

§ 29.2

responsible for coordinating with the Fund the resolution of claims filed as a result of a TAPS oil spill.

(e) *Damage* or *damages* means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

- (1) Removal costs;
- (2) Injury to, or destruction of, real or personal property;
- (3) Loss of use of real or personal property;
- (4) Injury to, or destruction of, natural resources;
- (5) Loss of use of natural resources; or
- (6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.

(f) *Fund* means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(g) *Guarantor* means the person, other than the Owner or Operator who provides evidence of financial responsibility for an Owner or Operator, and includes an underwriter, insurer or surety company.

(h) *Incident* (or "spill") means a discharge of oil from a vessel which is carrying TAPS oil loaded on that vessel at the terminal facilities of the Pipeline and which:

- (1) Violates applicable water quality standards, or
- (2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(i) *Operator of the Pipeline* means the common agent designated by the Permittees to operate the Pipeline.

(j) *Owner of the oil* means the Owner of TAPS oil at the time that such oil is loaded on a vessel at the terminal facilities of the Pipeline.

(k)(1) *Owner* means, in the case of a vessel, the person owning the vessel carrying TAPS oil at the time of an incident, and

(2) *Operator* means, in the case of a vessel, the person operating, or char-

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tering by demise, the vessel carrying TAPS oil at the time of an incident.

(l) *Person* means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) *Person in charge of the vessel* means the individual on board the vessel with the ultimate responsibility for vessel navigation and operations.

(n) *Permittees* means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System.

(o) *Pipeline* means any Pipeline in the Trans-Alaska Pipeline System.

(p) *Secretary* means the Secretary of the Interior or an authorized representative of the Secretary.

(q) *TAPS oil* means oil which was transported through the Trans-Alaska Pipeline and loaded on a vessel at the terminal facilities of the Pipeline.

(r) *Terminal facilities* means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the Pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(s) *Trans-Alaska Pipeline System* or *System* means any Pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(t) *United States* includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(u) *Vessel* means any type of watercraft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the Pipeline and ports under the jurisdiction of the United States, and which is carrying TAPS oil.

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund (Fund) was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under

regulations prescribed by the Secretary. The vessel Owner and Operator are strictly liable for the first \$14 million of claims for any one incident. The vessel Owner and Operator remain liable for claims over that amount whenever the damages involved were caused by the unseaworthiness of the vessel or by negligence and should the Fund pay any claims under those circumstances, the Fund retains the right of subrogation. The Fund's maximum liability for any one incident is the amount of the claims over \$14 million but not to exceed \$100 million.

(b) The Fund shall be subject to, and shall take all steps necessary to carry out its responsibilities under, the Act and these implementing regulations.

(c) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself or herself. Each member shall have the right to vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way sells the interest in such right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(d) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(e)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him or her as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him or her in connection with any such claim or liability: *Provided*, however, That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his or her own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his or her actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.