Assembly Appropriations Committee
Assembly, No. 2698—L. 1986.

The Assembly Appropriations Committee favor Committee Substitute for Assembly Bill No. 269.

This bill would amend the "Spill Compensation Act," 1976, c. 141 (C. 58:10-23.11 et. seq.) by increasing the tax on both chemical hazardous substances by 25%; adds new substances to the threshold at which a major facility becomes liable for cleanup costs from 400,000 gallons of storage capacity of hazardous substances and from 400,000 gallons to 200,000 gallons of storage capacity of petroleum hazardous substances.

The bill would also cap the tax liability of cur their liability for the 1986 tax year except that, substances which are directly converted to, and weight of, a nonhazardous final product, the tax shall not exceed 100% of the 1986 tax year liability.

The bill also directs the Department of Environmental Protection to compile lists of facilities to be transmitted to the Department of Taxation to notify those owners or operators that the tax applies. The owner or operator would pay the tax if the facility is not in fact a major facility.

COMMITTEE AMENDMENTS

The committee amended the bill to make various changes. Also at the suggestion of the Division of Taxation, amendments concerning the tax provisions in the bill those provisions was changed to three months after the end of the year.

Senate Energy and Environment Committee
Assembly, No. 1704—L. 1984, c.

Assembly Bill No. 1704 (Official Copy Reprint) in administration and implementation of the New Jersey Hazardous Site Cleanup Act (P.L. 1976, c. 141; C. 58:10-23.11).

(1) provide that to qualify for cleanup with Spill Fund discharge need not involve a water-born hazardous discharge which occurred prior to the effective date of the Act; (2) remove the requirement that a "pre-act" discharge presents an imminent threat before Spill Fund moneys may be used to increase the limits on spending Spill Fund moneys from \$1.5 million for any one site and \$3 million for any one year to, respectively, \$3 million and \$18 million; (3) remove the six year statute of limitations for filing a claim for damages. Currently a claim must be filed within 6 years of the incident which caused the damage. This amendment, however, the requirement to file a claim within one year of the damage.

Historical and Statutory Notes—1986 Legislation
1984 Legislation, Section 6 of

The 1984 amendment substituted "or onto the lands of the State" for "of the State or onto lands from which it might flow or drain into said waters" in subsection h, the definition of "Discharge".

Last additions in text indicated by underline; d

1. "Administrator" means the chief executive, within the department of audit and control, of the New York environmental protection and spill compensation fund;

2. "Barrel" means forty-two United States gallons, or 159.9 liters, at sixty degrees Fahrenheit;

(Added, L 1990)

2-a. "Biological additives" means microbiological cultures, enzymes, or nutrient additives that are deliberately introduced into a petroleum discharge for the specific purpose of encouraging biodegradation to mitigate the effects of the discharge.

3. "Claim" means, for purposes of part three of this article, any claim of the fund or any claim filed with the administrator by a person, who is not responsible for the discharge, seeking compensation for cleanup and removal costs incurred or damages sustained as a result of a petroleum discharge;

(Added, L 1990)

3-a. "Burning agents" means additives that, through physical or chemical means, improve the combustibility of the materials to which they are applied.

(Added, L 1990)

3-b. "Chemical agents" means generally those elements, compounds or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce, solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or removal of the pollutant or petroleum from the water;

4. "Cleanup and removal" means the (a) containment or attempted containment of a discharge, (b) removal or attempted removal of a discharge or; (c) taking of reasonable measures to prevent or mitigate damages to the public health, safety, or welfare, including but not limited to, public and private property, shorelines, beaches, surface waters, water columns and bottom sediments, soils and other affected property, including wildlife and other natural resources;

5. "Cleanup and removal costs" means all costs associated with the cleanup and removal of a discharge including relocation costs pursuant to section one hundred seventy-seven-a of this article incurred by the state or its political subdivisions or their agents or any person with approval of the department;

6. "Commissioner" means the commissioner of the department of environmental conservation, unless otherwise indicated;

(Added, L 1990)

6-a. "Containment boom" means a floating or stationary device composed of plastic, natural or synthetic materials which can be mechanically extended over water or permanently stationed over water for the purposes of containing floating petroleum, solid objects or other pollutants within or outside a particular area;

7. "Department" means the department of environmental conservation, unless otherwise indicated;

8. "Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum into the waters of the state or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the state when damage may result to the lands, waters or natural resources within the jurisdiction of the state;

(Added, L 1990)

8-a. "Dispersant" means chemical agents that emulsify, disperse, or solubilize petroleum into the water column or promote the surface spreading of petroleum slicks to facilitate dispersal of the petroleum into the water column.

9. "Fund" means the New York environmental protection and spill compensation fund;

10. "License fee period" means every calendar month on the basis of which the licensee is required to report under this article;

11. "Major facility" includes but is not limited to any refinery, storage or transfer terminal, pipeline, deep water port, drilling platform or any appurtenance related to any of the preceding that is used or is capable of being used to refine, produce, store, handle, transfer, process or transport petroleum. A vessel shall be considered a major facility only when petroleum is transferred between vessels. Facilities with total combined above-ground or buried storage capacity of less than four hundred thousand gallons are not major facilities for the purposes of this article;

12. "Natural resources" means all land, fish, shellfish, wildlife, biota, air, waters and other such resources;

13. "Owner" or "operator" means with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any major facility, any person owning such facility, or operating it by lease, contract or other form of agreement; with respect to abandoned or derelict major facilities, the person who owned or operated such facility immediately prior to such abandonment, or the owner at the time of discharge;

14. "Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the state of New York and any of its political subdivisions or agents;

15. "Petroleum" means oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other wastes and crude oils, gasoline and kerosene;

(Added, L 1990)

15-a. "Petroleum-bearing vessel" means any vessel transporting petroleum in commercial quantities as cargo or any vessel constructed or adapted for the carriage of petroleum in bulk;

(Added, L 1990)

15-b. "Sinking agents" means additives applied to petroleum discharges to sink floating pollutants below the water surface.

(Added, L 1990)

15-c. "Surface collecting agents" means chemical agents that form a surface film to control the layer thickness of petroleum.

16. "Transfer" means onloading or offloading between major facilities and vessels or vessels and major facilities, and from vessel to vessel or major facility to major facility;

17. "Vessel" means every description, of watercraft or other contrivance that is practically capable of being used as a means of commercial transportation of petroleum upon the water, whether or not self-propelled; and

18. "Waters" means the ocean and its estuaries to the seaward limit of the state's jurisdiction, and all lakes, springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this state. Provided,

§143-215.77. Definitions.

used in this Article, unless the context otherwise requires:

- (1) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- (2) "Commission" means the North Carolina Environmental Management Commission.
- (3) "Secretary" shall mean the North Carolina Secretary of Environment, Health, and Natural Resources.
- (4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.
- (5) "Having control over oil or other hazardous substances" shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances.
- (5a) "Hazardous substance" shall mean any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health or welfare, as designated pursuant to G.S. 143-215.77A.
- (6) Repealed by Session Laws 1979, c. 981, s. 5.
- (7) "Department" shall mean the Department of Environment, Health, and Natural Resources.
- (8) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel

N Carolina

§143-215.77

CH. 143. STATE DEPARTMENTS, ETC.

§143

oil, fuel oil, gasoline, lubrication oil, oil refuse, oil with other waste, oil sludge, petroleum related products, by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

- (9) "Bailee" shall mean any person who accepts oil or hazardous substances to hold in trust for another special purpose and for a limited period of time.
- (10) "Carrier" shall mean any person who engages in transportation of oil or other hazardous substances for compensation.
- (11) "Oil terminal facility" shall mean any facility of any kind and related appurtenances located in, on or under the face of any land, or water, including submerged land, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A facility shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another facility to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or used to store oil.
- (12) "Operator" shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.
- (13) "Person" shall mean any and all natural persons, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.
- (14) "Pipeline" shall mean any conduit, pipe or system of pipes and any appurtenances related thereto and used in connection therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.
- (15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect the public interest or to protect public property or to promote public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.
- (16) "Transfer" shall mean the transportation, on-loading, off-loading of oil or other hazardous substances between two or more oil terminal facilities; between one oil terminal facility and one or more vessels; and between one or more vessels.
- (17) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, but shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport or commercial vessel.

NC 1991

§143-215.94GG CH. 143. STATE DEPARTMENTS, ETC. §143-215.94H

§ 143-215.94GG. Notification by persons responsible for discharge.

(a) Any person responsible for an offshore discharge under this Part shall immediately notify the Division of Emergency Management pursuant to rules established by the Secretary of Crime Control and Public Safety, if any, but in no case later than two hours after the discharge. Failure to so notify the Division of Emergency Management shall make the responsible person liable to the penalties set out in subsection (b) of this section. No penalty shall be imposed under this section when the owner or operator promptly reported the discharge to federal authorities designated pursuant to 33 U.S.C. § 1321.

(b) The civil penalty for failure to immediately report a discharge under this Part shall be determined by the Commission. In determining the amount of a penalty for failure to report under this section, the Commission shall take into consideration such circumstances as the gravity of the violation, the previous record of the responsible person in complying with the terms of this Article, whether the violator reported the discharge and if so after what period of time following the spill, the size of the business of the responsible person and the effect of the penalty on the violator's ability to continue in business, and other relevant factors; provided that the penalty assessed under this section shall not exceed the following daily maximum amounts, based upon the quantity of oil spilled:

- (1) Up to 50,000 gallons \$ 500
- (2) More than 50,000 gallons 2500

For purposes of this section, each day or any part thereof during which a discharge goes unreported by the responsible person shall constitute a separate offense. (1989, c. 656, s. 5; c. 770, s. 17)

§ 143-215.94HH. Oil spill contingency plan.

The State Emergency Response Commission, in consultation with the Secretary of Administration or his designee in the Office of the Continental Shelf Lands Office, shall develop a State oil spill contingency plan relating solely to the undersea exploration, production, and transport of oil or natural gas in the marine environment off the North Carolina coast, including any development on the Outer Continental Shelf seaward of the State's jurisdiction over its territorial waters.

(b) The Secretary of Crime Control and Public Safety or his designee shall establish, pursuant to such a plan, an emergency spill control network which shall be comprised of available personnel from appropriate State, county and municipal government agencies. Such network shall be employed to provide an immediate response to an oil discharge into the offshore marine environment which is reasonably likely to affect the State's coastal waters. Furthermore, such network shall be employed in conjunction with cleanup operations under this Article or any applicable federal law required of the owner or operator of the discharging operation, vessel, or facility, the Department of Environment, Health, and Natural Resources, and any federal agency.

- (1) The Secretary of Crime Control and Public Safety or his designee shall make

215.94H

ART. 21A. HAZAR

and condition, of all equipment, and municipalities and municipalities available to the State for leasing, including costs of leasing, participating in discharge cleanup. The Secretary of Crime Control and Public Safety, in his discretion have the power to participate in a discharge cleanup. The Secretary of Environment and Natural Resources shall be authorized to use such funds as may be available to the State for cleanup of hazardous substances created pursuant to G.S. 143-215.94H. The oil spill contingency plan developed pursuant to this section shall be evaluated for adequacy at least every three years, or more often if the Secretary of Crime Control and Public Safety determines it is necessary. (1989, c. 656, s. 5; c. 727, s. 218(11))

Amendments. — The 1989 amendments, effective July 1, 1989, substitute "Environment, Health, and Natural Resources" for "Natural Resources" in the definition of "spill" in Article 21A.

215.94H. Emergency powers of the Governor.

Whenever any emergency exists which requires the discharge of oil or other pollutants, the Governor shall by proclamation declare the state of emergency exists in the State. Upon such proclamation, the powers enumerated in G.S. 14-288.15, shall be vested in the Governor.

If the Governor is unavailable, the Governor's designee shall, by proclamation, declare the fact of the emergency and perform his duties under this Article and directed to cooperate with the federal government, the other states, and the political agencies in all matters pertaining to the emergency.

In addition to the powers enumerated in this Article, the Governor is further authorized to use any funds available to him by statute and Other Hazardous Substances Act pursuant to G.S. 143-215.94H and specified therein. (1989, c. 656, s. 5)

OREGON 1991

as a dielectric fluid for an electric transformer or capacitor pursuant to rules of the commission to insure the public health. However, upon adequate documentation of the availability of reasonable substitutes which meet performance standards and environmental acceptability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring the phasing in of the substitute or substitutes.

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or used in this state pursuant to an exemption certificate issued by the department under ORS 466.520. [Formerly 468.906]

466.520 Exemption certificates; applications; conditions. (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application.

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466.515.

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB.

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB.

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having:

(a) Exposed the item, product or material to concentrations of PCB.

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB.

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought. [Formerly 468.909]

466.525 Additional PCB compounds may be prohibited. The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if

that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds is found to constitute a danger to public health. [Formerly 468.912]

466.530 Prohibited disposal of waste containing PCB. After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of PCB except in conformity with rules of the commission adopted pursuant to ORS 466.005 to 466.385 and 466.890. [Formerly 468.921]

466.540 [1987 c.539 §52; 1987 c.735 §1; 1989 c.171 §60; renumbered 465.200 in 1989]

466.547 [1987 c.735 §2; renumbered 465.205 in 1989]

466.550 [1987 c.735 §3; renumbered 465.210 in 1989]

466.553 [1987 c.735 §4; renumbered 465.400 in 1989]

466.555 [1987 c.735 §5; renumbered 465.420 in 1989]

466.557 [1987 c.735 §6; 1989 c.485 §1; renumbered 465.215 in 1989]

466.560 [1987 c.735 §7; 1989 c.485 §9; renumbered 465.220 in 1989]

466.563 [1987 c.735 §8; 1989 c.485 §10; renumbered 465.245 in 1989]

466.565 [1987 c.735 §9; renumbered 465.250 in 1989]

466.567 [1987 c.735 §10; renumbered 465.255 in 1989]

466.570 [1987 c.735 §11; renumbered 465.260 in 1989]

466.573 [1987 c.735 §12; renumbered 465.315 in 1989]

466.575 [1987 c.735 §13; renumbered 465.320 in 1989]

466.577 [1987 c.735 §14; renumbered 465.325 in 1989]

466.580 [1987 c.735 §15; renumbered 465.330 in 1989]

466.583 [1987 c.735 §16; renumbered 465.335 in 1989]

466.585 [1987 c.735 §17; renumbered 465.340 in 1989]

466.587 [1987 c.735 §18; 1989 c.485 §11; renumbered 465.375 in 1989]

466.590 [1987 c.735 §19; 1989 c.833 §113; 1989 c.966 §53; renumbered 465.380 in 1989]

SPILL RESPONSE AND CLEANUP OF HAZARDOUS MATERIALS

466.605 Definitions for ORS 466.605 to 466.680. As used in ORS 466.605 to 466.680 and 466.880 (3) and (4):

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the department.

(3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the department when implementing ORS 466.205, 466.605 to 466.680, 466.880 (3) and (4) and 466.995 (3) or 468B.320.

(4) "Commission" means the Environmental Quality Commission.

(5) "Department" means the Department of Environmental Quality.

(6) "Director" means the Director of the Department of Environmental Quality.

(7) "Hazardous material" means one of the following:

(a) A material designated by the commission under ORS 466.630.

(b) Hazardous waste as defined in ORS 466.005.

(c) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under ORS 469.605 and radioactive substances as defined in ORS 453.005.

(d) Communicable disease agents as regulated by the Health Division under ORS chapter 431 and ORS 431.175, 433.010 to 433.045 and 433.106 to 433.990.

(e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(8) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof and the Federal Government and any agency thereof.

(10) "Reportable quantity" means one of the following:

(a) A quantity designated by the commission under ORS 466.625.

(b) The lesser of:

(A) The quantity designated for hazardous substances by the United States Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(B) The quantity designated for hazardous waste under ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2);

(C) Any quantity of radioactive material, radioactive substance or radioactive waste;

(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding

normal discharges from properly operating marine engines; or

(E) If spilled on land, any quantity of oil over one barrel.

(c) Ten pounds unless otherwise designated by the commission under ORS 466.625.

(11) "Respond" or "response" means:

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material;

(b) First aid, rescue or medical services, and fire suppression; or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken.

(12) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468B.005, except as authorized by a permit issued under ORS chapter 454, 459, 459A, 468, 468A, 468B or 469, ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2) or federal law or while being stored or used for its intended purpose.

(13) "Threatened spill or release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state. [1985 c.733 §1; 1987 c.735 §26; 1989 c.6 §14]

466.610 Department authority relating to cleanup of oil or hazardous material. Subject to policy direction by the commission, the department may:

(1) Conduct and prepare independently or in cooperation with others, studies, investigations, research and programs pertaining to the containment, collection, removal or cleanup of oil and hazardous material.

(2) Advise, consult, participate and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to responses, remedial actions or cleanup of oil and hazardous material and financing of cleanup costs, including radioactive waste, materials and substances otherwise subject to ORS chapters 453 and 469.

(3) Employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies and enter into contracts with public and private parties necessary to carry out the provisions of ORS

VESSELS

the department of
t or its director
reflect this reorga-
ve date has been

The owners,
fined in sec-
nited States
mercial pur-
d transport-
ate of finan-
vessels less
onsibility in
and 1016 as
nent of any
i and Provi-
o the provi-
ng waters or
of financial
without evi-
Federal Oil
re than one
nt required
ssel, which-

i to apply to
in the state,
ely because

hereby au-
y to imple-

a misspelling of
end of the first
which correction
by the compiler;
tion (a), substi-
vessel"; substi-
terminal" near
d made several

punctuation changes throughout the section.

Compiler's Notes. This section as it appears above has been edited by the compiler to incorporate the changes made by the 1991 reenactment of title 46 by P.L. 1991, ch. 354,

which were not included in the 1991 amendment. For the extent of the reenactment changes, see the reenactment note above.

In 1991, the compiler designated the last paragraph as subsection (c).

CHAPTER 12.5

OIL POLLUTION CONTROL

SECTION.

- 46-12.5-1. Definitions.
- 46-12.5-2. Powers and duties of the director.
- 46-12.5-3. Prohibitions against oil pollution.
- 46-12.5-4. Ballast water discharge.
- 46-12.5-5. Discharge reporting.
- 46-12.5-6. Civil penalties for discharge of oil.
- 46-12.5-7. Damages.
- 46-12.5-8. Reimbursement for cleanup expenses — Deposit of monies.

SECTION.

- 46-12.5-9. Proceedings for enforcement.
- 46-12.5-10. Criminal penalties.
- 46-12.5-11. Emergency powers.
- 46-12.5-12. Notices of violations and compliance orders.
- 46-12.5-13. Remedies cumulative.
- 46-12.5-14. Inspections.
- 46-12.5-15. Oil discharge cleanup personnel, equipment, expenses.
- 46-12.5-16. Compacts authorized.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) substituted the present chapter designation for former chapter designation 12.3 of this title, as P.L. 1990, ch. 198, § 1 already enacted a chapter designated as chapter 12.3 and as P.L. 1990, ch. 197, § 1 enacted a chapter designated as chapter 12.4, which substitution was previously made in 1990 by the law revision officer of the joint committee on legislative services pursuant to § 43-2-2.1.

Compiler's Notes. P.L. 1990, ch. 461, reorganizes the department of environmental management into the department of the environment. The effective date of P.L. 1990, ch. 461, has been postponed to July 1, 1992, pursuant to Executive Order No. 91-9(B). References in this chapter to the department of environmental management or its director have not been changed to reflect this reorganization, because its effective date has been postponed to July 1, 1992.

46-12.5-1. Definitions. — As used in this chapter these terms shall, where the context permits, be construed to mean:

(a) "Containment and cleanup" includes all direct and indirect efforts associated with the prevention, abatement, containment, or removal of a pollutant, the restoration of the environment to its former state, and all incidental administrative costs;

(b) "Department" means the department of environmental management or its successor;

(c) "Director" means the director of the department of environmental management;

(d) "Oil" means oil of any kind and in any form, whether crude, refined, or a petroleum byproduct, including, but not limited to, petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oil refuse, oil mixed with other wastes, crude oils, liquified natural gas, propane, butane, or other liquid hydrocarbons regardless of specific gravity;

(e) "Oil pollution" means discharging, causing to be discharged, or permitting the discharge of oil into or upon the waters of this state, or to construct or install any industrial, commercial, or other estab-

ishment, to make any modification or addition thereto, or to undertake any development which may result in the discharge of oil into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director;

(f) "Operator" means the person who, through contract, lease, sublease, or otherwise, exerts general supervision and control of activities including, but not limited to, a prime or general contractor, the master of a vessel and the master's employer, or any other person who, personally or through an agent or contractor, undertakes the general functioning of the facility;

(g) "Person" shall include an individual, trust, firm, joint stock company, corporation (including a quasi government corporation), municipality, municipal or state agency, fire district, club, nonprofit agency, or country;

(h) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment;

(i) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, whether self propelled or otherwise, and shall include barges and tugs;

(j) "Waters of the state" shall include all surface waters including all waters of the territorial sea, tidewaters, all inland waters of any river, stream, brook, pond or lake, and all ground waters and wetlands of the state of Rhode Island.

History of Section.

P.L. 1990, ch. 324, § 2.

Reenactments. The 1991 Reenactment (P.L. 1991, ch. 354, § 1) arranged the subdi-

visions in alphabetical order, thereby redesignating the subdivision designations and made several punctuation and stylistic changes throughout the section.

46-12.5-2. Powers and duties of the director. — In addition to the other powers granted the director of environmental management, the director shall have and may exercise these powers and duties:

(a) To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated hereunder;

(b) To promulgate rules and regulations for the transportation of oil on the waters and over the land of this state; for the emergency response for the containment, cleanup, and abatement of a discharge of oil; for the assessment of penalties and recovery of costs and of damages as set forth in this chapter; and for any other procedures necessary for the implementation of this chapter.

(c) To promulgate rules and regulations for oil discharge contingency plans. The rules and regulations may at the minimum:

(1) Prohibit the transfer of oil to or from a tank vessel or oil barge without an oil discharge contingency plan that the appropriate authority has approved;

HISTORY: 1977 Act No. 179 Part 1 § 20.

Research and Practice References—

38 Am Jur 2d, Gas and Oil § 283.
58 CJS, Mines and Minerals § 129.

ARTICLE 3

POLLUTION CONTROL

SEC.

- 48-43-510. Definitions.
- 48-43-520. Findings and declarations of General Assembly.
- 48-43-530. General powers and duties of Department.
- 48-43-540. Registration certificate required to operate terminal facility; issuance of certificates; fees.
- 48-43-550. Regulations as to removal of discharges of pollutants.
- 48-43-560. Removal and abatement of discharge; use of federal funds; liability and rights of persons rendering assistance.
- 48-43-570. Cooperation and responsibilities of State agencies.
- 48-43-580. Unlawful acts; exceptions; permit for discharge of oil.
- 48-43-590. Financial responsibility of owners or operators of terminal facilities.
- 48-43-600. Arbitration of claims for damages; appeal of arbitration remedy; civil action for damages preserved; choice of remedies.
- 48-43-610. Violations and penalties.
- 48-43-620. Department's budget for responsibilities under article; accounting for appropriated funds.

§ 48-43-510. Definitions.

When used in this article unless the context clearly requires otherwise:

- (1) "Department" means the Department of Health and Environmental Control.
- (2) "Commissioner" means the Commissioner of the Department.
- (3) "Barrel" means 42 U. S. gallons at 60° Fahrenheit.
- (4) "Other measurements" means measurements set by the Department for products transferred at terminals which are other than fluid or which are not commonly measured by the barrel.
- (5) "Discharge" shall include, but not be limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping which occurs within the territorial limits of the State or outside of the territorial limits of the State and affects lands and waters within the territorial limits of the State.
- (6) "Pollutants" shall include oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof.

- (7) "Pollution" means the presence in the outdoor atmosphere or waters of the States of any one or more substances or pollutants, in quantities which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
- (8) "Terminal facility" means any waterfront or offshore facility of any kind, other than vessels not owned or operated by such facility, and directly associated waterfront or offshore appurtenances including pipelines located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. For the purposes of this article "terminal facility" shall not be construed to include waterfront facilities owned and operated by governmental entities acting as agents of public convenience for operators engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants; however, each operator engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants through a waterfront facility owned and operated by such governmental entity shall be construed as a terminal facility.
- (9) "Owner" means any person owning a terminal facility; "operator" means any person operating a terminal facility, whether by lease, contract, or other form of agreement.
- (10) "Transfer" or "transferred" includes onloading or offloading between terminal facility and vessel, vessel and vessel, or terminal facility and terminal facility.
- (11) "Vessel" includes every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and includes barges and tugs.
- (12) "Discharge cleanup organization" means any group,

incorporated or unincorporated, of owners or operators of waterfront terminal facilities in any port or harbor of the State, and any other person who may elect to join, organized for the purpose of containing and cleaning up discharges of pollutants through cooperative efforts and shared equipment and facilities.

(13) "Board" means the board of arbitration.

(14) "Person" means any individual, partnership, joint venture, corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity.

(15) "Registrant" is a terminal facility required to possess a valid registration certificate to operate as a terminal facility.

HISTORY: 1977 Act No. 179 Part 2 § 23.

§ 48-43-520. Findings and declarations of General Assembly.

(1) The General Assembly finds and declares that the highest and best use of the seacoast of the State is as a source of public and private recreation.

(2) The General Assembly further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.

(3) Furthermore it finds and declares that:

(a) The transfer of pollutants between vessels, between onshore facilities and vessels, between offshore facilities and vessels, and between terminal facilities within the jurisdiction of the State and state waters is a hazardous undertaking;

(b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the State, to owners and users of shore front property, to public and private recreation, to citizens of the State and other interests deriving livelihood from marine-related activities, and to the beauty of the coast;

(c) Such hazards have frequently occurred in the past, are

occurring now, and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth; and

(d) Such state interests outweigh any economic burdens imposed upon those engaged in transferring pollutants and related activities.

(4) The General Assembly intends by the enactment of this article to exercise the police power of the State by conferring upon the Department of Health and Environmental Control power to:

(a) Deal with the hazards and threats of danger and damage posed by such transfers and related activities;

(b) Require the prompt containment and removal of pollution occasioned thereby; and

(5) The General Assembly further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing diseases, promoting health, and providing for the public safety and that the state's interest in such preservation outweighs any burdens of liability imposed herein upon those engaged in transferring pollutants and related activities.

(6) The General Assembly further declares that it is the intent of this article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, specifically those provisions relating to the national contingency plan for removal of pollutants.

HISTORY: 1977 Act No. 179 Part 2 § 22.

Cross references—

As to regulation of liquefied petroleum gases, see Chapter 43 of Title 39.

Research and Practice References—

61 Am Jur 2d, Pollution Control §§ 53 et seq.

39A CJS, Health and Environment §§ 115 et seq.

§ 48-43-530. General powers and duties of Department.

(1) The powers and duties conferred by this article shall be exercised by the Department and shall be deemed to be an essential governmental function in the exercise of the police power of the State. The Department may call upon any other state agency for consultative services and technical advice and the agencies are directed to cooperate with the Department.

(2) Registration certificates required under this article shall be issued by the Department subject to such terms and conditions as

PUBLIC DOMAIN
Title 2

natural resources trustees. The legislation implemented in a manner consistent with
ch 28, 1991.

on concerns, a member knowledgeable in the
of admiralty law, and a member knowledge-
le in the operations of ports on the gulf coast.
e commission shall report its findings to the
mmissioner no sooner than two years nor later
in four years after the effective date of this
t. The commissioner shall submit the commis-
n's report and recommendations to the legisla-
re at the session during which the report is
pleted or at the immediately following ses-
n if the report is completed in the interim.
e commissioner shall provide staff to the com-
mission as is appropriate to carry out its respon-
sibilities under this section. There is hereby
ropriated to the General Land Office an
unt not to exceed \$100,000 from the coastal
section fund for the operation of the commis-

at 60 degrees Fahrenheit.
bed of the Gulf of Mexico within the
arms of the Gulf of Mexico subject to
s thereto that are navigable by vessels
of oil as fuel or cargo.
of the General Land Office.
public accounts.
g liquid hydrocarbon at atmospheric
h, including condensate.

direct, documented loss of; injury to, or
or natural resources damaged by an
direct, documented net loss of taxes or
services; or

holders of an oyster lease or permit;
mmercial fishing, oystering, crabbing,
ting, or employed by seafood process-
lly reliant on the use or acquisition of
d loss of income, profits, or earning
to use or acquire natural resources
resources from an unauthorized dis-

ages" includes the cost to assess,
al resources, or to mitigate further
h restoration, rehabilitation, replace-

intentional act or omission by which
d, poured, emitted, or dumped into or
l waters where, unless controlled or
al waters exists.

PUBLIC DOMAIN
Title 2

TEXAS

§ 40.003

(8) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the commissioner properly certifies the organization.

(9) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(10) "Fund" means the coastal protection fund.

(11) "Harmful quantity" means that quantity of oil the discharge of which is determined by the commissioner to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(12) "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas Water Commission.

(13) "Marine terminal" means any terminal facility used for transferring crude oil to or from vessels.

(14) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(15) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(16) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Water Commission.

(17) "Owner" or "operator" means:

- (A) any person owning, operating, or chartering by demise a vessel; or
- (B) any person owning a terminal facility or a person operating a terminal facility by lease, contract, or other form of agreement.

(18) "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a discharge of oil occurs or a particular duty arises under this chapter.

(19) "Person responsible" or "responsible person" means:

- (A) the owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate;
- (B) in the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment; and
- (C) any other person who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

(20) "Pollution" means the presence of harmful quantities of oil from an unauthorized discharge in coastal waters or in or on adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes.

(21) "Response costs" means:

- (A) with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this chapter, and costs of any

ARTICLE 11.

Discharge of Oil into Waters.

ls, including prior approval of pool
examinations of financial condi-

disapprove an application for the
suspend or withdraw such approval
pool:

pers, accounts, or affairs to the
or its representative;
ave refused, to furnish satisfactory
nding or solvency;

that its further transaction of
is to its members and creditors in
final judgment against it within

health or has violated or exceeded

arges imposed in this Common-
and payable, or within sixty days
th respect to liability therefor; or
of any other state, or by the
icer or agency of any other state,
in such state. (1987, c. 677; 1989,

section A, deleted "not less than" preced-
\$50,000" and "\$150,000" and inserted
an annual aggregate of \$200,000."
Review. — For survey on environmen-
in Virginia for 1989, see 23 U. Rich. L.
25 (1989).

aintenance. — A. In order to
imposed a tax of one-fifth of one
he same manner as specified in
of the tax shall be conducted by
nues from such taxes shall be
set forth in this article.
e operating level, the Commis-
hall suspend the levy of the tax
the Comptroller that the Fund
ll reinstitute the tax when the
en or is likely in the near future

missioner quarterly regarding
ie preceding quarter. (1989, c.

transferred to the Virginia Under-
Petroleum Storage Tank Fund.

§ 62.1-44.34:14. Definitions. — As used in this article unless the context
requires a different meaning:

"Containment and cleanup" means abatement, containment, removal and
disposal of oil and, to the extent possible, the restoration of the environment
to its existing state prior to an oil discharge.

"Discharge" means any spilling, leaking, pumping, pouring, emitting,
emptying or dumping.

"Facility" means any development or installation within the Common-
wealth that deals in, stores or handles oil, and includes a pipeline.

"Oil" means oil of any kind and in any form, including, but not limited to,
petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil
refuse, oil mixed with other wastes, crude oils and all other liquid hydrocar-
bons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or
otherwise exercises control over or responsibility for a facility or a vehicle or
vessel.

"Person" means any firm, corporation, association or partnership, one or
more individuals, or any governmental unit or agency thereof.

"Tank vessel" means any vessel used in the transportation of oil as cargo.

"Vehicle" means any motor vehicle, rolling stock or other artificial
contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used
as a means of transporting on water, whether self-propelled or otherwise, and
shall include barges and tugs. (1973, c. 417; 1976, c. 51; 1978, c. 816; 1990, c.
917.)

Editor's note. — Acts 1990, c. 598 enacted
an Article 11 of this chapter, comprising
§§ 62.1-44.34:14 through 62.1-44.34:18. Acts
1990, c. 917 enacted a new chapter 3.1:1 of this
title, also comprising §§ 62.1-44.34:14 through
62.1-44.34:18. At the direction of the Code
Commission, the sections added by c. 917 have

been enacted as Article 11 of this chapter,
comprising §§ 62.1-44.34:14 through
62.1-44.34:18, and the sections added by c. 598
have been enacted as Article 12 of this chapter,
comprising 62.1-44.34:24 through
62.1-44.34:28.

§ 62.1-44.34:15. Oil discharge contingency plans. — A. (Effective July
1, 1992) No operator shall cause or permit the operation of a facility in the
Commonwealth unless an oil discharge contingency plan applicable to the
facility has been filed with and approved by the Board. No operator shall
cause or permit a tank vessel to transport or transfer oil in state waters unless
an oil discharge contingency plan applicable to the tank vessel has been filed
with and approved by the Board.

B. Application for approval of an oil discharge contingency plan shall be
made to the Board and shall be accompanied by plans, specifications, maps
and such other relevant information as may be required, in scope and detail
satisfactory to the Board. An oil discharge contingency plan must conform to
the requirements and standards determined by the Board to be necessary to
ensure that the applicant can take such steps as are necessary to protect
environmentally sensitive areas, to respond to the threat of an oil discharge,
and to contain, clean up and mitigate an oil discharge within the shortest
feasible time. Each such plan shall provide for the use of the best available
technology at the time the plan is submitted for approval. The applicant shall
notify the Board immediately of any significant change in the operation or
capacity of or the type of product dealt in, stored, handled, transported or

WA

88.32.230 Joint aid river and harbor improvements—Bonds—Election. Whenever the county legislative authority of any county with a population of one hundred twenty-five thousand or more deems it for the interest of the county to engage in or to aid the United States of America, the state of Washington, or any adjoining county or any city of this state, or any of them, in construction, enlargement, improvement, modification, repair or operation of any harbor, canal, waterway, river channel, slip, dock, wharf, or other public improvement, or any of the same, for the purposes of commerce, navigation, sanitation and drainage, or any thereof, or to acquire or operate wharf sites, dock sites, or other properties, rights or interests, or any thereof, necessary or proper to be acquired or operated for public enjoyment of any such public improvement, and to incur indebtedness to meet the cost thereof and expenses connected therewith, and issue bonds of the county for the payment of such indebtedness, or any thereof, such county is hereby authorized and empowered, by and through its county legislative authority, to engage in or aid in any such public work or works, operation or acquisition, as aforesaid, and to incur indebtedness for such purpose or purposes to an amount, which, together with the then existing indebtedness of such county, shall not exceed two and one-half percent of the value of the taxable property in said county, as the term "value of the taxable property" is defined in RCW 39.36.015, and to issue the negotiable bonds of the county for all or any of such indebtedness and for the payment thereof, in the manner and form and as provided in chapter 39.46 RCW, and other laws of this state which shall then be in force, and to make part or all of such payment in bonds or in moneys derived from sale or sales thereof, or partly in such bonds and partly in such money: PROVIDED, That the county legislative authority shall have first submitted the question of incurring such indebtedness to the voters of the county at a general or special election, and three-fifths of the voters voting upon the question shall have voted in favor of incurring the same. [1991 c 363 § 161; 1970 ex.s. c 42 § 37; 1911 c 3 § 1; RRS § 9666. FORMER PART OF SECTION: 1911 c 3 § 2 now codified as RCW 88.32.235.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Bonds, generally as to form, etc.: Chapter 39.44 RCW.

Chapter 88.40

TRANSPORT OF PETROLEUM PRODUCTS— FINANCIAL RESPONSIBILITY

Sections	
88.40.005	Intent.
88.40.010	Repealed.
88.40.011	Definitions.
88.40.020	Evidence of financial responsibility for vessels.
88.40.025	Evidence of financial responsibility for onshore or off-shore facilities.

[1990-91 RCW Supp—page 1758]

88.40.030 Establishing evidence of financial responsibility—Documentation.

88.40.040 Failure to meet requirements—Denial of entry to state waters—Suspension of operation.

88.40.050 Repealed.

88.40.005 Intent. The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters. [1991 c 200 § 701; 1990 c 116 § 29; 1989 1st ex.s. c 2 § 1.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

88.40.010 Repealed. See Supplementary Table of Disposition of Former RCW Sections, Supplement Volume 9A.

88.40.011 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.

(2) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of greater than three hundred gross tons, including but not limited to, commercial fish processing vessels and freighters.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Hazardous substances" means any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(9) "Inland barge" means any barge operating on the waters of the state and certified by the coast guard as an inland barge.

(10) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(11) "Office" means the office of marine safety established by RCW 43.211.010.

(12) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility, as defined in subsection (7) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(14) "Onshore facility" means any facility, as defined in subsection (7) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington. [1991 c 200 § 702.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.40.020 Evidence of financial responsibility for vessels. (1) Any inland barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall establish evidence of financial responsibility in the amount of the greater of one million dollars, or one hundred fifty dollars per gross ton of such vessel.

(2)(a) Except as provided in (c) of this subsection, a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least five hundred million dollars.

(b) The administrator by rule may establish a lesser standard of financial responsibility for barges of three hundred gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the barge is capable of carrying. The administrator shall not set the standard for barges of three thousand gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter.

(3) A cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay the greater of at least six hundred dollars per gross ton or five hundred thousand dollars.

(4) The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and necessary expenses.

(5) The office may by rule set a lesser amount of financial responsibility for a tank vessel that meets standards for construction, propulsion, equipment, and personnel established by the office. The office shall require as a minimum level of financial responsibility under this subsection the same level of financial responsibility required under federal law.

same waters provide one of the most vital maritime trade links for our state, our nation, and for the Pacific Rim.

The future of Washington's waters lies in both purposes. But, at times in the past, maritime accidents have occurred from oil spills which have endangered this unique environment. While some of the commercial vessels which carry petroleum on the water have, already, voluntarily joined organizations to provide immediate oil spill response, not all vessels are so protected.

All commercial vessels which enter Washington waters must have the protection of an oil spill response system. This is a responsibility of the maritime industry and must be taken care of by that industry. Therefore, this chapter creates the Washington state maritime commission to establish an oil spill first response system and carry out the purposes of this chapter to protect the waters of Washington state. [1990 c 117 § 1.]

88.44.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means the administrator of the office of marine safety created by RCW 43.211.010.

(2) "Business class" means a recognized trade segment of the maritime industry.

(3) "Commission" means the Washington state maritime commission.

(4) "Fishing vessel" means a vessel (a) on which persons commercially engage in: (i) Catching, taking, or harvesting fish; (ii) preparing fish or fish products; or (b) that supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish.

(5) "Foreign vessel" means a vessel of foreign registry or operated under the authority of a country, except the United States.

(6) "Oil" or "oils" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related products.

(7) "Oceanographic research vessel" means a vessel that is employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(8) "Protection and indemnity club" means a mutual insurance organization formed by a group of shipowners or operators in order to secure cover for various risks of vessel operation, including oil spill costs, not covered by normal hull insurance.

(9) "Public vessel" means a vessel that is owned, or chartered and operated by the United States government, by a state of the United States, or a government of a foreign country and is not engaged in commercial service.

(10) "State" means a state of the United States, Guam, Puerto Rico, the Virgin Islands, American

Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(11) "Steamship agent or agency" means an agent or agency appointed by a vessel owner or operator to enter or clear vessels at ports within the state of Washington and to conduct onshore activities, or contract on behalf of the owner or operator for whatever is required for the efficient operation of the vessel.

(12) "Steamship liner company" means a steamship company maintaining a regular schedule of calls at designated ports of the state of Washington.

(13) "Towboat" means a commercial vessel engaged in, or intending to engage in, the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(14) "United States flag vessel" means a vessel documented under the laws of the United States or registered under the laws of any state of the United States.

(15) "Vessel" means every description of watercraft, other than a seaplane on water, used or capable of being used as a means of transportation on water, carrying oil as fuel or cargo, and over three hundred gross registered tons, except oceanographic research vessels, public vessels, vessels being employed exclusively for pleasure, or vessels which, prior to entering Washington waters, have formerly arranged with an officially recognized cleanup cooperative or with a private cleanup contractor for immediate oil spill response.

(16) "Vessel owner or operator" means the legal owner of a vessel and/or the charterer or other person in charge of the day-to-day operation.

(17) "Waters of this state" or "waters of the state of Washington" has the meaning in RCW 90.56.010. [1991 c 200 § 901; 1990 c 117 § 2.]

Effective dates—Severability—1991 c 200: See RCW 90.56.901 and 90.56.904.

88.44.020 Commission—Powers and duties. There is created the Washington state maritime commission to be known and designated and declared a corporate body. The powers and duties of the commission shall include the following:

(1) To adopt, rescind, and amend rules and orders for the exercise of its powers, which shall have the force and effect of the law when not inconsistent with existing laws;

(2) To administer and enforce the provisions of this chapter, and do all things reasonably necessary to effectuate the purposes of this chapter;

(3) To employ, and at its pleasure discharge, a manager, secretary, agents, attorneys, consultants, companies, organizations, and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation;

(4) To establish offices, incur expenses, enter into contracts, and create such liabilities as may be reasonable for the proper administration and enforcement of this chapter;

(5) To assess vessels transiting the waters of this state, to collect such assessments, investigate violations, and

provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(3) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and (b) processes that are currently in use. In determining what is best achievable technology, the administrator shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(4) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of greater than three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(7) "Department" means the department of ecology.

(8) "Director" means the director of the department of ecology.

(9) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(10)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(11) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(12) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(13) "Office" means the office of marine safety established by RCW 43.211.010.

(14) "Oil" or "oils" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(15) "Offshore facility" means any facility, as defined in subsection (10) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility as defined in subsection (11) of this section.

(16) "Onshore facility" means any facility, as defined in subsection (10) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(17)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(18) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(19) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(22) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(23) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

WA 1989

projects—Limitations. The department is authorized to make and administer grants within appropriations authorized by the legislature to any municipal or public corporation, or political subdivision within the state for the purpose of aiding in the construction of water pollution control projects necessary to prevent the discharge of untreated or inadequately treated sewage or other waste into the waters of the state including, but not limited to, projects for the control of storm or surface waters which will provide for the removal of waste or polluting materials therefrom.

Grants so made by the department shall be subject to the following limitations:

(1) No grant shall be made in an amount which exceeds the recipient's contribution to the estimated cost of the project: *Provided*, That the following shall be considered a part of the recipient's contribution:

(a) Any grant received by the recipient from the federal government pursuant to section 8(f) of the Federal Water Pollution Control Act (33 U.S.C. 466) for the project;

(b) Any expenditure which is made by any municipal or public corporation, or political subdivision within the state as a part of a joint effort with the recipient to carry out the project and which has not been used as a matching contribution for another grant made pursuant to this chapter, and

(c) Any expenditure for the project made by the recipient out of moneys advanced by the department from a revolving fund and repayable to said fund.

(2) No grant shall be made for any project which does not qualify for and receive a grant of federal funds under the provisions of the Federal Water Pollution Control Act as now or hereafter amended: *Provided*, That this restriction shall not apply to state grants made in any biennium over and above the amount of such grants required to match all federal funds allocated to the state for such biennium.

(3) No grant shall be made to any municipal or public corporation, or political subdivision for any project located within a drainage basin unless the department shall have previously adopted a comprehensive water pollution control and abatement plan and unless the project is found by the department to conform with such basin comprehensive plan: *Provided*, That the requirement for a project to conform to a comprehensive water pollution control and abatement plan may be waived by the department for any grant application filed with the department prior to July 1, 1974, in those situations where the department finds the public interest would be served better by approval of any grant application made prior to adoption of such plan than by its denial.

(4) Recipients of grants shall meet such qualifications and follow such procedures in applying for grants as shall be established by the department.

(5) Grants may be made to reimburse recipients for expenditures made after July 1, 1967 for projects which meet the requirements of this section and were commenced after the recipient had filed a grant application with the department. [1987 c 109 § 145; 1969 ex.s. c 284 § 1; 1967 c 13 § 28.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1969 ex.s. c 284: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 284 § 24.] This applies to RCW 90.48.290, 90.48.295, 90.22.010 through 90.22.040, 90.14.031 through 90.14.121, 43.27A.190 through 43.27A.220, 43.27A.075, and to the repeal of RCW 43.21.145 and 90.14.030 through 90.14.120.

90.48.300 Pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

90.48.315 Discharge of oil into waters of the state—Definitions. For purposes of RCW 90.48.315 through 90.48.365, 78.52.020, 78.52.125, 82.36.330, 90.48.315, 90.48.370 through 90.48.410, 90.48.903, 90.48.906 and 90.48.907, and 90.48.366 through 90.48.369, the following definitions shall apply unless the context indicates otherwise:

(1) "Board" shall mean the pollution control hearings board.

(2) "Committee" shall mean the preassessment screening committee established under RCW 90.48.368.

(3) "Department" shall mean the department of ecology.

(4) "Director" shall mean the director of the department of ecology.

(5) "Discharge" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(6) "Fund" shall mean the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(7) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(8) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; and (c) conducting actions necessary to clean up the discharge.

(9) "Oil" or "oils" shall mean oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, liquid natural gas, propane, butane, oils distilled from coal, and other liquid hydrocarbons regardless of specific gravity, or any other petroleum related product.

(10) "Person" shall mean any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever and any owner, operator, master, officer, or employee of a ship.

(11) "Ship" shall mean any boat, ship, vessel, barge, or other floating craft of any kind.

(12) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

(13) "Waters of the state" shall include lakes, rivers, ponds, streams, inland waters, underground water, salt

(a) To establish state agency expertise in marine safety and to centralize state activities in spill prevention and response activities;

(b) To prevent spills of oil and to promote programs that reduce the risk of both catastrophic and small chronic spills;

(c) To ensure that responsible parties are liable, and have the resources and ability, to respond to spills and provide compensation for all costs and damages;

(d) To provide for state spill response and wildlife rescue planning and implementation;

(e) To support and complement the federal oil pollution act of 1990 and other federal law, especially those provisions relating to the national contingency plan for cleanup of oil spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law;

(f) To provide broad powers of regulation to the department of ecology relating to spill prevention and response;

(g) To provide for an independent oversight board to review the adequacy of spill prevention and response activities in this state; and

(h) To provide an adequate funding source for state response and prevention programs. [1991 c 200 § 101; 1990 c 116 § 1.]

90.56.010 Definitions. For purposes of this chapter, the following definitions shall apply unless the context indicates otherwise:

(1) "Administrator" means the administrator of the office of marine safety created in RCW 43.211.010.

(2) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(3) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(4) "Board" means the pollution control hearings board.

(5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, greater than three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(7) "Committee" means the preassessment screening committee established under RCW 90.48.368.

(8) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(9) "Department" means the department of ecology.

(10) "Director" means the director of the department of ecology.

(11) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(12)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; (iii) a motor vehicle motor fuel outlet; (iv) a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or (v) a marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(13) "Fund" means the state coastal protection fund as provided in RCW 90.48.390 and 90.48.400.

(14) "Having control over oil" shall include but not be limited to any person using, storing, or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(15) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(16) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(17) "Necessary expenses" means the expenses incurred by the department and assisting state agencies for (a) investigating the source of the discharge; (b) investigating the extent of the environmental damage caused by the discharge; (c) conducting actions necessary to clean up the discharge; (d) conducting predamage and damage assessment studies; and (e) enforcing the provisions of this chapter and collecting for damages caused by a discharge.

(18) "Oil" or "oils" means naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline, and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil,

diesel oil, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(19) "Offshore facility" means any facility, as defined in subsection (12) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(20) "Onshore facility" means any facility, as defined in subsection (12) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(21)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(22) "Passenger vessel" means a ship of greater than three hundred or more gross tons or five hundred or more international gross tons carrying passengers for compensation.

(23) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(24) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(25) "Spill" means an unauthorized discharge of oil or hazardous substances into the waters of the state.

(26) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(27) "Technical feasibility" or "technically feasible" shall mean that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the resource prior to the injury.

(28) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(29) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel

complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions. [1991 c 200 § 102; 1990 c 116 § 2; 1989 c 388 § 6; 1985 c 316 § 5; 1971 ex.s. c 180 § 1; 1970 ex.s. c 88 § 1; 1969 ex.s. c 133 § 10. Formerly RCW 90.48.315.]

Findings—Severability—1990 c 116: See notes following RCW 90.56.210.

Intent—1989 c 388: "The legislature finds that oil spills can cause significant damage to the environment and natural resources held in trust by and for the people of this state. Some of these damages are unquantifiable, and others cannot be quantified at a reasonable cost. Both quantifiable and unquantifiable damages often occur despite prompt containment and cleanup measures. Due to the inability to measure the exact nature and extent of certain types of damages, current damage assessment methodologies used by the state inadequately assess the damage caused by oil spills.

In light of the magnitude of environmental and natural resource damage which may be caused by oil spills, and the importance of fishing, tourism, recreation, and Washington's natural abundance and beauty to the quality of life and economic future of the people of this state, the legislature declares that compensation should be sought for those damages that cannot be quantified at a reasonable cost and for those unquantifiable damages that result from oil spills. This compensation is intended to ensure that the public does not bear substantial losses caused by oil pollution for which compensation may not otherwise be received." [1989 c 388 § 1.]

Application—1989 c 388: "This act applies prospectively only, and not retroactively. It applies only to causes of action which arise after May 13, 1989." [1989 c 388 § 12.]

Captions not law—1989 c 388: "Section headings as used in this act do not constitute any part of the law." [1989 c 388 § 13.]

Severability—1989 c 388: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 388 § 14.]

Severability—1969 ex.s. c 133: "If any provision of this 1969 act or the application thereof to any person or circumstance is held invalid, this 1969 act can be given effect without the invalid provision or application; and to this end the provisions of this 1969 act are declared to be severable. This 1969 act shall be liberally construed to effectuate its purpose." [1969 ex.s. c 133 § 12.] This applies to RCW 90.48.315 through 90.48.365.

Marine oil pollution—Baseline study program: RCW 43.21A.405 through 43.21A.420.

90.56.020 Director responsible for spill response. Except as otherwise specifically provided in this chapter or other law, the director has the primary authority, in conformance with the state-wide master oil and hazardous substance spill prevention and contingency plan adopted pursuant to RCW 90.56.060 and any applicable contingency plans prepared pursuant to this chapter and chapter 88.46 RCW, to oversee prevention, abatement, response, containment, and cleanup efforts with regard to any oil or hazardous substance spill in the navigable waters of the state. The director is the head of the state incident command system in response to a spill of oil or hazardous substances and shall coordinate the response efforts of all state agencies and local emergency response personnel. If a discharge of oil or hazardous substances is subject to the national contingency plan, in responding to the discharge, the director shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan. [1991 c 200 § 103.]

Economy & Business

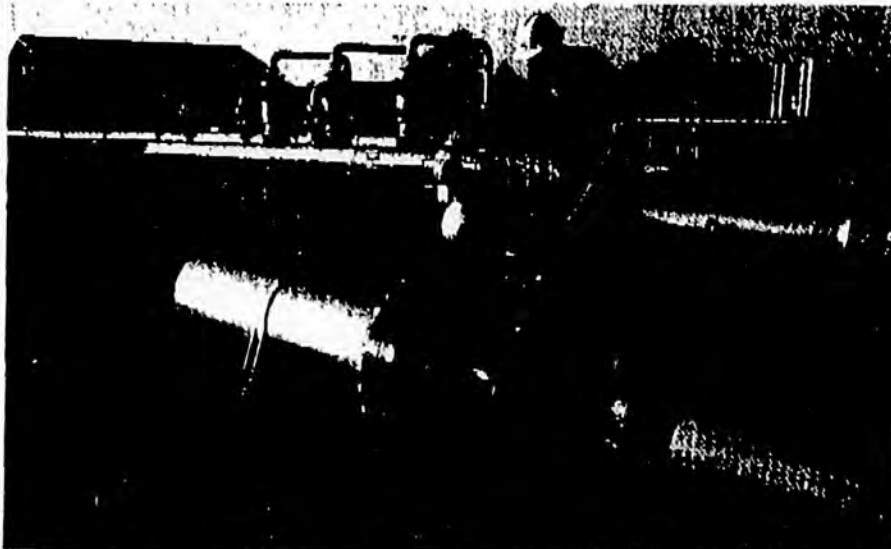
Mopping Up the PCB Mess

A pipeline company must come up with a \$400 million solution

The repairman from New York's Long Island Lighting Co. was trying to fix a faulty home-heating system when he found a mysterious oily sludge in the natural-gas pipe connected to the house. LILCO soon learned that the substance contained dangerous concentrations of PCBs, a class of highly toxic industrial chemicals. That startling discovery in 1981 eventually led the Environmental Protection Agency to launch a major investigation of Texas Eastern, the Houston-based firm that supplied the gas to LILCO. Last week, in the largest settlement of an EPA case in history, Texas Eastern (1986 revenues: \$4.1 billion) agreed to

billion lbs. of PCBs throughout the world. As a result, most people have absorbed at least tiny amounts of PCBs.

Researchers do not know how dangerous the PCB threat is, partly because an increase in the incidence of ill effects caused by the chemicals might take a long time to show up. As a precaution, the Government has been moving to mop up the PCB mess. In 1979 Congress banned the production, sale and distribution of PCBs. Companies were permitted to keep using equipment that already contained the chemicals, as long as the machinery was carefully sealed. As the equipment wears out, owners must deposit it at feder-



A Texas Eastern employee adjusts a valve at a pumping station in Linden, N.J.

Chemicals once used to promote safety now constitute a widespread environmental hazard.

undertake a massive cleanup of PCB contamination along the company's 10,600-mile network of pipelines, which runs through 14 states, from Texas to New Jersey. The cleanup will cost Texas Eastern some \$400 million, plus a \$15 million fine that the company must pay EPA.

Unfortunately, the PCB contamination at Texas Eastern is not an isolated case. Starting in the 1930s—decades before it was discovered that minute concentrations of PCBs can cause cancer in laboratory animals—the chemicals were widely used in electrical equipment as a flame retardant to reduce the risk of fires and explosions. Texas Eastern, for example, long ago put PCBs into the compressors that drive natural gas through the company's pipelines, and the stubborn residues of the chemicals are still present. The firm is only one of 14 pipeline companies the EPA has been investigating for PCB leakage. Less severe problems may exist at hundreds of other enterprises, from electric utilities to railroads. Industrial users have scattered an estimated 1.2

ally approved toxic-waste disposal sites.

Such measures, however, have not stopped the spread of PCBs. In the case of Texas Eastern, the firm agreed in 1982 to clean the PCBs out of its compressors and haul the material to approved landfills. But the company continued to remove other residues—some of which also contained high levels of PCBs—from its pipelines. The EPA found PCB-laced sludge buried in rough pits at 89 company properties.

Some firms are not waiting for EPA directives. California's Pacific Gas & Electric is voluntarily replacing equipment that contains PCBs. The project, nearly complete, has cost more than \$120 million, but the company learned the hard way four years ago that a failure to act can be costly as well. At that time, a fire in a PG&E transformer spewed PCB-laden smoke into a San Francisco high-rise. The price tag for the cleanup: \$22 million.

—By Janice Castro,
Reported by Lianne Hart/Houston and Dick Thompson/Washington

Post-It™ brand fax transmittal memo 7671		# of pages 6
To: Ricki Off	From: Carl Reller	
Co.	Co. AHP	
Dept.	Phone # 274-2864	
Fax # 463-2545	Fax # 274-3089	



AMERICAN GAS ASSOCIATION, BELOW: HANE MORGAN

BLUE FLAME, BLACK GUNK

Natural gas may be clean energy, but the PCB-laced oil buried along pipelines that cross thirteen states is cause for concern—as is the Environmental Protection Agency's botched response.

by JOYCE EGGINTON

The creek running through Barbara Kiriluk's farm was considered a blessing—until it was discovered that toxic PCBs had been dumped at a Texas Eastern pipeline compressor station a half-mile upstream.

IN THE BITTER WEATHER of January 1981 the heating system of a house in Centereach, Long Island, suddenly stopped working. Unable to detect the cause of the problem, the Long Island Lighting Company's repairman opened the gas service pipe to the house and released a flow of oily gunk which should not have been there—enough to fill a fifty-five-gallon drum overnight. Laboratory analysis of the gunk found it to contain dangerously high concentrations of PCBs (polychlorinated biphenyls), those ubiquitous industrial chemicals suspected of causing cancer and birth defects, whose manufacture had been outlawed five years earlier.

A contaminated mixture of condensate and lubricating oils had somehow found its way around the "gate" connecting the Long Island Lighting Company's system to the wider pipeline of its supplier, the Texas Eastern Transmission Corporation. No one could determine how this happened, or how all this gunk got into Texas Eastern's system in the first place. Other homes in the Centereach neighborhood were found to be similarly affected, and for several uneasy weeks local health officials worried that when householders turned on their gas stoves they might be getting some unwholesome whiffs of PCBs.

Before any scare stories could be picked up by the press, the fear was laid to rest by a New York State Health Department investigation which found no detectable levels of PCBs in the atmosphere of fifty-three Long Island homes thought to be at risk. This was reported to the regional office of the Environmental Protection Agency, which, after limited tests, concluded that the public's supply of natural gas had not been contaminated.

This conclusion has never been questioned. But more than six years later it is just emerging that EPA left a lot of obvious questions unasked, that it knew that the mess in the pipe at Centereach was not just a local aberration. Rather it was an important clue (passed over by federal and state officials) to a nationwide problem of potentially heavy PCB contamination—not of the gas supply, but of soil and water in the vicinity of compressor stations along gas transmission lines. And there are hundreds of these stations around America.

For up to twenty years, workers at an unknown number of these stations regularly dumped quantities of PCB-laced oil and condensate, which they rou-

tinely removed from their compressors, into unlined pits on company property. This is just the kind of gunk which showed up at Centereach, where PCB levels of 4,000 parts per million were measured. (According to federal guidelines, any wastes containing more than 500 ppm of PCBs are considered so unsafe they must be totally destroyed in high-temperature incinerators.)

Some of these makeshift burial pits were only two or three feet deep, and dangerously close to groundwater supplies. So far as is known, no records were kept of what went into them and how many were dug. EPA has finally begun a broad investigation which, after so much delay, seems unlikely to uncover the full extent of the problem. But there are real fears of widespread contamination which may have affected air, water, and food.

More than 1.25 million miles of natural gas pipelines run across the United States, mostly underground, of which Texas Eastern owns 10,000 miles. Most of the major lines emanate from the oil-producing states of the south-central region. As they fan out across the country, these feed into the smaller pipelines of hundreds of local utility companies. This is a fairly recent industry which has brought inexpensive

gas heat to millions of American homes. Natural gas is found with oil, and for years oil developers flared it into spectacular oblivion because they did not know what else to do with it. After World War II the technology was developed to build high-pressure pipelines in which gas could be sent long distances with the help of compressor stations, built every fifty to seventy-five miles along the pipeline. The function of these stations is to maintain the gas in a near-liquid state and to apply pressure boosts to keep it moving.

PCBs are not essential to the functioning of gas pipelines. But one of the uses of this very stable family of synthetic chemicals is as a fire-retardant which will bond to oil. For many years PCBs were commonly mixed with industrial oil, a precaution which many gas pipeline companies adopted after a 1958 fire at a compressor station.

Thereafter, Texas Eastern regularly used PCB-laced oil to lubricate its turbines. These turbines generate high temperatures, and fires are a real hazard. The equipment at the compressor stations was cleaned periodically, and quantities of used oil and condensate scraped out of the pipes. This was dumped on site—a practice which persisted from 1958 until after it was



More than a half-million gallons of contaminated oil were buried in makeshift pits at sites like this near Lambertville, New Jersey.



made illegal by the Toxic Substances Control Act of 1976.

Prior to passage of the act, there was nothing to prevent on-site dumping of toxic waste. And although the manufacture of PCBs was outlawed in 1976, industries were permitted to use existing stocks of the chemical for another three years. There are strong suggestions that Texas Eastern continued for longer than that: The company's explanation that the high level of PCB contaminate found at Centereach in 1981 was from two-year-old residues stretches credibility.

EPA's belated inquiry has now revealed that for twenty years Texas Eastern drained 600,000 gallons of PCB-laden oil from its equipment, but can only account for the safe disposal of 38,000 gallons. Most of it was buried without insulation in the varying geological strata of twelve states, from Texas to New England.

In some places the open pits were doused with gasoline and set afire, undoubtedly creating airborne toxins. There is a Texas Eastern station at West Amwell, New Jersey, where a former worker has described "the old burn pit" on company property, on the outskirts of the picturesque town of Lambertville. The EPA investigation has recently focused on the West Amwell site, following the agency's discovery that the soil near an abandoned pit had a PCB level of 4,600 ppm.

TYPICAL OF MANY, the West Amwell station is on a twenty-seven-acre site surrounded by oak, ash, and buttonwood (sycamore) trees and obscured by the gentle contours of the countryside. Seen through a wire fence, it is a collection of low, metal buildings with the grass around them interspersed with a strange conglomeration of wide metal pipes, rising from the ground in futuristic shapes, then sinking back into it. A sign on the gate warns that this is the private property of the Texas Eastern Transmission Corporation, that unauthorized people should keep out.

It has never been a place that local residents have wanted to visit. Over the years it has often been responsible for gassy odors around the neighborhood. Barbara Kiriluk, whose farm is about half a mile away, has often worried that her tank of propane cooking gas may be leaking, only to discover that the bad smell was being wafted through her kitchen window from Texas Eastern's compressor station.

Recently she has had a more profound cause for concern. In February of this year, the Environmental Protection Agency took samples of drinking water from the private wells of the nine homes within half a mile of the West Amwell disposal site and measured dangerous levels of PCBs in five of them. The highest level, 4.4 parts per billion, was found at the Kiriluk farm-

house. (It is worth noting that PCBs pose such a health hazard their concentrations in drinking water are measured in parts per *billion*, rather than parts per million, as they are in chemical dumps, sediments, and streams. In parts per million, the 4.4 ppb measured in the Kiriluk household would be expressed as 0.0044 ppm. The federal guideline is that any PCB level over 0.9 ppb—or 0.0009 ppm—is unsafe for drinking water.)

Before the water samples were taken, Texas Eastern's reaction to the discovery of PCBs on its own land was one of cheerful optimism. A company spokesman asserted that since PCBs bond to soil they were unlikely to migrate to groundwater. The PCBs were confined behind fences in covered pits "minding their own business" and "not bothering anyone if no one bothers them," he argued. Later the company changed its line to, "We still don't believe there is a threat to public health, but if a cleanup is necessary it is our duty to do it."

James R. Young, Texas Eastern's manager of media relations, also stated: "If we had known back then what we know now, we wouldn't have been dumping PCBs in pits, that's for sure." The company has been unable to explain how contaminants which should have been removed at a compressor station found their way along a series of pipes to households on Long

Island. Young admitted that it was as improbable as having motor oil show up in a car radiator. "They are two distinct systems."

Although it is hard to find West Amwell on the map, local environmentalists soon put it there. A protest movement developed, literally overnight, in the living room of Jacqueline Nelson, a neighbor of the Kiriluks and the principal of a private school in Princeton. She is an energetic and determined woman. A recovered cancer patient, she had begun to wonder whether the unusually high incidence of cancer in her neighborhood had anything to do with Texas Eastern's compressor station. She and her neighbors did not buy the company's theory about PCBs' minding their own business; they were especially concerned about the movement of water in Alexauchen Creek, part of which curved into Texas Eastern's land before flowing across open countryside on its way to the Delaware River.

The creek runs downhill to the Kiriluk farm, and for years Barbara Kiriluk believed this to be a blessing. "It goes right down to the pasture where our cows feed, and in summertime they would drink from it. I water my vegetable garden from that creek, and on hot days we used to sit in it. Now that we have built our own swimming pool, we fill it with water from the creek and throw in a few bottles of Clorox. The water doesn't look great, but it is so close and convenient, and it has saved us the expense of running extra water lines."

Over the past five or six years she noticed that the cows preferred to take their water from the barn, that there were more stillbirths in the herd and fewer wild ducks in the creek, that newborn animals on the farm were smaller than they used to be, and that "cats would eat like horses and never seem to grow." She was particularly struck by what had happened to a litter of four kittens, born on her farm two years earlier. She kept two and gave two to her sister, who lives in the northern part of the state.

"Mine have never grown larger than kittens, but hers are so big you could put a saddle on them."

Fearing that all this might reflect on her family's farm management, Barbara Kiriluk kept these concerns to herself until she met with a group of neighbors at Jackie Nelson's home and learned that PCBs had been found in the sediment of the creek, up to a level of 4.3 parts per million.

Subsequently, EPA ran a second and third round of tests on the private wells at West Amwell. The results were both a relief and a confusion to householders. None of these later tests revealed any traces of PCBs, from which agency officials concluded that their initial findings must have been flawed. Measuring down to parts per billion is such a new and precise art that it is distressingly easy to get distorted results. It is virtually impossible to sustain a completely sterile atmosphere in a laboratory: Minuscule residues from one test can create background contamination, lingering around the glassware in the lab to skew the outcome of the next experiment. EPA concluded that this happened with the first round of West Amwell well tests, and that the local drinking water was safe after all. But there was no doubt about the contamination of Alexauchen Creek, or of the soil at the compressor station.

These latest drinking-water tests have done little to reassure local residents or the health authorities. "We cannot be confident there has been no risk," said James Staples, spokesman for the New Jersey Department of Environmental Protection. "We are looking for evidence several years after the fact, and there's no way to use hindsight scientifically. The fact that there is no pollution in the wells today doesn't mean that it wasn't there a few years ago when the PCB waste was being dumped. It's a haunting possibility."

John Beckley, health director for Hunterdon County (in which West Amwell is situated), has also raised the point that "we shall never know how much went downriver, how much was airborne, or how much has been 'bio-accumulated' in fish and animals." He added that EPA's confusing test results caused "a high level of anxiety and fear" in the neighborhood.

The burial of PCB waste in unlined pits was an industry-wide practice, according to Texas Eastern, and West Amwell was probably a typical site. A New Jersey official has estimated that every week for at least ten years about three hundred gallons of contaminants went into the ground around this one compressor station. As pits were filled they were covered with soil, and new ones dug. With all this movement of earth the location of many original pits has been lost. This happened at Texas Eastern's other New Jersey station, at Linden, where—according to an EPA official—"it was a matter of poking around and taking soil samples by

guesswork." The guesswork found soil with 600 ppm of PCBs, along with the realization that this may not be the most contaminated area.

THE ENVIRONMENTAL Protection Agency's inadequacy in this crisis stems from confusion and ineptitude within its own bureaucracy, and from the agency's continued trust in an industry which had given good reason for it to be mistrusted. So far as the story can be pieced together, back in 1981 EPA followed up on the Centereach incident by spot-checking other gas systems for contaminants. These limited tests produced ample evidence of a potentially widespread problem throughout the pipeline industry. Among the findings was a house in Mamaroneck, New York (for which the original gas supplier was not Texas Eastern but Tenneco Inc.), where a PCB-contaminated oily mess was actually dripping from the gas meter. Similar gunk was found to be trapped at the "gates" leading from major pipelines into several other local utilities. A PCB level of 230 ppm was measured at the gate to the Peoples Gas Light & Coke Company of Chicago—all this more than a year after EPA's ruling that the pipelines must stop using their existing supply of PCB-laden oil, or dilute it to less than 50 ppm.

EPA instituted a clean-up program requiring the pipeline companies to monitor their condensate for PCB residues, and to dispose of those residues in approved incinerators. But it did not check that they were doing this. The agency seems to have been satisfied with the companies' assurances that the law was being obeyed and that their systems were no longer leaking.

Despite all the evidence of current contamination, EPA does not seem to have asked the industry about its past practices. It did not ask what had happened to the thousands of gallons of gunk which the pipeline companies had collected for twenty years before the Toxic Substances Control Act outlawed dumping. Since the Superfund legislation of 1980, industries have been under orders to clean up their earlier toxic dumps, and EPA is supposed to make sure this is carried out. In the spring of 1981 it would not have taken much investigation, in the agency's talks with the pipeline companies, to uncover the existence of the dozens of unsecured toxic dumps—and that some of them were still being used illegally.

Texas Eastern has now admitted to having seventy-seven pits in twelve states. Four of the ten other major pipeline companies (Consolidated Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Transmission Company, and the American Natural Resources Company) have acknowledged that they followed the same practice of dumping toxic waste on their own property.

All this information lay as buried as the waste itself until August 1985, when Texas Eastern initiated some discussions with the Environmental Protection Agency. The company revealed that it had taken nine years to phase out its practice of on-site dumping, and that it did not stop dumping in the last of its pits until 1984—eight years after this had become illegal. What prompted this sudden confession is unclear. EPA then asked for information about the pits. At that point company officials admitted that they had no records of what had been dumped where or when. The only way they could get enough information to clean up the sites was to hire a firm of environmental consultants to do some probing.

With an equanimity which borders on the unbelievable, the Environmental Protection Agency agreed to Texas Eastern's proposal that it investigate itself. The company's consultants took more than a year to produce a partial report; it was December 1986 before EPA finally received a draft report from Texas Eastern's consultants. Apparently, in all this time, the agency did not hassle them.

In an effort to restore public confidence, staff at the agency's Washington headquarters are now being frank about their inadequacies. "A year is a long time for us to have known about this situation and not to have pushed Texas Eastern harder," admitted Barbara McGuinness, special assistant to the EPA administrator. "They had done some sampling of the pits. They had found some very high levels of PCBs, up to 4,000 parts per million. They had also found other hazardous waste on the pit sites. This was our first realization that we were not dealing with PCBs alone, or that there were so many pits—almost a hundred of them."

"We should have been more aggressive with Texas Eastern and insisted upon more specific information. Instead, we accepted that what the company told us was accurate. The problem we are now faced with is whether

they and others told us the truth. We still do not know how many pipelines are involved or how many hazardous dumps exist. We have no idea of the size of the problem. It could be just enormous."

After receiving the Texas Eastern report last December, EPA headquarters staff put together "a comprehensive strategy" which was sent to its regional offices early this year. It is clear that some of the regional staff are annoyed that they were kept uninformed for so long.

"The regional staff should have been alerted to do a preliminary investigation in the summer of 1985, when Texas Eastern told EPA about its earthen pits," said William Muszynski, deputy regional administrator of EPA's Region 2 (which covers, among other places, West Amwell and Centereach). "Instead of this information being passed to the regional offices, it was handled at a national level, with EPA headquarters relying upon the company for information and the company taking its time. There is no question in our minds that the agency should have acted quicker."

Muszynski admitted that his regional office also had its shortcomings. It was his region which, six years earlier, had reacted to the Centereach incident by instigating a spot check of the pipelines for contaminants. "If we had known more about pipeline operations, we could have asked better questions when we did that investigation," he stated. "We did ask Texas Eastern how well the company cleaned out its compressors, and what was done with the condensate which was removed. We were assured that it was being disposed of properly. We did not ask about past practices or do any on-site inspections. Most of our programs depend on the integrity of self-reporting. We are also faced with an enormous task of catching up on a lot of industrial and municipal practices which used to be accepted ways of doing business. In some cases the environmental effects were not known. In others, they should have been."

IT WAS FEBRUARY of this year before EPA headquarters instructed its regional offices to send crews out to check the pipeline companies' abandoned pits in their area. That was when a team from Muszynski's office confirmed the presence of PCBs at the two New Jersey pit sites and in the sediment at Alexauken Creek, and got the conflicting reports about the safety

of the West Amwell well water. The team's report also warned of potential groundwater migration which might affect local drinking water supplies in the future.

In all this time, state governments were told nothing about PCB dumping on pipeline property in their areas. State officials are now angry and resentful at being bypassed. They think the federal agency should have notified them when it first discovered the potential for contamination. "Now we are operating in a crisis environment," says Hunterdon County health director John Beckley, "instead of being able to work systematically."

New Jersey's problems may be minor compared with those of oil-producing states like Louisiana, whose substratum is interlaced with forty thousand miles of gas pipelines. The highest pipeline contamination measured anywhere has been an enormous 48,000 ppm of PCBs in soil around a Texas Eastern pit in Larose, near the Gulf Coast. This was discovered by another of EPA's regional offices, in response to the same directive which prompted the investigation at West Amwell.

Martha Madden, secretary of Louisiana's Department of Environmental Quality, knew nothing of the Larose contamination until she read of it in a Baton Rouge newspaper. She had barely finished the news item when a Louisiana television station telephoned her for a comment. "I could not make one at that time," she says, "because I had not been given any information by EPA. My office had never been told of any concern which EPA might have had about the operations of Texas Eastern. The agency's behavior in all this is inexplicable."

The task ahead is immeasurable. It may even be insurmountable. Scattered around America are hundreds of sites, some of their locations forgotten, from which PCBs and other toxic wastes may or may not have leaked in the past, from which they could be leaking now, or to which they may migrate in the future. The limited tests which are being made will never tell the whole story. And the facilities do not exist for disposing of such vast quantities of contaminated soil.

"Our well water ought to be tested regularly for the next hundred years," commented Jackie Nelson, West Amwell's leading activist. "Nothing in my life has made me feel so insecure as this, not even having cancer. When that happened, at least I knew what to expect."

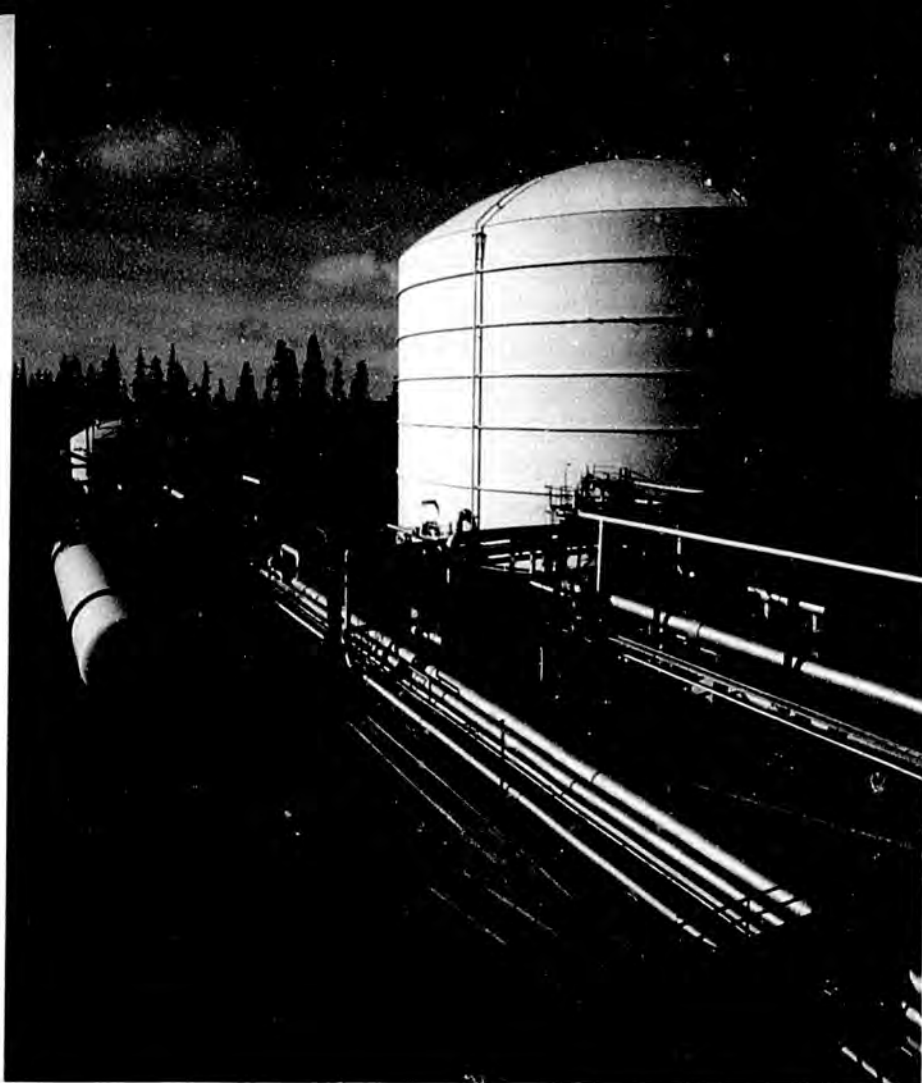
Kenai
Liquefied
Natural
Gas
Operations

The Showpiece of an Industry

The Kenai (pronounced KEY-nye) liquefied natural gas project is a success story. Its continuous operation since 1969 demonstrates the exceptional dependability and efficiency of liquefied natural gas (LNG) as a fuel. Since operations began, the plant and ships have compiled an outstanding safety record and the facility has surpassed contract delivery volumes.

The Kenai LNG project also is an example of international cooperation and goodwill. LNG manufactured in the United States is delivered to Japan in ships built in Sweden and sailed by Italians and Filipinos. Deliveries have gone like clockwork and technical coordination and business relations between the buyers and sellers have been excellent. In addition to its use as a fuel, the extreme cold of the LNG is used in Japan in auxiliary industries such as refrigeration of fresh tuna and manufacture of liquid oxygen and nitrogen.

These factors make the Kenai LNG project a showpiece of the LNG industry and an example of the value and potential of LNG to the local area, the Pacific Rim and the world.



Contents

1 The Product

2 The Companies

3 The LNG Industry and Kenai



7 The Plant



8 LNG Manufacturing Flow Diagram

9 The Kenai Plant Process



10 Maps



12 The Ships



15 The Customers

16 The Kenai Area



19 The Future



The Product

Liquefied natural gas is manufactured from natural gas (99 percent methane) by reducing the temperature to -259 degrees Fahrenheit (-161 degrees Celsius), changing it from a vapor to a liquid. This change shrinks the gas to 1/600th of its original volume, making long-distance shipping feasible. LNG is less than half as dense as water, is colorless (water clear), odorless, non-toxic and sulfur free. LNG is stored at the receiving terminal as a liquid and vaporized as needed for use as a high-quality fuel.



The Companies



Phillips 66 Natural Gas Company is 70 percent owner of the Kenai plant, which it operates, and the two LNG tankers. The company was incorporated in 1986 as a subsidiary of Phillips Petroleum Company. Both firms are headquartered in Bartlesville, Okla., where the parent company was founded in 1917. Phillips is the largest producer of natural gas liquids in the United States. The company also produces over 1 billion cubic feet of natural gas daily worldwide, and buys about twice that much gas from other producers. The company processes some 2 billion cubic feet of natural gas daily — about five percent of all gas production in the United States. Phillips' gas operations also include a major gas pipeline. Gas and gas liquids are pivotal to Phillips' integrated operations, furnishing gas liquids for the company's chemicals and refining businesses.

In addition to its natural gas interests, Phillips Petroleum Company is engaged in these businesses:

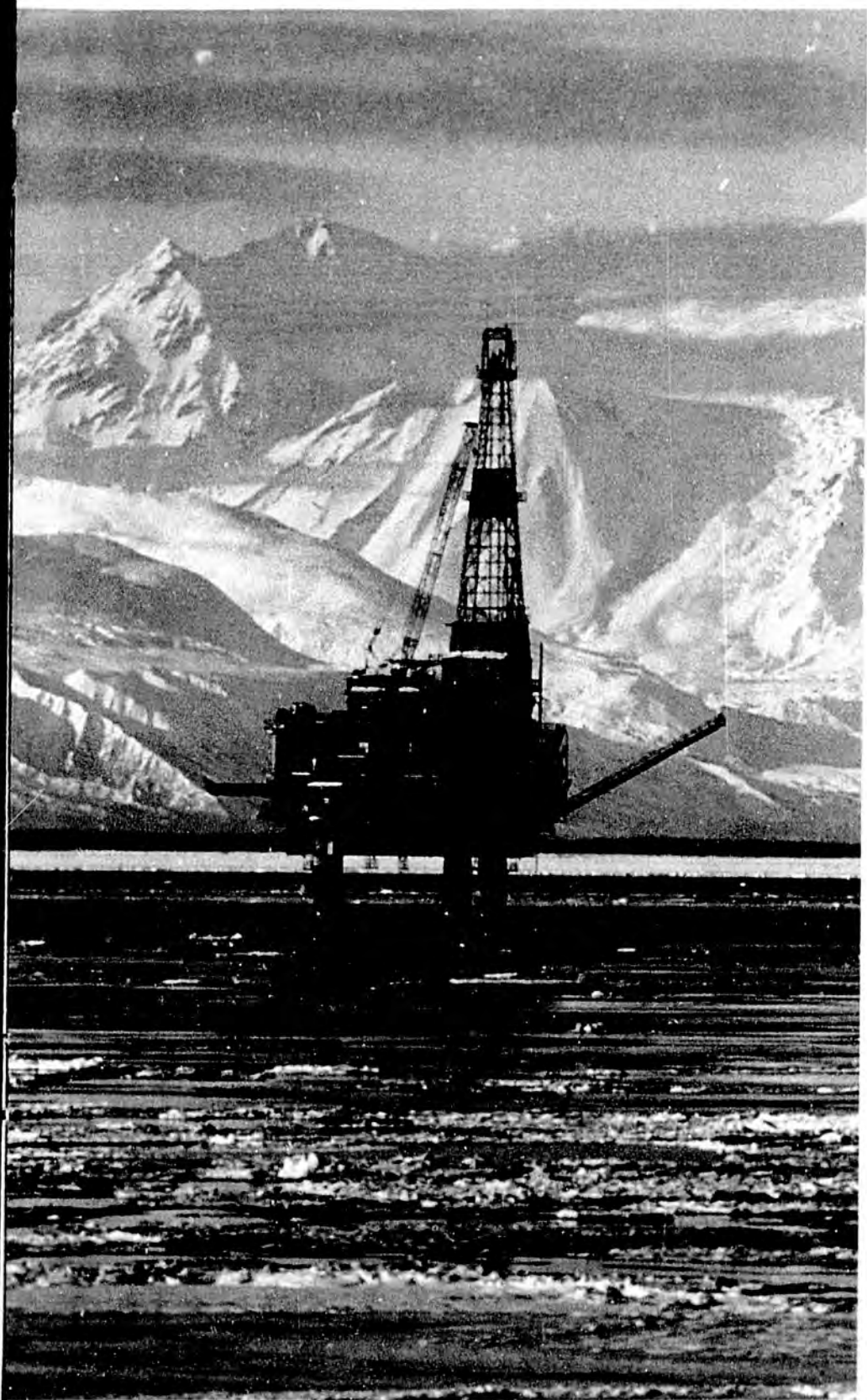
- Petroleum exploration and production on a worldwide scale.
- Petroleum refining and marketing in the United States.
- Chemicals production and distribution worldwide.



Marathon Oil Company owns 30 percent of the Kenai LNG plant and the two LNG tankers, which it operates. Marathon was founded in 1887 and is headquartered in Findlay, Ohio. As a major participant in the natural gas production and processing industry, Marathon produces about 611 million cubic feet of gas per day from worldwide reserves of more than 3.3 trillion cubic feet. Among the company's current gas-related interests are 18 U. S. gas plants processing about 350 million cubic feet per day; its wholly owned Kinsale Head gas field facilities, the only commercial source of petroleum hydrocarbons in Ireland; and the Brae B gas cycling system, the first in the U.K. North Sea and one of the largest offshore systems in the world. In addition to its natural gas interests, Marathon is engaged in these related businesses:

- Petroleum exploration and production on a worldwide scale.
- Petroleum refining and marketing in the United States.

In 1982 Marathon merged with U.S. Steel, now USX Corporation, a company with diversified business interests, and the largest steel producer in the United States.



The LNG Industry and Kenai

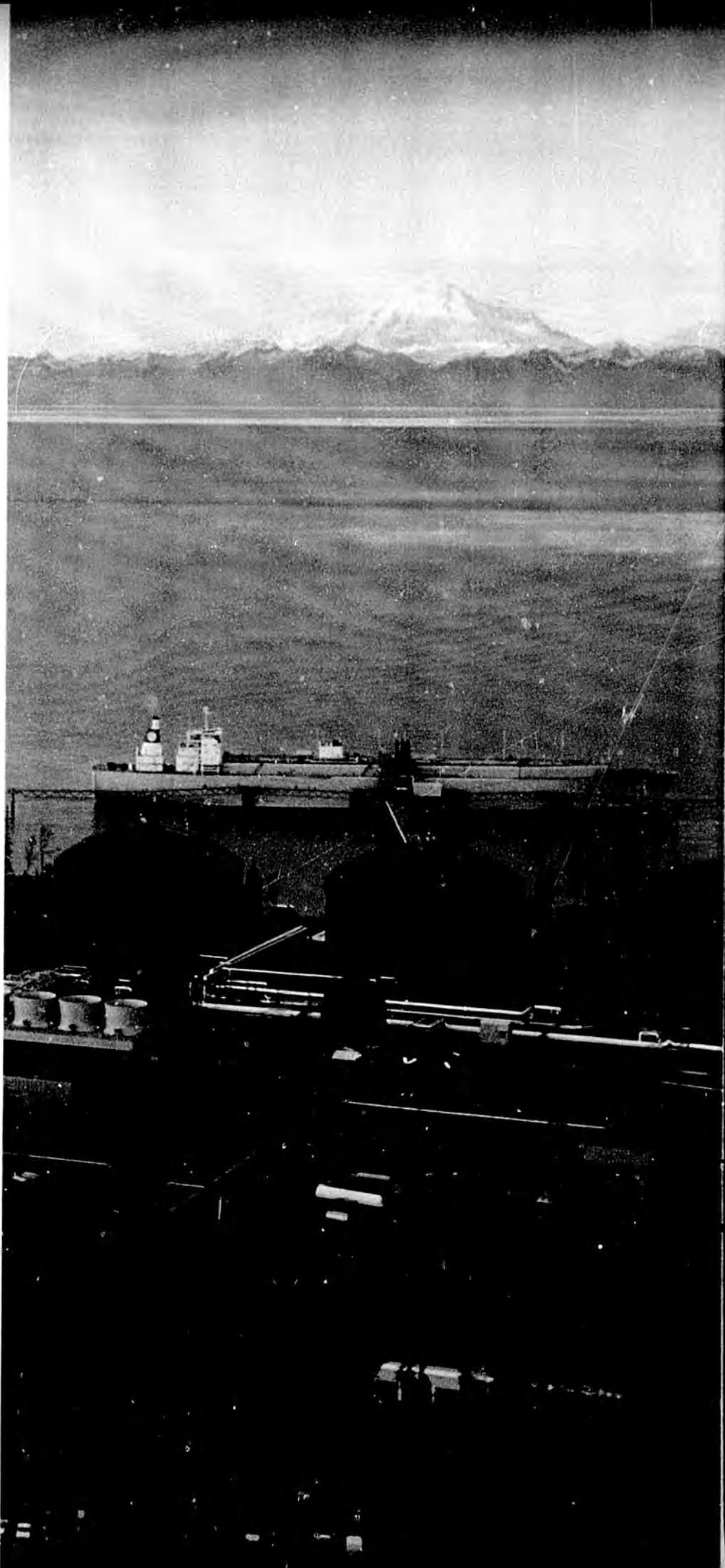
Until well into the 20th Century, natural gas was often considered a nuisance by-product of oil production. Marathon and Phillips were among the first companies to recognize the potential of gas. Marathon (then The Ohio Company) found large natural gas reserves in remote areas of Wyoming in 1915. In the early 1920s Marathon pioneered the development of natural gas pipelines to bring the gas to market and created several natural gas subsidiaries. In the 1920s Phillips' founder Frank Phillips recognized that natural gas was a source of valuable liquids for gasoline. By 1924, Phillips was the largest producer of natural gas liquids in the United States — a position it still holds. In the 1930s, Phillips developed the liquefied petroleum gas business, providing butane and propane for rural heating.

Based on experiments started in 1937, the first large-scale cryogenic liquefaction, or super cooling, of natural gas began at a Cleveland, Ohio, utility in 1941. The first ship transportation of LNG was carried out by a group

pipeline was constructed down the west shore of Kenai Peninsula to the LNG plant site. Meanwhile, Marathon laid gathering pipelines and an 18-mile, 20-inch pipeline to connect the onshore wells in the Kenai field.

On June 8, 1969, the plant made its first LNG exactly 26 months after the start of design and less than two years after the start of site clearing. The plant came on stream with essentially no start-up problems and operations soon exceeded design specifications.

On October 15, 1969, the *Polar Alaska* began loading LNG from the Kenai Plant. After a nine-day voyage, the vessel docked in Yokohama on November 4 and discharged its cargo. This marked the first commercial LNG exported from the Western Hemisphere and the first LNG imported into Japan and Asia.



The Plant

The Kenai Liquefaction Plant has been in continuous operation on a 24-hours-a-day basis and has delivered, on average, in excess of contract quantity since its first full year of operation in 1970. Annual contract quantities totaled 52 trillion British thermal units (Btu) of LNG per year in the late 1980s and are scheduled to be 57.5 trillion Btu per year by the mid-1990s. This is enough to provide heat and power to the entire greater Tokyo area for 11 days.

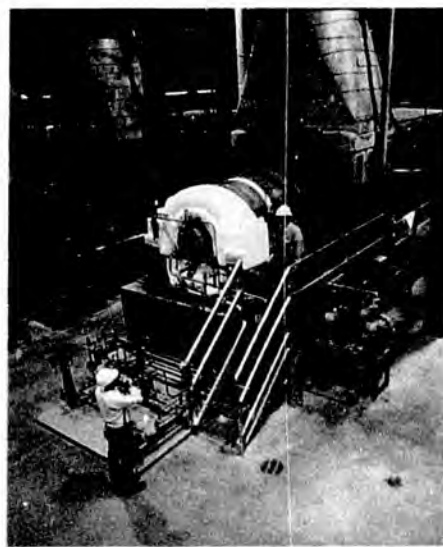
As one of the oldest continuously operating LNG plants in the world, the Kenai LNG Plant still serves as an LNG industry role model for safe, efficient and reliable operation. The assessment of the independent consulting firm Arthur D. Little, Inc., concluded that the facility could safely and reliably fulfill the contract quantity through 2009, 40 years after start-up.

There are a number of reasons for the fine condition and record of the plant. The approximately 30 employees who operate the plant are well trained and committed to preventive maintenance and safety. Since the beginning of operation, the plant has been



maintained with a rigorous program which includes regular inspections by company experts. An in-depth plant review is conducted at the annual two-week plant "turnaround," or major maintenance operation, usually performed while one of the LNG tankers is in dry dock for regular inspection and maintenance.

Excellent environmental factors also contribute to the sound oper-



ations. The Kenai Peninsula's cold climate and clean, non-salty air provide an ideal operating environment for preventing corrosion of plant equipment. The raw gas — almost pure methane — is extremely low in sulfur and non-corrosive.

The Kenai Plant Process

The process of producing liquefied natural gas is fairly complex, but can be simplified as follows:

Raw gas is received as more than 99 percent methane and is processed to remove water, carbon dioxide and other impurities.

The purified gas enters the Phillips Optimized Cascade System, consisting of three chilling cycles using different refrigerants — propane, ethylene

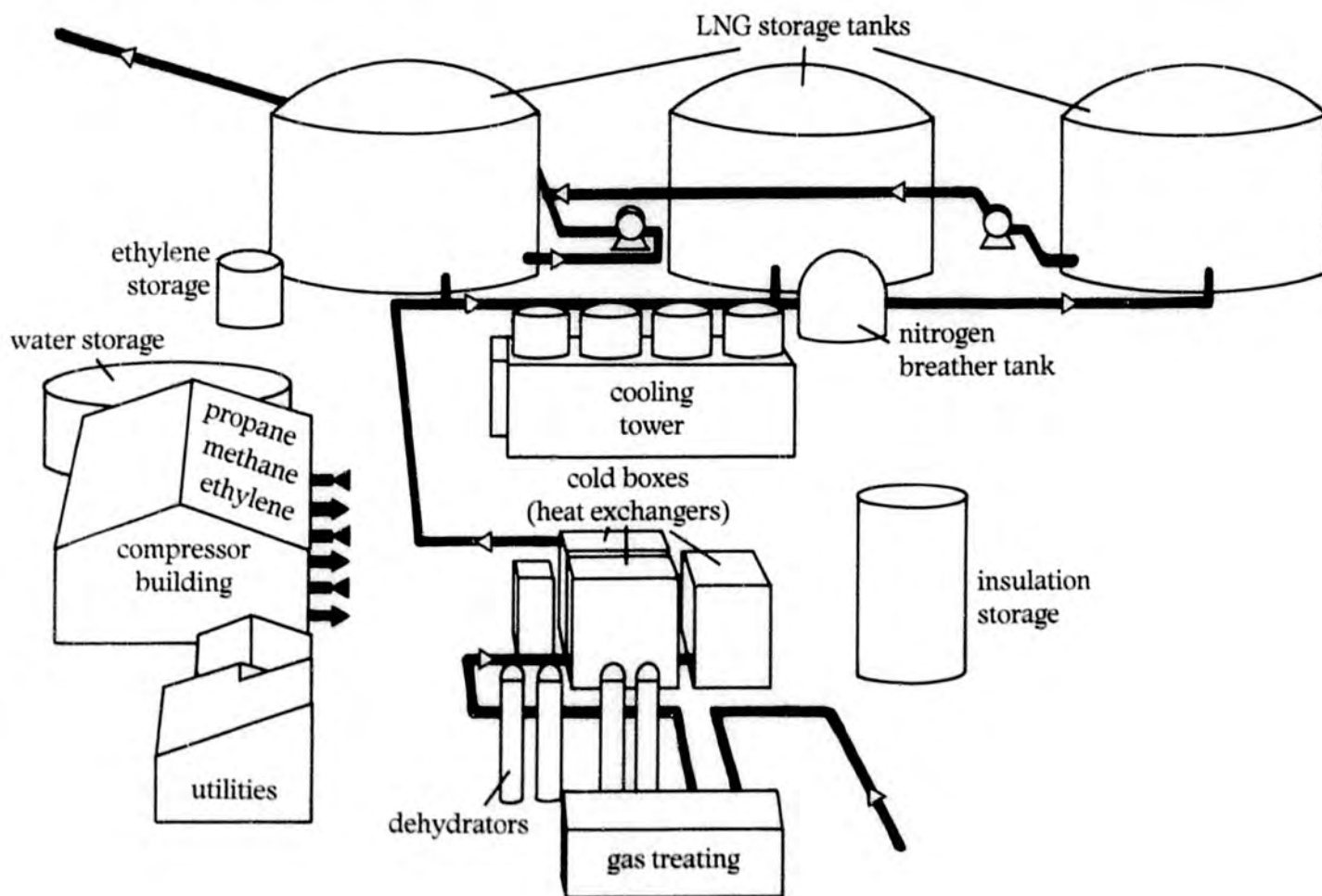
system and methane — for each cycle. Each chilling cycle reduces the temperature until the gas liquefies.

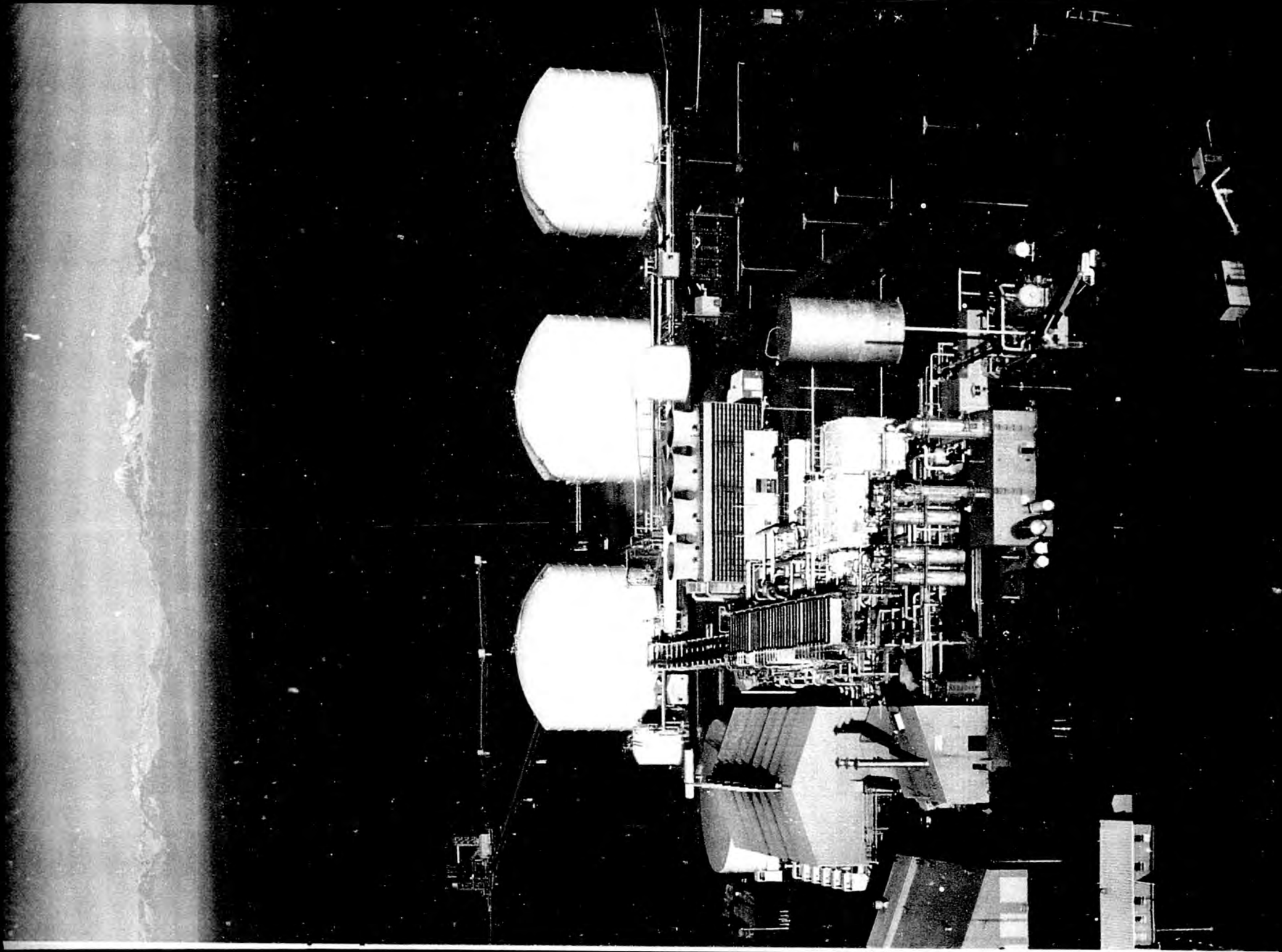
The sub-cooled liquid is then "flashed" or subjected to a reduced pressure to produce LNG at approximately atmospheric pressure.

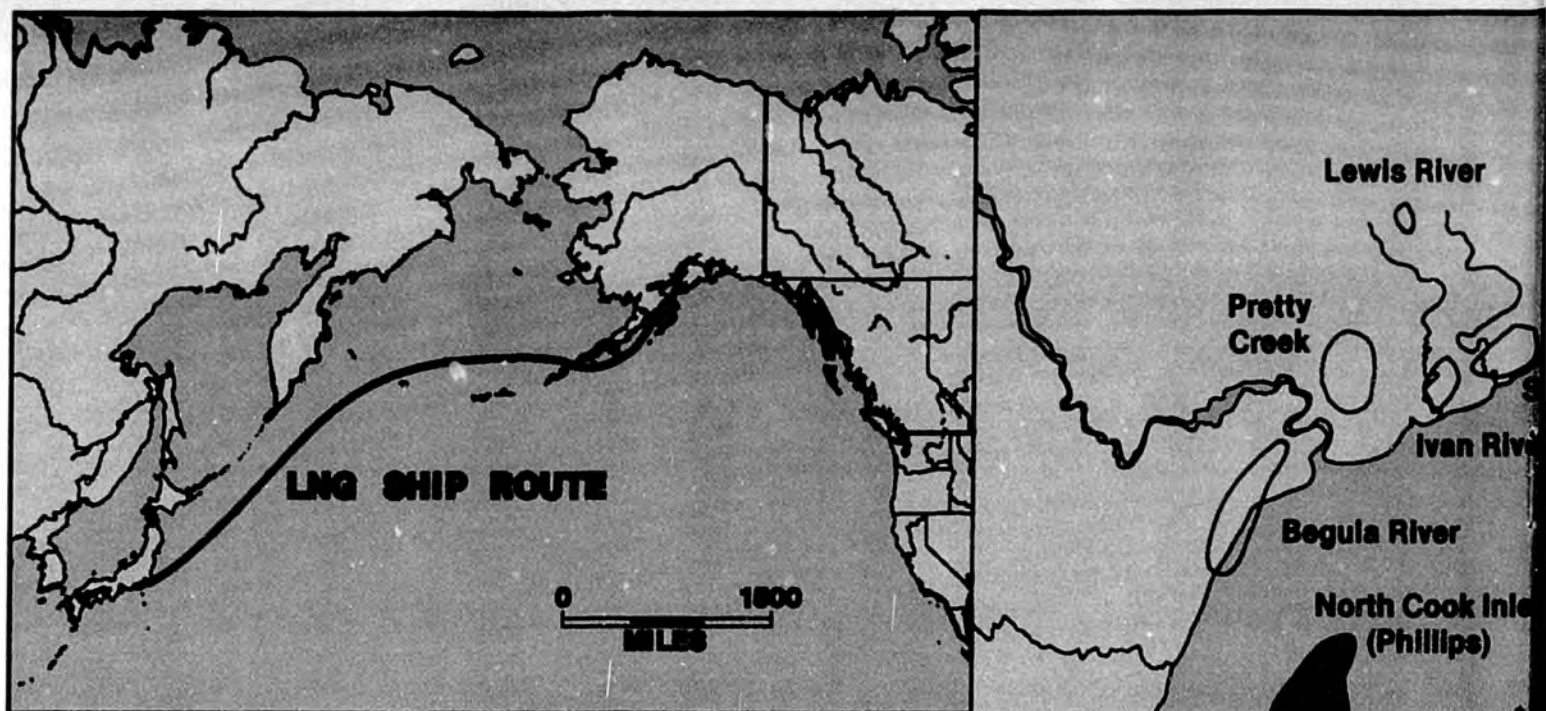
The LNG, now near -259 degrees F, is transferred to three, heavily insulated, 225,000-barrel storage tanks.

While in storage, some LNG evaporates. This evaporation, or "boil off" maintains the remaining LNG at its liquid temperature and is used as fuel for the large refrigeration compressors.

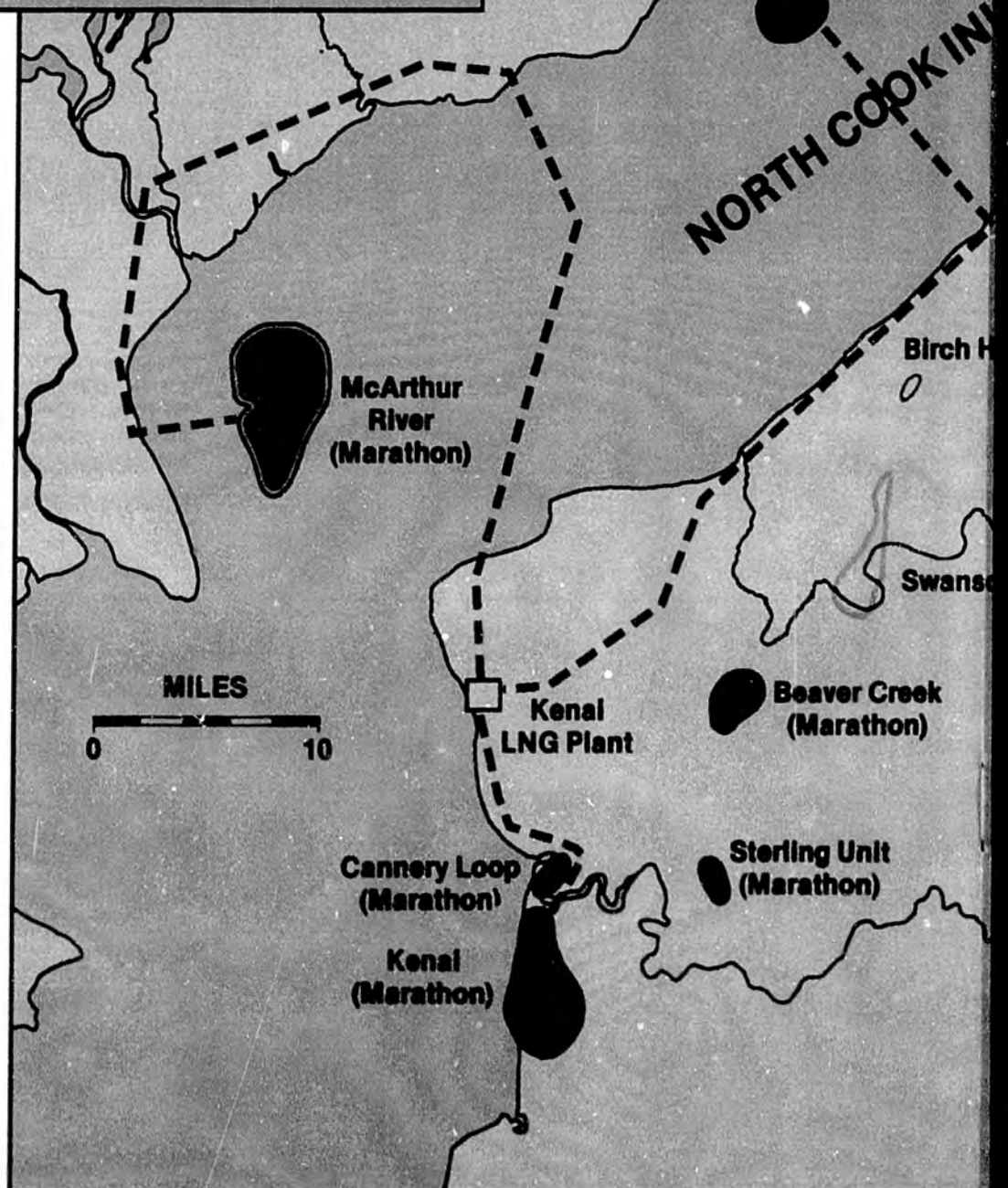
The final step of the process is loading LNG on the tankers. Each ship can be loaded in 12 hours and leaves Kenai with 440,000 barrels of LNG.

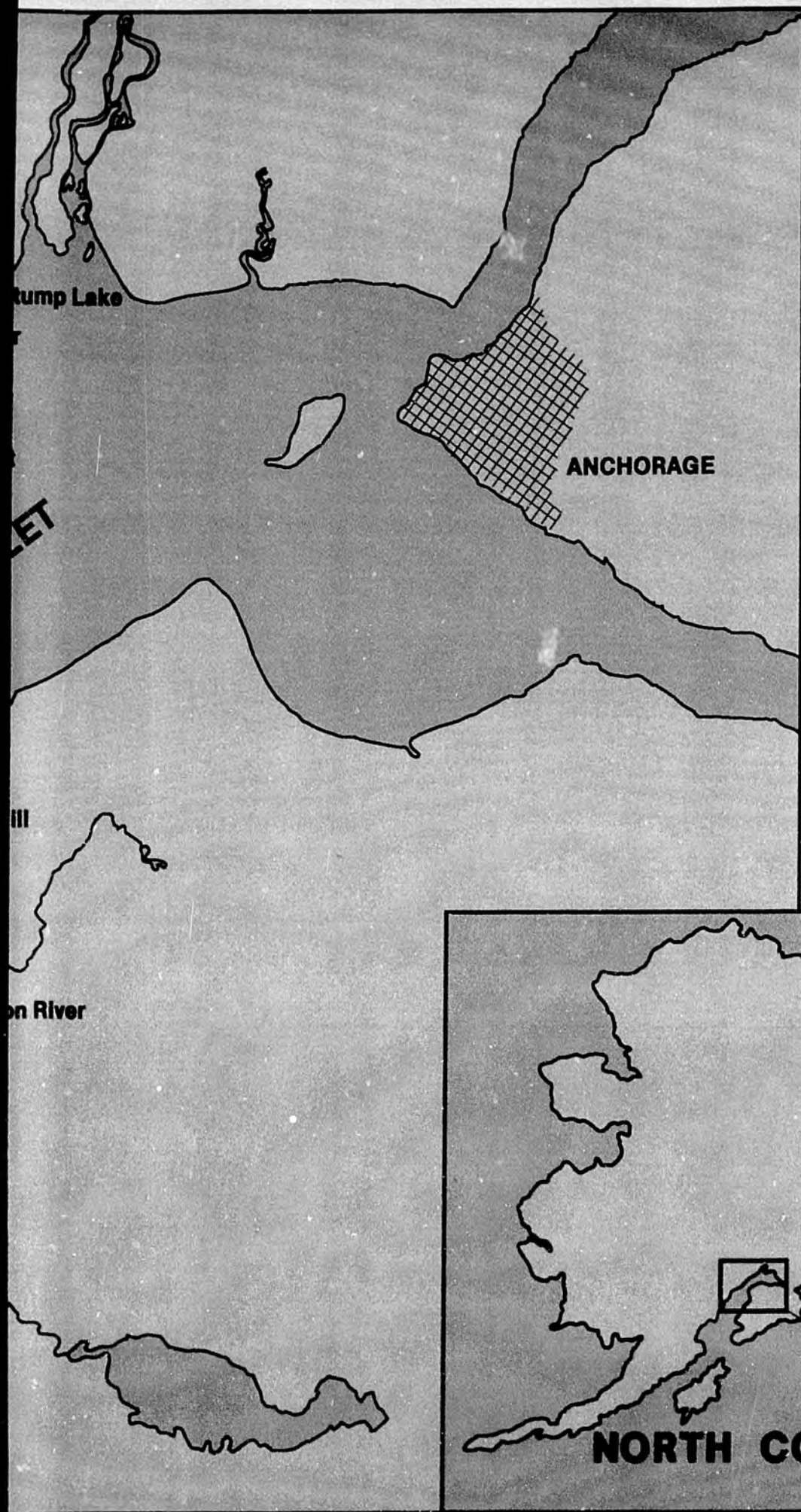






North Cook Inlet,
Alaska and the
North Pacific
Ocean



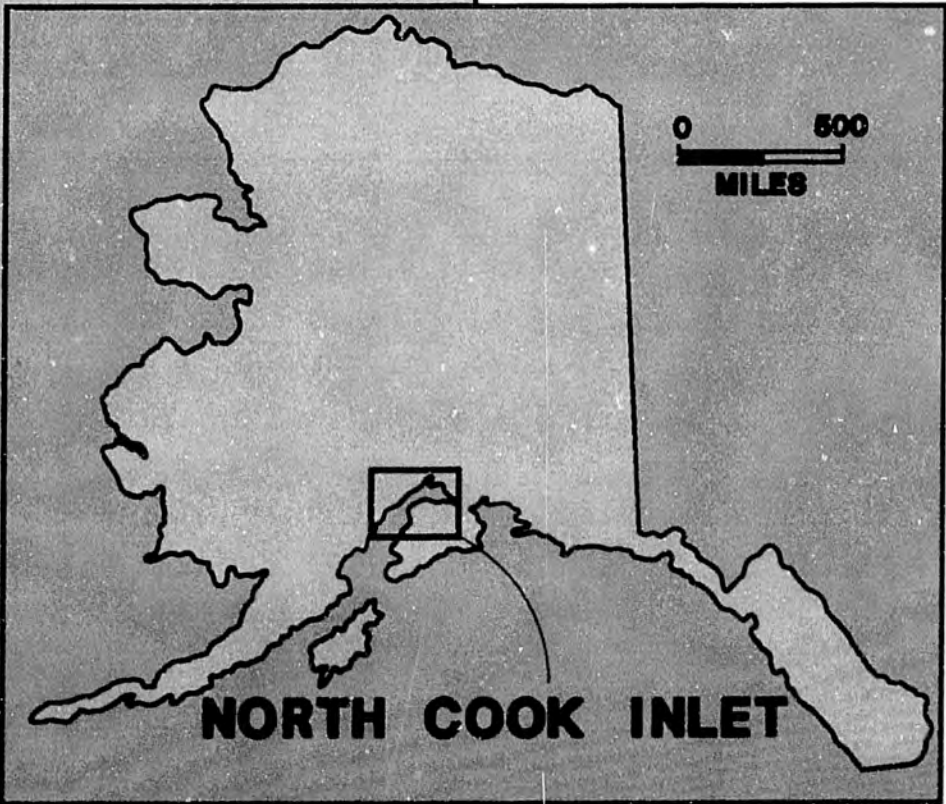


 **MARATHON (owned or partially owned) OR PHILLIPS GAS FIELD**

 **OTHER GAS FIELD**

 **OTHER OIL FIELD**

 **PLANT SUPPLY PIPELINE**



The Ships

Two specially designed tankers, the *Polar Alaska* and the *Arctic Tokyo*, transport liquefied natural gas from Alaska to Japan. They each make 16 to 18 round trips a year, with each trip averaging 20 days and covering a round-trip distance of 6,600 nautical miles.

The ships are operated by Marathon with a crew of 37 on each. Phillips and Marathon jointly developed cargo handling procedures, produced operating manuals and trained the crew in operations and safety. The engineering and deck officers are well trained in the sophisticated engine room procedures and complex cargo containment and handling system.

Both of the sophisticated ships were built in Sweden to the most exacting standards of the American Bureau of Shipping and have been upgraded to meet changing international shipping requirements. The ships are inspected by the U. S. Coast Guard, the Liberian government and the American Bureau of Shipping to ensure compliance with national and international standards. As a result, both ships are independently surveyed five or more times each year.

The ships have been maintained in Japanese shipyards



with a view toward extended service. The steam propulsion drive system on the ships is extremely dependable and its maintenance is well understood. Boilers are fired with clean-burning natural gas which boils off during the voyage, thus avoiding the corrosive unburned fuel deposits and impurities of

conventional marine fuels. The ships' hull strength (47 percent in excess of construction requirements for similar ships built today) will allow these ships to operate for many years without losing structural integrity. In 1988 the ships became the first LNG vessels in the world to travel 1 million miles loaded with LNG, a milestone indicating exceptional safety practices.

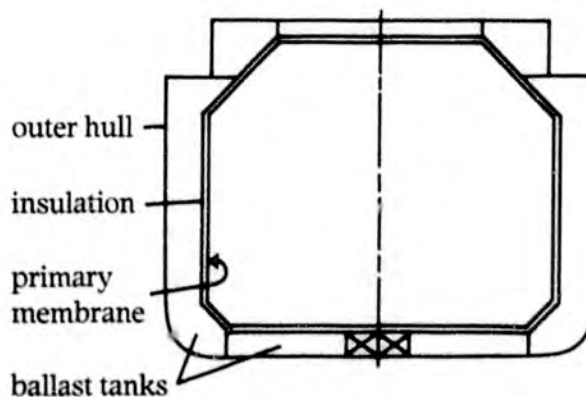
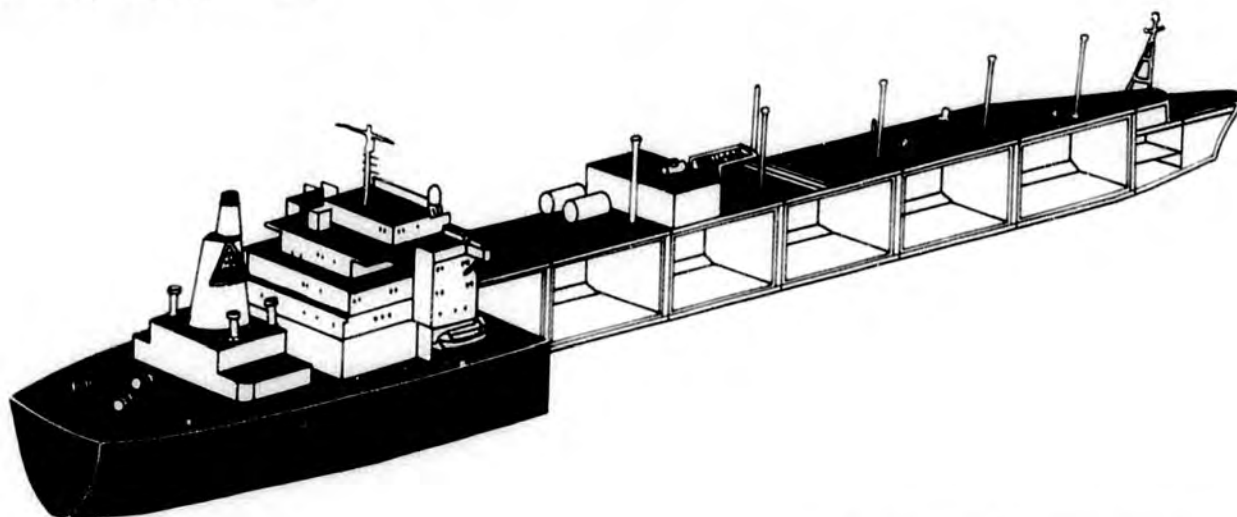
The Alaska LNG sales contract calls for construction of new, larger ships by the mid-1990s. Until then, the *Polar Alaska* and *Arctic Tokyo* can continue to serve the project's needs for dependable transportation, and afterwards will be available for serving expanded markets.

Cargo is carried in six tanks using the Gaz Transport membrane type containment system. This system is comprised of two thin metallic barriers alternating with two 10-inch thick layers of insulation. The barriers, or membranes, are made from a special low-temperature steel.

The primary membrane is the container for the LNG. This membrane is surrounded by a layer of insulation

and the secondary membrane, which would contain any leakage should the primary barrier develop a problem. A second layer of insulation surrounds the second membrane and is supported by the inner hull of the ship. All stresses imposed by the weight of the cargo on the containment system are transferred to the inner hull and ship structure.

While in transit, some LNG evaporates. This "boil off" gas is collected, compressed and used as fuel in the ship's two boilers. The steam generated in the boilers powers the main propulsion steam turbine and is used to generate electricity.



Midship Section

LNG Ship Statistics

Length	799 feet
Breadth	111 feet 6 inches
Depth	69 feet 6.5 inches
Design Draft	31 feet 2 inches
Deadweight	36,900 long tons
Gross Weight	44,100 tons
Cargo Capacity	450,000 barrels
Shaft Horsepower	20,000
Service Speed	17 knots

