2003 No 403

New South Wales

Marine Pollution Amendment (Waste Discharge and Oil Spill Response Plans) Regulation 2003

under the

Marine Pollution Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Pollution Act 1987*.

MICHAEL COSTA, M.L.C.,

Minister for Transport Services

Explanatory note

The object of this Regulation is to incorporate into the *Marine Pollution Regulation 2001* matters relating to pollution of navigable waters that were previously included in the *Management of Waters and Waterside Lands Regulations—N.S.W.* with various changes.

In particular these matters relate to:

(a) the requirement that the owner and master of a trading ship ensure that the ship, when on a prescribed voyage, carry on board:
  (i) an approved oil spill response plan, and
  (ii) any equipment, materials and substances required by the plan, and
  (iii) a master and crew trained in accordance with the plan, and

(b) the prevention of the discharge of untreated sewage from vessels into navigable waters, except into a waste collection facility or in accordance with an environment protection licence, and

(c) the prevention of the discharge of treated sewage from vessels in certain waters, except into a waste collection facility or in accordance with an environment protection licence, and

(d) requirements for certain vessels to be fitted with toilets and toilet waste holding tanks or to have an approved plan of management for the disposal of waste, and

(e) requirements for certain vessels to be fitted with grey water tanks, and

(f) the requirements for operators of commercial marinas in the Sydney Harbour locality with regard to the disposal of waste from vessels.

This Regulation is made under the *Marine Pollution Act 1987*, including section 61 (the general regulation-making power) and, in particular, section 61 (1) (d1) and (d2) as inserted by the *Marine Safety Act 1998*.

Marine Pollution Amendment (Waste Discharge and Oil Spill Response Plans) Regulation 2003

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Marine Pollution Act 1987

1 Name of Regulation

This Regulation is the *Marine Pollution Amendment (Waste Discharge and Oil Spill Response Plans) Regulation 2003*.

2 Commencement

This Regulation commences on 1 July 2003.

3 Amendment of Marine Pollution Regulation 2001

The *Marine Pollution Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Parts 5A and 5B

Insert after Part 5:

Part 5A Oil spill response plans—trading ships

22A Definitions

In this Part:

oil includes:

(a) any kind of liquid, viscid, unctuous, inflammable, chemically neutral substance that is lighter than and insoluble in water and soluble in alcohol and ether, and

(b) any derivative of a chemically neutral substance referred to in paragraph (a) or of such a substance mixed with water.

trading ship means a ship that is used wholly or principally for the carriage of cargo (including oil).

22B Trading ships to be equipped to deal with oil spills

(1) A trading ship must, while on any voyage to or from Lord Howe Island, or on any voyage on which Lord Howe Island is a port of call, have on board:

(a) an oil spill response plan approved (either generally or in a particular case) by the Minister, and

(b) any equipment, materials and substances required by that plan, and

(c) a master and crew trained in accordance with that plan.

(2) The owner and the master of a trading ship are each guilty of an offence if the vessel is operated in contravention of subclause (1).

Maximum penalty (subsection (2)): 100 penalty units.

22C Requirements of an oil spill response plan

(1) An oil spill response plan required by clause 22B (1) may be approved by the Minister only if the plan provides for the following matters:

(a) the equipment, materials and substances to be carried on board a trading ship to assist in dealing with, and minimising the damage from, any oil spilled from the ship,

(b) the way in which that equipment and those materials and substances are to be stowed and maintained,

(c) the action to be taken by the master and crew of the ship if an oil spill occurs,

(d) the relevant training to be completed by the master and crew.

(2) Subclause (1) does not limit the matters that may be included in an oil spill response plan.

Part 5B Control of toilet and galley waste from vessels

Division 1 Preliminary

22D Definitions

In this Part:

aquaculture means the commercial production, including breeding, hatching, rearing or cultivation, of marine, estuarine or fresh water organisms, including aquatic plants or animals (such as fin fish, crustaceans, molluscs or other aquatic vertebrates).

certified on-board sewage treatment system means an on-board sewage treatment system that has been tested and certified as treating sewage in accordance with the sewage discharge standard by an authority certified by the National Association of Testing Authorities (NATA) as being competent to test and certify on-board sewage treatment systems.

Class 1 commercial vessel means a commercial vessel for which a class 1 (passenger vessels) permit is in force under the *Commercial Vessels Act 1979*.

Class 4 commercial vessel means a commercial vessel for which a class 4 (hire and drive vessels) permit is in force under the *Commercial Vessels Act 1979*.

commercial vessel means any vessel used or intended to be used for or in connection with any business or commercial activity, and includes (but is not limited to) a vessel used or intended to be used wholly or principally for:

(a) carrying passengers or cargo for hire or reward, whether within or outside State waters or in the course of overseas or interstate voyages, or

(b) providing services to vessels for reward.

grey water means galley waste and shower and bath water from a vessel and any other waste water from a vessel, but does not include waste from a toilet.

grey water tank means any permanent container or receptacle on a vessel that:

(a) is designed and constructed to receive discharge from any galley, bath or shower on the vessel and to retain the discharge for disposal at a waste collection facility, and

(b) is separate from any holding tank if the waste collection facility to be used requires faecal matter to be discharged separately from any grey water.

holding tank means any permanent container or receptacle on a vessel that is designed and constructed to receive waste from a toilet on the vessel and to retain the waste for disposal at a waste collection facility.

inland waters means navigable waters not subject to tidal influence.

length means length overall.

marina means premises consisting of one or more moorings, pontoons, jetties, piers or other structures (whether water-based or land-based) that are designed to provide:

(a) accommodation for, or a means of, securing a vessel, and

(b) a slipway or some other way of taking a vessel out of the water, and

(c) at least one of the following:

(i) a shipwright service,

(ii) sewage pumpout facilities for vessels,

(iii) dinghy or tender storage,

(iv) fuel for vessels,

(v) engineering services for vessels,

(vi) mechanical repair services for vessels,

(vii) tender services,

(viii) provisioning services for vessels,

(ix) any other similar marine services or facilities.

master of a vessel means the person having the command or charge of the vessel, but does not include a marine pilot.

Murray River includes:

(a) the navigable waters of that part of the Darling River and its tributaries from the junction of that river with the Murray River upstream approximately 42 kilometres to the overhead crossing at Avoca, and

(b) the navigable waters of the anabranches of the Murray River, and

(c) the backed up waters of all dams and other impoundments on the Murray River from the South Australian border upstream to the source of the Murray River.

navigable waters means all waters (whether or not in the State) that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise.

on-board sewage treatment system means a sewage waste treatment system installed on a vessel.

operator of a marina means the owner, lessee or occupier of, or other person responsible for, the marina.

owner of a vessel means the person who owns the vessel (whether jointly with another person or otherwise) and includes:

(a) a person registered as the vessel's owner in the relevant licence for the vessel under the *Commercial Vessels Act 1979* or the *Maritime Services Act 1935* or other certificate of registry for the vessel, or

(b) a person who is the charterer of the vessel.

sewage discharge standard means the Standard specified in Schedule 4.

Sydney Harbour locality means the waters of Sydney Harbour, including the waters of all tidal bays, rivers and their tributaries connected or leading to the Harbour bounded by mean high water mark and lying to the west of a line commencing at the southernmost point of North Head and running to the northernmost point of South Head.

toilet includes a urinal.

treated sewage means sewage that has been treated in accordance with the sewage discharge standard.

untreated sewage means sewage that has not been treated in accordance with the sewage discharge standard.

vessel includes watercraft of any description used or capable of being used as a means of transportation on water.

waste collection facility means a facility that is designed and constructed to receive the contents of a holding tank, portable toilet or grey water tank and contains facilities where faecal matter can be discharged separately from grey water where signs at the facility indicate that this is a requirement.

Division 2 Sewage from vessels

22E No discharge zones for untreated sewage

(1) A person must not discharge or deposit untreated sewage from a vessel into any navigable waters or onto the bank or bed of any navigable waters unless the sewage is discharged or deposited:

(a) into a waste collection facility, or

(b) in accordance with an environment protection licence within the meaning of the *Protection of the Environment Operations Act 1997*.

Maximum penalty: 100 penalty units.

(2) The owner and master of a vessel are each guilty of an offence if untreated sewage is discharged or deposited from the vessel by any person in contravention of subclause (1).

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution for an offence under subclause (2) if the defendant shows that all reasonable measures were taken to prevent the discharge or deposit from the vessel.

22F No discharge zones for treated sewage

(1) This clause applies to the following waters:

(a) all inland waterways,

(b) all intermittent closing and opening lagoons,

(c) waters within 500 metres of:

(i) any area in which aquaculture occurs, or

(ii) any area normally used for swimming or any beach, or

(iii) any person in the water, or

(iv) any moored or anchored vessel or any marina, or

(v) any marine park within the meaning of the *Marine Parks Act 1997* or any area declared to be an aquatic reserve under the *Fisheries Management Act 1994*.

(2) A person must not discharge or deposit treated sewage from a vessel into any waters to which this clause applies or onto the bank or bed of any such waters or any adjacent waters unless the sewage is discharged or deposited:

(a) into a waste collection facility, or

(b) in accordance with an environment protection licence within the meaning of the *Protection of the Environment Operations Act 1997*.

Maximum penalty: 100 penalty units.

(3) The owner and master of a vessel are each guilty of an offence if treated sewage is discharged or deposited from the vessel by any person in contravention of subclause (2).

Maximum penalty: 100 penalty units.

(4) It is a defence to a prosecution for an offence under subclause (3) if the defendant shows that appropriate measures were in place to prevent the discharge or deposit from the vessel.

22G On-board sewage treatment systems to be certified

(1) The owner of a vessel operating in navigable waters is guilty of an offence if the vessel is fitted with an on-board sewage treatment system that is not a certified on-board sewage treatment system.

(2) The owner of a vessel must ensure that any on-board sewage treatment system on the vessel:

(a) is fitted in accordance with the manufacturer's instructions, and

(b) is maintained in good condition, and

(c) does not exceed its maximum treatment capacity as specified by the manufacturer.

Maximum penalty: 100 penalty units.

22H Sewage requirements—Class 1 and Class 4 commercial vessels

(1) The owner of a Class 1 commercial vessel or a Class 4 commercial vessel must ensure that:

(a) the vessel has a toilet fitted that is connected properly to a holding tank that:

(i) is of a capacity that complies with Schedule 5, and

(ii) complies with the provisions of Schedule 6 and has been tested in accordance with that Schedule, or

(b) if it is not structurally possible to install a holding tank on the vessel or the vessel has a certified on-board sewage treatment system, there is a plan of management for the vessel that has been approved under clause 22I.

(2) The owner of a Class 1 commercial vessel or a Class 4 commercial vessel must ensure that any toilet, holding tank and associated fittings on the vessel are maintained in good condition.

(3) The owner of a Class 1 commercial vessel or a Class 4 commercial vessel must not cause or permit any holding tank on the vessel to be modified or removed unless the consent in writing of the Minister is first obtained.

(4) The owner of a Class 1 commercial vessel or a Class 4 commercial vessel for which a plan of management has been approved under clause 22I is guilty of an offence if the vessel is operated in contravention of the plan of management.

Maximum penalty: 100 penalty units.

22I Plans of management for waste from vessels

(1) The owner of a Class 1 commercial vessel or a Class 4 commercial vessel may submit a plan of management to the Minister for approval for the management of waste in relation to the vessel.

(2) A plan of management submitted to the Minister for approval must:

(a) be in a form approved by the Minister, and

(b) be accompanied by an application fee of $150, and

(c) describe the proposed operations of the vessel, and

(d) specify the waters in which the vessel will operate, and

(e) specify the areas of those waters in which treated sewage may be discharged from the vessel and the areas in which no sewage may be discharged from the vessel, as prescribed by this Regulation, and

(f) indicate the maximum number of persons likely to be on board the vessel.

(3) The Minister may, after consultation with the applicant for approval, include any additional provisions in a plan of management before it is approved.

(4) If the Minister determines that an inspection of the vessel the subject of the proposed plan of management is required, an additional inspection fee is payable to the Minister on completion of the inspection calculated on the basis of the time taken to make the inspection at the hourly rate of $120.

(5) The Minister may:

(a) approve a plan of management unconditionally or subject to conditions, or

(b) refuse to approve a plan of management.

(6) The Minister may, by notice in writing served on the owner of a vessel, vary an approved plan of management for the vessel or revoke the approval of a plan of management for the vessel.

Division 3 Other discharge from vessels

22J Vessels to which Division applies

This Division applies to the following vessels:

(a) a commercial vessel used on the Murray River, the hull construction of which commenced, or in which a grey water tank was installed, on or after 1 January 2005,

(b) a commercial vessel used in the Sydney Harbour locality, the hull construction of which commenced, or in which a holding tank or a grey water tank was installed, on or after 1 January 2005,

(c) a Class 1 commercial vessel or Class 4 commercial vessel not referred to in paragraph (a) or (b), the hull construction of which commenced on or after 1 January 2005.

22K Requirements for grey water tank

(1) Any sink, basin, washbowl or similar permanent container into which grey water is discharged on a vessel must be connected to a grey water tank on the vessel.

(2) The grey water tank, the fittings leading from the galley to the tank and the fittings used for the discharge of the contents of the tank must be:

(a) fabricated from stainless steel, polyester fibreglass, polyvinyl chloride or some other corrosion-resistant material, or

(b) protected internally by polyester fibreglass, rubber or some other continuous liner and protected externally by a coating.

(3) The owner of a vessel must ensure that the requirements of this clause are complied with in relation to the vessel.

Maximum penalty (subclause (3)): 100 penalty units.

22L Maintenance of grey water tanks

The owner of a vessel must ensure that the grey water tank on the vessel is maintained in a good and serviceable condition.

Maximum penalty: 100 penalty units.

22M Requirement for the proper discharge of galley waste

(1) A person must not discharge or deposit the contents of a grey water tank on a vessel into or onto any navigable waters or the bank or bed of any navigable waters unless the contents are discharged or deposited:

(a) into a waste collection facility, or

(b) in accordance with an environment protection licence issued under the *Protection of the Environment Operations Act 1997*.

Maximum penalty: 100 penalty units.

(2) The owner and master of a vessel are each guilty of an offence if the contents of a grey water tank on the vessel are discharged or deposited from the vessel by any person in contravention of subclause (2).

Maximum penalty: 100 penalty units.

(3) It is a defence to a prosecution under subclause (2) if the defendant shows that appropriate measures were in place to prevent the discharge or deposit from the vessel.

Division 4 Provision of waste collection facilities

22N Requirements for commercial marina operators

(1) Until 1 January 2005, an operator of a marina that has 9 or more berths in the Sydney Harbour locality and is being operated on a commercial basis must ensure that:

(a) there is an adequate and readily accessible waste collection facility at the marina for use by all vessels moored at the marina, and

(b) the waste collection facility is maintained in good order and condition so that it is available for efficient use.

Maximum penalty: 100 penalty units.

(2) On and from 1 January 2005, the operator of any marina in the Sydney Harbour locality that is being operated on a commercial basis must ensure that:

(a) there is an adequate and readily accessible waste collection facility at the marina for use by all vessels moored at the marina, and

(b) the waste collection facility is maintained in good order and condition so that it is available for efficient use.

Division 5 Directions regarding discharge of waste

22O Authorised officer may give certain directions

(1) An authorised officer (within the meaning of the *Marine Safety Act 1998*) may direct the owner or master of a vessel from which sewage or other waste is being discharged or deposited in contravention of this Part to do any or all of the following:

(a) to take specified action to ensure that no further sewage or waste is so discharged or deposited,

(b) to return the vessel to its mooring,

(c) if the vessel is a commercial vessel, to cease commercial operations until:

(i) any action specified under paragraph (a) has been taken, and

(ii) an authorised officer has inspected the vessel and approved in writing of the vessel resuming those commercial operations.

(2) A direction referred to in subclause (1) (b) or (c) may be given only if the authorised officer considers that it is necessary to prevent the further discharge or deposit of waste from the vessel concerned.

(3) The owner or master of a vessel to whom a direction is given under this clause must not fail to comply with the direction.

Maximum penalty: 100 penalty units.

[2] Clause 27 Savings and transitional provisions

Insert at the end of the clause:

(2) Subject to subclauses (3) and (4), any approval, exemption or agreement given or entered into for the purposes of a provision of Division 6 or 7 of Part 2 of the *Management of Waters and Waterside Lands Regulations—N.S.W.* (as in force immediately before the repeal of that provision) is taken to have been given or entered into for the purposes of the corresponding provision of Part 5A or 5B of this Regulation.

(3) A Lectra San EC and MC Marine Sanitation Device manufactured by Raritan Engineering Company Inc. is taken to be a certified on-board sewage treatment system for the purposes of Part 5B of this Regulation:

(a) in a case where the Device is fitted in a Class 1 commercial vessel or Class 4 commercial vessel—until 13 November 2005, or

(b) in a case where the Device is fitted in any other vessel—for the life of the Device, but only if the Device was fitted in the vessel before 13 November 2005.

(4) For the purposes of clause 22G (2) (c), the maximum treatment capacity of a Marine Sanitation Device referred to in subclause (4), as specified by the manufacturer, is taken to be the treatment of the waste of not more than 15 persons per day.

[3] Schedules 4–6

Insert after Schedule 3:

Schedule 4 Standard for treated sewage from vessels

(Clause 22D)

1 Faecal coliform standard

The geometric mean of the faecal coliform count of the samples of effluent taken during the test period must not

exceed 250 faecal coliforms/100 ml M.P.N. (most probable number) as determined by a multiple tube fermentation analysis or an equivalent analytical procedure.

2 Suspended solids standards

(1) If testing is carried out on shore, the geometric mean of the total suspended solids content of the samples of effluent taken during the test period must not exceed 50 mg/l.

(2) If testing is carried out on board a vessel, the geometric mean of the total suspended solids content of the samples of effluent taken during the test period must not be more than 100 mg/l above the suspended solids content of ambient water used for flushing purposes.

3 Biochemical Oxygen Demand

In addition to the requirements of clauses 1 and 2, the geometric mean of 5-day Biochemical Oxygen Demand (BOD) of the samples of effluent taken during the test period must not exceed 50 mg/l.

Schedule 5 Holding tanks—capacity and specification requirements

(Clause 22H)

A Class 1 commercial vessel or Class 4 commercial vessel must have a holding tank with a capacity that complies with the following:

(a) in the case of a vessel used during daylight hours (other than a houseboat):

(i) that has not more than 12 persons on board—a capacity of 120 litres, or

(ii) that has more than 12 persons on board—a capacity of 120 litres + 7 litres x the number of persons on board in excess of 12,

(b) in the case of a vessel used overnight (other than a houseboat):

(i) that has not more than 12 persons on board—a capacity of 240 litres, or

(ii) that has more than 12 persons on board—a capacity of 240 litres + 15 litres x the number of persons on board in excess of 12,

(b) in the case of a houseboat:

(i) that has 1 to 6 berths—a capacity of 360 litres, or

(ii) that has more than 6 berths—a capacity of 720 litres.

The capacity required for the holding tank of a vessel fitted with an efficient flushing system, being a system that uses less than 1.5 litres per flush, is half of the capacity specified in the previous provisions of this Schedule.

Schedule 6 Holding tanks—further requirements

(Clause 22H)

1 Materials

(1) Materials in contact with sewage must be resistant to the effects of toilet water or fresh or salt water flush, the marine environment, disinfectants, deodorants, cleaning agents and chemical compounds in solid, liquid or gaseous form or of a toxic or explosive nature likely to be generated in the operation of a holding tank.

Note. Typical materials for holding tanks include stainless steel lined with rubber, polyester resin fibre reinforced plastics and fibre reinforced plastics or poly vinyl chloride without a metal shell.

(2) The materials of which the holding tank is constructed must be chemically and galvanically compatible.

2 Design and construction

The holding tank must be manufactured to meet the following requirements:

(a) the tank must be capable of operation when heeled 15 degrees to either side (or, in the case of a sailing craft, 30 degrees) and trimmed 10 degrees by bow or stern,

(b) the design of the tank must preclude the possibility of back-siphoning,

(c) the design of the tank must prevent the escape of toilet waste to the interior or the exterior of the vessel under all conditions of heel or trim,

(d) the tank must be securely fastened by means other than any connected piping,

(e) fittings and openings must be accessible for maintenance and cleaning,

(f) the tank must not have any common boundary with any potable water tank,

(g) the tank must be constructed in such a manner as to have a smooth uninterrupted interior surface free from any projections,

(h) the lower part of the tank must be sloped to be self-cleansing.

3 Tank inlet

The toilet pan must be located as close as practicable to the top of the tank and an inlet connection to the tank must terminate not less than 75 mm inside the tank.

4 Tank outlet

The outlet pipe from the tank must have a minimum nominal bore of 40 mm and be fitted so that not more than 40 mm depth of waste remains in the tank after discharge of the tank contents. The upper end of the outlet pipe must be rigidly attached to the vessel and must be exposed on, or accessible from, the deck of the vessel. The upper end of the outlet pipe must be fitted with the female side of an approved quick coupling device of 40 mm nominal bore. A removable gas-tight cover that is capable of protecting the seal must be positioned over this coupling.

5 Venting

A vent pipe of 38 mm nominal bore must be fitted to the top of the tank and must extend to a point outside the vessel, being a point not less than 300 mm above the level of the toilet seat pan.

6 Flushing water inlet

If the outlet pipe from the tank is not alternatively used as a flushing water inlet to the tank, a pipe of 38 mm nominal bore must be fitted to the top of the tank and be used for that purpose. The upper end of the flushing pipe must be fitted

with the female side of an approved quick coupling device of 38 mm nominal bore and this coupling end must be rigidly attached to the vessel and be exposed on, or accessible from, the deck of the vessel. A removable gas-tight cover that is capable of protecting the seal must be positioned over this coupling.

7 Inspection opening

Except where a toilet with a mechanical seal is mounted directly on top of the tank, an accessible inspection opening of 100 mm diameter must be located in the top of the tank and must be fitted with a removable gas-tight cover.

8 Gas tightness

When all removable gas-tight covers are secured in position, the tank and its fittings (except for the vent pipe) must be thoroughly gas-tight under normal operating conditions.

9 Tests

(1) The holding tank and the connecting piping or tubing (including all fittings) must be pressure tested with water as follows:

(a) the pressure is to represent a water column of 1.5 times the distance between the tank top and the top of the venting pipe,

(b) the minimum height is to be not less than 2 metres of water column,

(c) the tank must hold the water pressure for 30 minutes without any leakage.

(2) The holding tank and the connecting piping or tubing (including all fittings) must withstand the following pump-out test:

The tank is to be emptied with a 170 litre per minute positive displacement pump that remains in operation for 30 seconds after emptying of the tank.