

# **Marine Pollution (Control and Civil Liability) Act 6 of 1981 (MPCCLA) Read together with the Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986 (MPPPFSA) Read together with the Marine Pollution (Intervention) Act 64 of 1987 (MPIA)**

**Topic: Environmental, Marine and Pollution**

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## **IN A CALABASH**

### **Introduction**

**The Constitution of the Republic of South Africa, 1996 provides for the protection of the South African environment.**

**Many laws have been introduced into South Africa to protect our environment.**

**While a number of these laws apply to specific mediums, such as air, land, soil, water and fauna and flora, all of these laws should be read together, because they all have the same objective: preservation of the environment.**

**This summary looks at the Marine Pollution (Intervention) Act 64 of 1987 (MPIA), the Marine Pollution (Control and Civil Liability) Act 6 of 1981 (MPCCLA) and the Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986 (MPPPFSA), which Acts provide for the protection of the marine environment from oil spills or other toxic discharges from ships and sea-going vessels.**

### **Objectives of the Acts**

The MPIA, the MPCCLA and the MPPPFSA concentrate on mechanisms which are aimed at the protection of the marine environment from pollution by oil and other harmful substances.

The MPIA gives effect to the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties and to the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil 1973.

In addition the MPPPFSA specifically gives effect to the International Convention for the Prevention of Pollution from Ships, 1973, as amended by the Protocol of 1978.

All of these laws and protocols provide for the prevention and combating of pollution of the sea by oil and other harmful substances. They provide for liability for any loss or damage caused by the discharge of oil from ships, tankers and offshore installations.

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## **Application of the Acts and their implication to Tourism**

These Acts apply to—

- any South African ship, tanker or offshore installation wherever it may be;
- any other ship, tanker or offshore installation while in the Republic, its territorial waters or exclusive economic zone; and
- the master/owner of such ship, tanker or offshore installation.

In terms of the tourism industry, the Act applies to any tourism activities which take place in the waters of South Africa.

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## **Summary of the provisions of the Acts**

### **Discharge of oil prohibited**

If any oil is discharged from a ship, tanker or offshore installation, the master/owner of such ship, tanker or offshore installation shall be guilty of an offence unless—

- the oil in question was discharged for the purpose of securing the safety of such ship, tanker or offshore installation or any other ship or tanker or preventing damage to such ship, tanker or offshore installation or to any other ship or tanker or the cargo thereof or saving a life and was necessary or was a reasonable step to take in the circumstances;
- the oil in question escaped because of damage to the ship, tanker or offshore installation and all reasonable steps were taken for preventing, stopping or reducing the escape of the oil; or
- the oil escaped because of leakage, neither such leakage nor any delay in discovering it was due to any lack of reasonable care and all reasonable steps were taken for stopping or reducing the escape as soon as it was discovered.

### **Reporting of discharge and damage causing discharge or likelihood of discharge**

When any harmful substance has been discharged from a ship, tanker or offshore installation the master, any member of the crew or the staff employed in connection with such offshore installation, designated by such master must immediately report the discharge to the principal officer at the nearest South African port.

If a ship or a tanker sustains any damage while it is within a prohibited area which causes or creates the likelihood of a discharge of any harmful substance or, having

sustained such damage, enters the prohibited area in such damaged condition, the master or any member of the crew designated by the master must immediately report to the principal officer at the nearest South African port the fact that such damage was sustained, the nature and location on the ship or tanker, the damage, the position at sea where the damage was sustained, the name of the ship or tanker, its port of registry, its official number, its position, its course and, if in South Africa, its destination, the quantity and type of harmful substances on board and any particulars contained in its certificate, where applicable.

If the master of a ship, tanker or offshore installation fails to comply, he or she will be guilty of an offence.

### **Powers of authority to take steps to prevent pollution of sea where harmful substance is being or is likely to be discharged**

If any harmful substance is being discharged or is, in the opinion of the authority, likely to be discharged from a ship or a tanker, the authority may require the master/owner of such ship—

- to unload the harmful substance from the ship or tanker or any such substance from a specified part of the ship or tanker;
- to transfer any harmful substance from a specified part of the ship or tanker to another specified part of the ship or tanker;
- to dispose of any harmful substance so unloaded or transferred, in such manner and within such period as the authority may direct;
- to move the ship or tanker or cause the ship or tanker to be moved to a place specified by the authority;
- not to move the ship or tanker from a place specified by the authority, except with their approval and in accordance with the conditions subject to which such approval was granted;
- not to unload any cargo or harmful substance specified by the authority from the ship or tanker except with their approval and in accordance with the conditions subject to which such approval was granted;
- to carry out such operations for the sinking or destruction of the ship, tanker or any part thereof or the destruction of the harmful substances in the ship or tanker as the authority may specify;
- to steer such course as the authority may specify while the ship or tanker is within a prohibited area;
- to obtain the services of one or more suitable vessels to stand by such ship or tanker during a period determined by the authority; and
- to take such other steps in regard to the ship, tanker, its cargo and/or the harmful substances therein as may be specified by the authority to prevent the discharge or further discharge of any such substance from the ship or tanker,

with a view to preventing the pollution or further pollution of the sea by such substance.

### **Right of entry upon land**

Any person authorised by the authority and any member of the South African Police Service or the South African National Defence Force may enter upon any land with such workmen, machinery, vehicles, equipment, appliances, instruments and other articles—

- to perform all such acts thereon as may be necessary for the purpose of complying with the Acts;
- for the purpose of making any enquiries or undertaking any investigations to determine whether any pollution of the sea by a harmful substance has occurred and whether the removal of such pollution is feasible;
- for the purpose of erecting camps or other temporary works which are necessary in connection with the removal of such pollution; and/or
- for the purpose of ascertaining whether or not any provision of the Acts or a 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, provided that—

- no such entry can be made into any building, or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof;
- as little damage, loss or inconvenience as possible is be caused; and
- such compensation as may be agreed upon or determined by a competent court must be paid from the National Revenue Fund for any damage, loss or inconvenience caused.

Any person who prevents any entry or wilfully obstructs or hinders any person entering in the performance of his or her functions will be guilty of an offence.

### **Inspection of ship or tanker and of records, and taking samples of harmful substances**

Any person authorised by the authority and any member of the South African Police Service or the 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 the Acts to be carried onboard such ship or tanker is so carried on board; or
- if he or she has reasonable grounds for believing that any provision of the Acts has been or is being contravened in connection with such ship or tanker—
  - o to inspect such ship or tanker or any part or cargo thereof;
  - o to inspect and make copies of any documents or records kept in respect of such ship, tanker, its cargo or the harmful substances onboard;
  - o to take samples of any harmful substance onboard such ship or tanker;
  - o to take soundings of tanks, spaces and bilges; and
  - o to test any equipment onboard such ship or tanker which is intended for use in preventing a discharge of harmful substances from such ship or tanker.

### **Moving of ship or tanker from certain area**

The authority may order the master of any ship or tanker to move his or her ship or tanker and any object it may have in tow from an area where a removal of pollution is in progress or about to be undertaken.

### **Powers of Authority in case of default by master or owner**

If the master of a ship refuses or fails to perform, within the time specified by the authority, any act which he or she has been required to perform, then the authority may

cause such act to be performed or such condition to be complied with. To this end, the authority may cause steps to be taken, which may include taking over of control of such ship. The costs of such effort will be for the account of the non-performing master/owner.

### **Expenses**

If the owner of a ship or a tanker incurs any expenses while complying with a requirement of the authority and–

- the discharge or likelihood of a discharge of the harmful substance in question was due wholly to the fault of the State; or
- the discharge or likelihood of a discharge of the harmful substance in question was due partly to the fault of the State,

the amount of such expenses or the applicable proportion of the amount of such expenses determined in the Apportionment of Damages Act 34 of 1956, will be payable to the owner by the State.

This will also apply in respect of harmful substances discharged or, in the opinion of the authority, likely to be discharged from an offshore installation.

### **Liability for loss, damage or costs caused by discharge of oil**

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 will be liable for–

- any loss or damage caused, elsewhere than on such ship, tanker or offshore installation, in South Africa, by pollution resulting from the discharge of oil from such ship, tanker or offshore installation;
- the costs of any measures taken or caused to be taken by the authority after an incident has occurred in respect of such ship, tanker or offshore installation for the purposes of reducing loss or damage or for the purposes of preventing such loss or damage being caused, whether or not a discharge has occurred and whether or not such a discharge in fact subsequently occurs.

The owner of any ship, tanker or offshore installation will not be liable for any loss, damage or costs if he or she proves that the discharge or the anticipated discharge–

- resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon;
- was wholly caused by an act or omission on the part of any person, not being the owner or a servant or agent of the owner, with intent to do damage; or
- was wholly caused by the negligence or other wrongful act of any government or other authority responsible for the maintenance of lights or other navigational aids, in the exercise of that function.

Where a ship or a tanker is involved in an incident with another ship or tanker or with an offshore installation and liability is incurred by each of the owners concerned, but the loss, damage or costs for which each of the owners would be liable cannot reasonably be separated from that or those for which the other owner or owners would be liable, then the owners concerned shall be jointly and severally liable for all such loss, damage or costs.

## **Compulsory insurance against liability for loss, damage or costs**

No ship carrying more than 2 000 long tons of oil in bulk as cargo and which is registered in a state other than a Convention State must enter or leave a port in South Africa or arrive at or leave an offshore installation in the territorial waters unless it carries a certificate issued by the authority of the government of a Convention State or recognised by the authority stating that there is in force a contract of insurance or other financial security for an amount, not less than an fixed amount, to cover the liability of the owner for any loss, damage or costs which may become payable by him or her as a result of any incident which may.



### **WHAT HAPPENS IF YOU DO NOT COMPLY?**

Any person who contravenes or fails to comply with the provisions of the MPCCLA will be guilty of an offence and liable to a fine of between R25 000–R200 000, to imprisonment for a period of up to five years or to both such fine and imprisonment.

Any person convicted of an offence under the MPPFSA will be liable to a fine not exceeding R500 000, to imprisonment for a period not exceeding five years or to such fine and imprisonment.

No person will be guilty of an offence if he or she can show that all reasonable steps were taken to ensure that the provisions of these Acts and the Convention were complied with.

If any person–

- admits to the Authority that he or she has contravened or failed to comply with any provision of the Acts or the Convention;
- agrees to abide by the decision of the authority; and
- deposits with the authority the required sum imposed for a conviction for the contravention or failure,
- the authority may, after such enquiry as it deems necessary, summarily determine the matter and may, without legal proceedings, order by way of penalty the whole or any part of the deposit to be forfeited.

A convicted person may appeal to the Minister when a penalty exceeds R10 000 within three months from the date of such determination or order.

The imposition of a penalty will not be deemed a conviction for an offence, and no prosecution in respect of the offence in question may thereafter be instituted.



### RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACTS

- Awareness of Acts and related protocols;
- Discharge of oil prohibited;
- Reporting of discharge and damage causing discharge or likelihood of discharge; and
- Compulsory insurance against liability for loss, damage or costs.

### FURTHER INFORMATION

#### **Regulators**

Minister of Transport  
South African Maritime Safety Authority

#### **Website**

[www.samsa.org.za](http://www.samsa.org.za)