

“Prevention or removal of pollution of sea by harmful substances

5.(1) If in the opinion of the Minister [oil] a harmful substance is likely to be discharged from a ship or a tanker, he may take such measures, including the destruction, burning or disposal in any other manner of [oil] the harmful substance in such ship or tanker, as he may deem fit to guard 5 against or to prevent pollution of the sea by such [oil] harmful substance.

(2) If any [oil] harmful substance is discharged from a ship or a tanker the Minister may cause any pollution of the sea caused thereby to be removed.

(3) If the Minister takes measures [in **terms of**] under subsection (1) or causes any pollution to be removed [in **terms of**] under subsection (2), he 10 may order any person who—

(a) is capable of supplying any goods or services; or

(b) is capable of manufacturing, producing, processing or treating any goods; or

(c) is the owner of or has the power to dispose of or has in his possession 15 or under his control any goods, or is a supplier of **any** service.

which may be required for the purpose of such measures or the removal of such pollution, to supply or deliver or sell such goods or a specified quantity or number thereof, or to supply such service, to the Minister or a specified person, or to manufacture, produce, process or treat a specified quantity or 20 number of such goods and to supply or deliver or sell it to the Minister or to a specified person, within a specified period and at a specified place, as the case may be.

(4) Any person who has received an order under subsection (3) shall, in the absence of evidence to the contrary, be deemed to be capable of performing the act which he has been ordered to perform [**unless he proves that he is not so capable**]. 25

(5) In respect of any goods supplied, delivered, sold, manufactured, produced, processed or treated or any service supplied in terms of this section, the person concerned shall, when called upon to do so, declare and 30 certify the cost to him of every item invoiced, in addition to stating the selling price, in the case of goods, and the amount of the compensation, in the case of a service, claimed by him.

(6) The Minister may institute, through an independent chartered accountant designated by him for that purpose, a cost investigation in 35 connection with **any** goods or service in respect of which an order has been issued [in **terms of**] by him under subsection (3).

(7) In every contract resulting from an order issued [in **terms of**] under subsection (3), or from the acceptance, by or on behalf of the Minister, of an offer for the manufacture, production, processing, treating or supply of any 40 goods or for the supply of any service, there shall be deemed to be incorporated a condition that the price or compensation stipulated by the seller or supplier concerned shall be subject to confirmation or adjustment by the Minister.

(8) Every person who supplies any service, or supplies, delivers, sells, 45 manufactures, produces, processes or treats any goods, in accordance with an order issued [in **terms of**] under subsection (3), shall, in the absence of agreement, be paid by the Minister or the person concerned, as the case may be, compensation or a price equal to the amount of the cost to him of the supply of the service in question, or of the goods in question, or of the 50 manufacture, production, processing or treating thereof, plus a percentage of such cost or an amount fixed in the notice in question, or, where the

Minister has instituted a cost investigation in terms of subsection (6), the compensation or price determined by the Minister.

(9) If the discharge or **[likelihood of the] likely** discharge **[of the oil]** in question **relates to oil and** was **due**—

(a) wholly to the fault of the State, the owner of the ship or tanker in question shall not be liable **[under] in terms** of the provisions of section 9(1)(b) for any expenditure incurred by the Minister by virtue of the provisions of this section; 5

(b) partly to the fault of the State, the amount of any expenditure so incurred by the Minister and recoverable from the owner concerned in terms of the provisions of section 9(1)(b), shall be reduced to such extent as is just and equitable regard being had to the degree in which the State was at fault in relation to the discharge or likely discharge. 10

(10) The provisions of this section, excluding the provisions of subsection (1), shall *mutatis mutandis* apply in respect of a discharge of **[oil] harmful substances** from an offshore installation.”. 15

Amendment of section 6 of Act 6 of 1981

32. Section 6 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution for the word “oil” of the words “a harmful substance”, 20

Substitution of section 7 of Act 6 of 1981

33. The following section is hereby substituted for section 7 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

“Inspection of ship or tanker and of records, and taking samples of harmful substances” 25

7. Any person authorized thereto by the Minister and any member of the South African Police Service or of the **[police force of the South African Railways and Harbours Administration] South African National Defence Force** may go on board any ship or tanker in any part of the prohibited area to ascertain whether any document required by **[this Act] the Marine Pollution Acts** to be carried on board such ship or tanker is so carried on board or, if he has reasonable grounds for believing that any provision of **[this Act] those Acts** has been or is being contravened in connection with such ship or tanker, may so go on board and inspect such ship or tanker or any part or cargo thereof, inspect and make copies of any documents or records kept in respect of such ship or tanker or in respect of its cargo or **[oil] the harmful substances** on board thereof, take samples of any **[oil] harmful substance** on board such ship or tanker, take soundings of tanks, spaces and bilges and test any equipment on board such ship or tanker which is intended for use in preventing a discharge of **[oil] harmful substances** from such ship or tanker.”. 30
35
40

Amendment of section 8 of Act 6 of 1981, as amended by section 2 of Act 9 of 1990

34. Section 8 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words: 45

“Any person or member referred to in section 7 and any other person authorized thereto by the Minister may enter upon any land with such workmen, machinery, vehicles, equipment, appliances, instruments and other articles, and may perform all such acts thereon, as may be necessary for the purpose of complying with any provision of this Act, or for the purpose of making any enquiries or undertaking any 50

investigations with a view to determining whether any pollution of the sea by [oil] a harmful substance has occurred and whether the removal of such pollution is feasible, or for the purpose of erecting camps or other temporary works which may be considered necessary in connection with the removal of such pollution [of **the sea by oil**], or for the purpose of ascertaining whether or not any provision of [this **Act**] the Marine Pollution Acts or condition imposed thereunder is being complied with, and may, for the purpose of gaining access to such land, enter upon and cross any other land with the said workmen, machinery, vehicles, equipment, appliances, instruments and other articles:”.

Amendment of section 9 of Act 6 of 1981

35. Section 9 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to the provisions of this Act, the owner of any ship, tanker or offshore installation at the time of the incident, or, where the incident consists of a series of occurrences, at the time of the first such occurrence shall be liable for—”; and

(b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (2) of the following subparagraph:

“(ii) an amount deemed by the Director-General to be sufficient to compensate the South African National Foundation for the Conservation of Coastal Birds, an organization registered [under] in terms of the National Welfare Act, [1965 (Act No. 79 of 1965)] 1978 (Act No. 100 of 1978), as a welfare organization, or any similar organization approved by the Minister, for expenses incurred in rescuing, conveying, treating, feeding, cleaning and rehabilitating coastal birds polluted by oil discharged from the ship, tanker or offshore installation in question.”.

Amendment of section 10 of Act 6 of 1981

36. Section 10 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended—

(a) by the substitution in subsection (5) for the word “oil” where it—

(i) first appears of the words “a harmful substance”; and

(ii) thereafter appears of the words “harmful substances”; and

(b) by the substitution in subsection (6) for the word “oil” of the words “a harmful substance”.

Amendment of section 20 of Act 6 of 1981, as amended by section 1 of Act 63 of 1987

37. Section 20 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any offence [under] in terms of this Act shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed [at any place where the accused happens to be] within the area of jurisdiction of the court in which the prosecution is instituted.”.

Substitution of section 21 of Act 6 of 1981

38. The following section is hereby substituted for section 21 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981:

“Minister’s permission required for transfer of certain harmful substances or for certain other acts in respect of ships or tankers

21. (1) No person shall—

- (a) outside any harbour [as defined in section 1(l) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957)] of which Transnet Limited has become the owner in terms of section 3 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or a fishing harbour as defined in section 1 of the Sea [Fisheries Act, 1973 (Act No. 58 of 1973)] Fishery Act, 1988 (Act No. 12 of 1988), and within the prohibited area, render any ship having oil or any other prescribed harmful substance on board (whether as cargo or otherwise), or any tanker, incapable of sailing or manoeuvring under its own power: 5
- (b) within the prohibited area transfer any oil or other prescribed harmful substance from any ship or tanker to any other ship or tanker or to an offshore installation or from such offshore installation to any ship or tanker, 10
- except with the permission of the Minister and in accordance with the provisions of this Act. 15

(2) In giving his permission for the performance of any act referred to in subsection (1), the Minister may impose any conditions subject to which such act shall be performed, and such conditions may include the obligation to obtain the services of one or more tugs, spray boats or other vessels to stand by during a period determined by the Minister.”. 20

Amendment of section 25 of Act 6 of 1981

39. Section 25 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended by the substitution in subsection (2) for the word “oil” where it— 25

- (a) first appears of the words “a harmful substance”: and
(b) thereafter appears of the words “harmful substance”.

Amendment of section 26 of Act 6 of 1981, as substituted by section 3 of Act 9 of 1990

40. Section 26 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended— 30

- (a) by the substitution in paragraph (d) of subsection (1) for the word “oil” of the words “a harmful substance”;
- (b) by the substitution in paragraph (a) of subsection (2) for the word “oil” of the words “harmful substances”; 35
- (c) by the substitution in paragraph (b) of subsection (2) for the word “oil” of the words “harmful substances”;
- (d) by the substitution in paragraph (d) of subsection (2) for the word “oil” of the words “harmful substances”;
- (e) by the substitution in paragraph (f) of subsection (2) for the word “oil” of the words “harmful substances”: and 40
- (f) by the substitution in subsection (2) in the words following paragraph (h) for the word “oil” of the words “harmful substances”.

Amendment of section 27 of Act 6 of 1981, as amended by section 4 of Act 9 of 1990

41. Section 27 of the Prevention and Combating of Pollution of the Sea by Oil Act, 1981, is hereby amended— 45

- (a) by the substitution in subsection (4) for the word “oil” of the words “harmful substances”; and
- (b) by the substitution for subsection (6) of the following subsection: 50
- “(6) The Minister may cause steps not in conflict with the provisions of the Marine Pollution (Intervention) Act, 1987 (Act No. 64 of 1987), to be taken to remove or prevent pollution of the sea by [oil] harmful substances outside the prohibited area in such circumstances and on such conditions as he may deem fit.”.