

South Australia

Protection of Marine Waters (Prevention of Pollution from Ships) Regulations 2013

under the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Protection of Marine Waters (Prevention of Pollution from Ships) Regulations 2013*.

2—Commencement

These regulations will come into operation on 1 September 2013.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987*;

Department means the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act;

IMO means the International Maritime Organization;

South Australian Marine Spill Contingency Action Plan means the plan developed and published under section 28A of the Act;

State Marine Pollution Controller means the person for the time being performing the duties and functions of State Marine Pollution Controller as detailed in the *South Australian Marine Spill Contingency Action Plan*.

Part 2—Pollution by oil or noxious substances

4—Prescribed officers

- (1) The State Marine Pollution Controller and each port manager are prescribed officers for the purposes of sections 8(2) and 18(2) of the Act.
- (2) For the purposes of sections 13(3) and (4) and 23(5) and (6) of the Act, the State Marine Pollution Controller is a prescribed officer.
- (3) For the purposes of section 18(6), (7), (8) and (9) of the Act, the State Marine Pollution Controller is a prescribed officer.

5—Oil record book

- (1) An oil tanker to which section 11 of the Act applies must carry—
 - (a) an oil record book in the form set out in Part I of Appendix III to Annex I of the 1978 Protocol; and
 - (b) an oil record book in the form set out in Part II of Appendix III to Annex I of the 1978 Protocol.

- (2) A ship (other than an oil tanker) to which section 11 of the Act applies must carry an oil record book in the form set out in Part I of Appendix III to Annex I of the 1978 Protocol.

6—Matters to be recorded in an oil record book

- (1) For the purposes of section 11(5) of the Act—
- (a) each of the following operations (being a machinery space operation) is a prescribed operation in relation to a ship (including an oil tanker):
 - (i) the ballasting or cleaning of an oil fuel tank;
 - (ii) a discharge of dirty ballast or cleaning water from an oil fuel tank;
 - (iii) a disposal of oil residues (sludge);
 - (iv) a discharge overboard or other disposal of bilge water that has accumulated in any machinery space; and
 - (b) each of the following operations (being a cargo or a ballast operation) is a prescribed operation in relation to an oil tanker:
 - (i) the loading of oil cargo;
 - (ii) an internal transfer of oil cargo during a voyage or in port;
 - (iii) the unloading of oil cargo;
 - (iv) the ballasting of a cargo tank or a dedicated clean ballast tank;
 - (v) the cleaning of a cargo tank (including crude oil washing);
 - (vi) a discharge of ballast from a tank other than a segregated ballast tank;
 - (vii) a discharge of water from a slop tank;
 - (viii) the closing, after an operation referred to in subparagraph (vii), of all applicable valves or similar devices;
 - (ix) the closing, after an operation referred to in subparagraph (vii), of valves necessary for the isolation of a dedicated clean ballast tank from cargo and stripping lines;
 - (x) a disposal of residues.
- (2) For the purposes of section 11(5) of the Act, each of the following occurrences is a prescribed occurrence in relation to a ship (including an oil tanker):
- (a) the discharge into the sea of oil or an oily mixture from the ship for the purpose of—
 - (i) securing the safety of the ship; or
 - (ii) saving life at sea;
 - (b) the discharge into the sea of oil or an oily mixture in consequence of damage to the ship or its equipment;
 - (c) the discharge into the sea of substances containing oil for the purpose of combating specific pollution incidents;
 - (d) the failure of the ship's oil discharge monitoring and control system;

- (e) the discharge into the sea of oil or an oily mixture, being—
 - (i) a discharge for an exceptional purpose other than a purpose referred to in paragraph (a) or (c); or
 - (ii) an accidental discharge other than a discharge referred to in paragraph (b).

7—Cargo record book

For the purposes of section 21 of the Act, the prescribed form of cargo record is the form set out in Appendix IV to Annex II of the 1978 Protocol.

8—Matters to be recorded in a cargo record book

- (1) For the purposes of section 21(5) of the Act, each of the following operations is a prescribed operation in relation to a ship:
 - (a) the loading of cargo;
 - (b) an internal transfer of cargo during a voyage or in port;
 - (c) the unloading of cargo;
 - (d) the ballasting of a cargo tank;
 - (e) the cleaning of a cargo tank;
 - (f) a discharge of ballast from a cargo tank;
 - (g) a disposal of residues to a reception facility;
 - (h) the discharge of a noxious liquid substance, or of a mixture containing such a substance, into the sea in accordance with Regulation 5 of Annex II to the Convention;
 - (i) the removal by ventilation procedures of cargo residues from a tank in accordance with Regulation 5 of Annex II to the Convention.
- (2) For the purposes of section 21(5) of the Act, each of the following occurrences is a prescribed occurrence in relation to a ship:
 - (a) the discharge into the sea of a noxious liquid substance, or of a mixture containing such a substance, for the purpose of—
 - (i) securing the safety of the ship; or
 - (ii) saving life at sea;
 - (b) the discharge into the sea of a noxious liquid substance, or of a mixture containing such a substance, in consequence of damage to the ship or its equipment;
 - (c) the discharge into the sea of a noxious liquid substance, or of a mixture containing such a substance, being—
 - (i) a discharge for an exceptional purpose other than a purpose referred to in paragraph (a); or
 - (ii) an accidental discharge other than a discharge referred to in paragraph (b).

9—Regulation 8 of Annex II to have the force of law

- (1) Pursuant to section 24 of the Act, the provisions of Regulation 8 of Annex II to the Convention, other than paragraph (1) of that Regulation, apply to, and in relation to, the washing of a tank of a ship from which a noxious liquid substance has been unloaded.
- (2) A person who is a surveyor accredited or otherwise recognised under the *Marine Safety (Domestic Commercial Vessel) National Law* is, by virtue of this subregulation, a surveyor authorised for the purpose of implementing Regulation 8 of Annex II to the Convention.
- (3) If a tank of a ship from which a noxious liquid substance has been unloaded is not washed in accordance with whichever of the provisions of Regulation 8 of Annex II to the Convention is applicable to the tank, having regard to—
 - (a) whether the substance unloaded from the tank is a Category A, Category B, Category C or Category D substance; and
 - (b) whether the tank has been unloaded in a Special Area or an area other than a Special Area,the master of the ship is guilty of an offence.
Maximum penalty: \$5 000.
- (4) In the application of Regulation 8 of Annex II to the Convention to, or in relation to, the washing of a tank of a ship—
 - (a) a reference to the receiving Party will be taken as a reference to Australia or to the State; and
 - (b) a reference to the Administration will be taken as a reference to the State Marine Pollution Controller; and
 - (c) a reference to the surveyor (however described) will be taken as a reference to a surveyor authorised under subregulation (2).
- (5) A surveyor referred to in subregulation (2) must, in the exercise of any power or the performance of any function for the purpose of implementing Regulation 8 of Annex II to the Convention, comply with any control procedures developed by the IMO.
- (6) An exemption referred to in paragraph (2)(b), (5)(b), (6)(b) or (7)(c) of Regulation 8 of Annex II to the Convention may only be granted to a ship engaged in voyages to ports or terminals under the jurisdiction of States, other than Australia, that are parties to the Convention and, on such an exemption being granted to a ship, the appropriate entry made in the ship's cargo record book must be endorsed by a surveyor.

Part 3—Pollution by packaged harmful substances

10—Interpretation

- (1) Unless the contrary intention appears, an expression that is used in this Part and in Annex III to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

- (2) For the purposes of this Part—
cargo does not include a ship's stores or equipment.

11—Purpose

This Part—

- (a) gives effect to regulations 1 to 6 of Annex III to the Convention; and
- (b) prescribes matters for the purposes of Part 3AA of the Act.

12—Carriage of harmful substance

If a harmful substance is carried by sea as cargo in packaged form in contravention of these regulations, the master and the owner of the ship are each guilty of an offence.

Maximum penalty:

- (a) if the offender is a natural person—\$8 000 or imprisonment for 1 year; or
- (b) if the offender is a body corporate—\$20 000.

13—Packaging and marking of harmful substance

- (1) A harmful substance carried by sea as cargo in packaged form must be packaged in accordance with the IMDG Code.
- (2) The package must be marked or labelled—
 - (a) to indicate that the substance is a marine pollutant; and
 - (b) with the correct technical name of the harmful substance; and
 - (c) with the trade name (if any) of the substance.
- (3) The marking or labelling of the package must be sufficiently durable so as to be legible after immersion in the sea for a period of 3 months.
- (4) A package containing a harmful substance that is exempted from the marking requirements of the IMDG Code on the grounds that it contains only a small quantity of the harmful substance, is exempt from the marking requirements of this regulation.

14—Stowage

A harmful substance carried by sea as cargo in packaged form, and any package containing residue of a harmful substance, must be stowed and secured on the ship in accordance with the IMDG Code.

15—Quantity limitations

The quantity of a harmful substance that is carried by sea as cargo in packaged form must not exceed the quantity limitation for the particular substance specified by the IMDG Code.

16—Documents relating to carriage of harmful substance

If a ship is carrying a harmful substance by sea as cargo in packaged form the following provisions apply:

- (a) any document relating to the carriage of the harmful substance must state that the substance being carried is a marine pollutant and the correct technical name of the substance;

- (b) the shipping documents supplied by the shipper must include a signed certificate or declaration that the harmful substance is packaged and marked or labelled in accordance with these regulations;
- (c) a list or stowage plan detailing the location of the harmful substance on the ship must be carried on the ship;
- (d) where the harmful substance is loaded in this State, a copy of the list or stowage plan detailing the location of the harmful substance on the ship must—
 - (i) be retained on shore by the owner of the ship, or his or her representative, until the substance is unloaded; and
 - (ii) be deposited with the port manager prior to the departure of the ship.

17—Washing substances overboard

For the purposes of section 24AAB of the Act, a substance is taken to have been washed overboard in accordance with the regulations if the manner of disposal is the most appropriate having regard to the physical, chemical and biological properties of the substance.

Part 4—Pollution by garbage

18—Interpretation

Unless the contrary intention appears, an expression that is used in this Part and in Annex V to the Convention (whether or not a particular meaning is assigned to it by that Annex) has, in this Part, the same meaning as in that Annex.

19—Placards

- (1) A ship of 12 metres in length or more must display placards informing the crew and passengers of the garbage disposal requirements of section 24AAD of the Act.
- (2) If placards are not displayed on a ship in accordance with subregulation (1), the master and the owner of the ship are each guilty of an offence.

Maximum penalty:

- (a) if the offender is a natural person—\$2 000; or
- (b) if the offender is a body corporate—\$5 000.

20—Garbage management plan

- (1) This regulation applies to the following ships while they are in State waters:
 - (a) a ship of 400 tons gross tonnage or more;
 - (b) a ship certified to carry 15 or more passengers and crew.
- (2) If a garbage management plan conforming to the requirements of subregulation (3) is not carried, and implemented, on a ship to which this regulation applies, the master and the owner of the ship are each guilty of an offence.

Maximum penalty:

- (a) if the offender is a natural person—\$2 000; or
- (b) if the offender is a body corporate—\$5 000.

- (3) A garbage management plan must—
 - (a) provide written procedures for the collection, storage, processing and disposing of garbage, including procedures for the use of the garbage disposal equipment on board; and
 - (b) designate a person to be responsible for ensuring the plan is followed; and
 - (c) be in accordance with the guidelines developed by the IMO.

21—Garbage record book

- (1) This regulation applies to the following ships while they are in State waters:
 - (a) a ship of 400 tons gross tonnage or more;
 - (b) a ship certified to carry 15 or more passengers and crew.
- (2) If a garbage record book, in the form specified in the Appendix to Annex V of the 1978 Protocol, is not carried at all times on a ship to which this regulation applies, the master and the owner of the ship are each guilty of an offence.

Maximum penalty:

- (a) if the offender is a natural person—\$2 000; or
 - (b) if the offender is a body corporate—\$5 000.
- (3) The person responsible for overseeing a discharge of garbage from a ship to which this regulation applies or for an incineration of garbage on board such a ship must, on completion of the discharge operation or incineration, record in the ship's garbage record book—
 - (a) the date and time of the discharge operation or incineration; and
 - (b) the position of the ship at the time of the discharge operation or incineration; and
 - (c) a description, and the estimated amount, of the garbage discharged or incinerated,

and sign the entry in the garbage record book.

Maximum penalty: \$2 000.

- (4) Where the disposal, escape or accidental loss of garbage from a ship to which this regulation applies occurs in a situation referred to in section 24AAD(2)(a), (b) or (c) of the Act, an entry must be made in the ship's garbage record book, by the master of the ship, of the circumstances of, and the reasons for, the disposal, escape or accidental loss.

Maximum penalty: \$2 000.

- (5) The master of a ship to which this regulation applies must—
 - (a) sign each completed page of the ship's garbage record book; and
 - (b) ensure the garbage record book is kept on board the ship and is available at all times for inspection.

Maximum penalty: \$2 000.

- (6) The owner of a ship to which this regulation applies must keep the ship's garbage record book for a period of 2 years after the date of the final entry in the book.
Maximum penalty: \$2 000.

Part 5—Reporting requirements

22—Notification of discharges

- (1) For the purposes of section 25A(1) and (3) of the Act, a prescribed incident must be notified to the State Marine Pollution Controller by means of a telephone message, a telex message, a radio message or a fax message—
- (a) conveyed through the Port Adelaide Signal Station of the operator of the port of Port Adelaide or the office of a prescribed officer and containing the name, radio call sign (if any) and position of the ship concerned followed by the name of the person notifying the incident; or
 - (b) conveyed through the Australian Search and Rescue Centre of the Australian Maritime Safety Authority and commencing with the code letters POLREP and containing the name, radio call sign (if any) and position of the ship concerned followed by the name of the person notifying the incident.
- (2) For the purposes of section 25A(6) and (7) of the Act, a report in relation to a prescribed incident must be furnished to the State Marine Pollution Controller—
- (a) within 24 hours of receipt of a request for a report or within such further time as the State Marine Pollution Controller may allow; and
 - (b) in the form set out in Schedule 1.

23—Discharge reports occurring other than from ships

- (1) For the purposes of section 27(2) of the Act, a report must be furnished to the Minister in relation to the occurrence within 24 hours after receipt of a request for a report, or within such further time as the Minister may allow.
- (2) For the purposes of section 27(2) of the Act the form set out in Schedule 1 is the prescribed form.

24—Discharge reports occurring other than from ships

- (1) For the purposes of section 27(2) of the Act, a report must be furnished to the Minister in relation to the occurrence within 24 hours after receipt of a request for a report, or within such further time as the Minister may allow.
- (2) For the purposes of section 27(2) of the Act the form set out in Schedule 1 is the prescribed form.

Part 6—Miscellaneous

25—Minister may make orders

The Minister may, by instrument in writing, make orders for and in relation to—

- (a) giving effect to Annexes I, II, III and V to the Convention, other than provisions of those Annexes to which effect is given by a provision of the Act or these regulations; and

- (b) giving effect to Article 8 of, and Protocol I to, the Convention, other than provisions of that Article or Protocol to which effect is given by a provision of the Act or these regulations; and
- (c) the fixing of fees to be paid in respect of any matters under any such orders.

26—Fee for deposit of oil record book or cargo record book

A fee of \$40.00 is payable by the owner of a ship for—

- (a) the deposit of an oil record book of the ship in accordance with section 13(4) of the Act; or
- (b) the deposit of a cargo record book of the ship in accordance with section 23(6) of the Act.

27—Exemptions

- (1) For the purposes of section 41(1)(h) of the Act, each of the following classes of ships is exempt from the provisions of the Act and these regulations:
 - (a) ships belonging to an arm of the Defence Forces of Australia or to the naval, military or air forces of another country;
 - (b) ships (other than a vessel belonging to an arm of the Defence Forces of Australia or to the naval, military or air forces of another country) that are owned or operated by a State other than Australia and used, for the time being, only on government non-commercial service.
- (2) In subregulation (1)(b)—
State has the same meaning as in the Convention.

Schedule 1—Discharge report

(section 25A and section 27 of Act)

Details to be provided below only if applicable and must be provided within 24 hours of receipt of request for report unless further time allowed.

1. **Name and contact details (telephone, address etc) of the person requested to furnish report**, being the relevant person with duty to notify of the pollution incident or discharge occurrence:

If ship—

Master of the ship:

Where Master unable to comply, the owner, charterer, manager or operator of the ship or their agents:

If vehicle—

Owner or person in charge of the vehicle; or person responsible for the discharge:

If apparatus—

Owner or person in charge of the apparatus; or person responsible for the discharge:

2. **Please tick the relevant occurrence and provide the relevant source information:**

Pollution incident for ships

Note—Pollution incident for a ship includes damage, failure or breakdown of a ship of 15 metres in length or more that—

- (i) affects the safety of the ship, including collision, grounding, fire, explosion, structural failure, flooding and cargo shifting; or
- (ii) results in impairment of the safety of navigation, including failure or breakdown of steering gear, propulsion plant, electrical generating systems or essential shipborne navigational aids.

Discharge from ship

For pollution incident or discharge from ship—provide name, radio call-sign, flag of ship and type of ship (eg oil tanker, chemical tanker, dry cargo ship), gross tonnage and condition of ship:

Discharge from vehicle

Provide type of vehicle and number plate:

Discharge from apparatus (includes a pipeline, structure on land, oil rig, or any equipment used for the exploration, recovery or storage of oil)

Provide type of apparatus:

3. Location of pollution incident or discharge

If ship—latitude and longitude and also provide position, course and speed of the ship at the time of pollution incident or discharge:

If vehicle or apparatus—location on water or land of the discharge, where it was reasonably likely oil or mixture would flow into State waters (latitude and longitude, if known):

4. Date and time of pollution incident or discharge (specify which time status used, eg UTC, CST, daylight savings):

5. Brief description of the pollution incident or discharge (what, how and why incident/discharge occurred, what damage was sustained, condition of ship/vehicle/apparatus, if any other ship/vehicle/apparatus involved etc):

6. Type and origin of discharge including the technical name (or, where the technical name is not known, the trade name), UN number, Classification in the International Maritime Dangerous Goods (IMDG) Code (where applicable), name of manufacturer, quantity and concentration, of the harmful substance discharged, or likely to be discharged:

7. Volume/quantity of discharge:

8. Is the discharge ongoing and/or has been contained?

9. Weather, sea and current conditions in the vicinity of the pollution incident or discharge:

10. Estimated direction of discharge movement and surface area of the discharge:

11. What actions have been taken since the pollution incident or discharge to contain the discharge (including any equipment that has been used)?

12. What assistance (if any) is required or has been provided?

- 13. Any known sensitive areas nearby** (eg mangroves, power station inlets, marine parks, conservation parks, Native title or cultural significance to the Indigenous populations etc)?

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2013	223	<i>Gazette 29.8.2013 p3733</i>	1.9.2013: r 2