

**§ 1653. Liability for damages**

**(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska**

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused solely by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to \$350,000,000 for any one incident, and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of \$350,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

**(b) Control and removal of pollutants at expense of right-of-way holder**

If any area in the State of Alaska within or without the right-of-way or permit area granted under this chapter is polluted by any activities related to the Trans-Alaska Pipeline System, including operation of the terminal, conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the

Secretary or any other Federal or State officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

(Pub. L. 93-153, title II, §204, Nov. 16, 1973, 87 Stat. 586; Pub. L. 101-380, title VIII, §§8101, 8102(a)(1), (4), (b)-(e), Aug. 18, 1990, 104 Stat. 565-567.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-380, §8101(a), substituted “caused solely by” for “caused by”.

Subsec. (a)(2). Pub. L. 101-380, §8101(b), substituted “\$350,000,000” for “\$50,000,000” in two places.

Subsec. (b). Pub. L. 101-380, §8101(c), inserted “in the State of Alaska” after “any area”, “related to the Trans-Alaska Pipeline System, including operation of the terminal,” after “any activities”, and “or State” after “any other Federal”.

Subsec. (c). Pub. L. 101-380, §8102(a)(1), struck out subsec. (c) which related to liability for discharges of oil loaded at terminal facilities and to establishment of Trans-Alaska Pipeline Liability Fund.

Subsec. (c)(2). Pub. L. 101-380, §8102(b), substituted “caused solely by” for “caused by”.

Subsec. (c)(3). Pub. L. 101-380, §8102(d), inserted at end “The Fund shall expeditiously pay claims under this subsection, including such \$14,000,000, if the owner or operator of a vessel has not paid any such claim within 90 days after such claim has been submitted to such owner or operator. Upon payment of any such claim, the Fund shall be subrogated under applicable State and Federal laws to all rights of any person entitled to recover under this subsection. In any action brought by the Fund against an owner or operator or an affiliate thereof to recover amounts under this paragraph, the Fund shall be entitled to recover prejudgment interest, costs, reasonable attorney’s fees, and, in the discretion of the court, penalties.”

Subsec. (c)(4). Pub. L. 101-380, §8102(e), designated existing provisions as par. (A) and added pars. (B) and (C).

Subsec. (c)(5). Pub. L. 101-380, §8102(a)(4), inserted before period at end of second sentence “, except that after August 18, 1990, the amount to be accumulated shall be \$100,000,000 or the amount determined by the trustees and certified to the Congress by the Comptroller General as necessary to pay claims arising from incidents occurring prior to August 18, 1990, and administrative costs, whichever is less”.

Subsec. (c)(13), (14). Pub. L. 101-380, §8102(c), added pars. (13) and (14).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-380 applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as an Effective Date note under section 2701 of Title 33, Navigation and Navigable Waters.

Pub. L. 101-380, title VIII, §8102(a)(5)(A), Aug. 18, 1990, 104 Stat. 566, provided that: “The repeal by paragraph (1) [repealing subsec. (c) of this section] shall be effective 60 days after the date on which the Comptroller General of the United States certifies to the Congress [certified July 5, 2000] that—

“(i) all claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) have been resolved,

“(ii) all actions for the recovery of amounts subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act have been resolved, and

“(iii) all administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of the Trans-Alaska Pipeline Authorization Act have been paid.”

## SAVINGS PROVISION

Pub. L. 101-380, title VIII, § 8102(a)(3), Aug. 18, 1990, 104 Stat. 566, provided that: "The repeal made by paragraph (1) [repealing subsec. (c) of this section] shall have no effect on any right to recover or responsibility that arises from incidents subject to section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) occurring prior to the date of enactment of this Act [Aug. 18, 1990]."

## BULK FUEL STORAGE TANKS

Pub. L. 105-277, div. A, § 101(g) [title III, § 329(a), (b)], Oct. 21, 1998, 112 Stat. 2681-439, 2681-470, provided that:

"(a) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, the remainder of the balance in the Trans-Alaska Pipeline Liability Fund that is transferred and deposited into the Oil Spill Liability Trust Fund under section 8102(a)(2)(B)(i) of the Oil Pollution Act of 1990 (43 U.S.C. 1653 note) after June 16, 1998 shall be used in accordance with this section.

"(b) USE OF INTEREST ONLY.—The interest produced from the investment of the Trans-Alaska Pipeline Liability Fund balance that is transferred and deposited into the Oil Spill Liability Trust Fund under section 8102(a)(2)(B)(ii) of the Oil Pollution Act of 1990 [Pub. L. 101-380] (43 U.S.C. 1653 note) after June 16, 1998 shall be transferred annually by the National Pollution Funds Center to the Denali Commission for a program, to be developed in consultation with the Coast Guard, to repair or replace bulk fuel storage tanks in Alaska which are not in compliance with federal law, including the Oil Pollution Act of 1990 [33 U.S.C. 2701 et seq.], or State law."

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

## DISPOSITION OF FUND BALANCE

Pub. L. 101-380, title VIII, § 8102(a)(2), Aug. 18, 1990, 104 Stat. 565, as amended by Pub. L. 105-277, div. A, § 101(g) [title III, § 329(c)], Oct. 21, 1998, 112 Stat. 2681-439, 2681-471, provided that:

"(A) RESERVATION OF AMOUNTS.—The trustees of the Trans-Alaska Pipeline Liability Fund (hereafter in this subsection referred to as the 'TAPS Fund') shall reserve the following amounts in the TAPS Fund—

"(i) necessary to pay claims arising under section 204(c) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)); and

"(ii) administrative expenses reasonably necessary for and incidental to the implementation of section 204(c) of that Act.

"(B) DISPOSITION OF THE BALANCE.—After the Comptroller General of the United States certifies that the requirements of subparagraph (A) have been met, the trustees of the TAPS Fund shall dispose of the balance in the TAPS Fund after the reservation of amounts are made under subparagraph (A) by—

"(i) rebating the pro rata share of the balance to the State of Alaska for its contributions as an owner of oil, which, except as otherwise provided under article IX, section 15, of the Alaska Constitution, shall be used for the remediation of above-ground storage tanks; and then

"(ii) transferring and depositing the remainder of the balance into the Oil Spill Liability Trust Fund established under section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

"(C) DISPOSITION OF THE RESERVED AMOUNTS.—After payment of all claims arising from an incident for which funds are reserved under subparagraph (A) and certification by the Comptroller General of the United States that the claims arising from that incident have

been paid, the excess amounts, if any, for that incident shall be disposed of as set forth under subparagraphs (A) and (B).

"(D) AUTHORIZATION.—The amounts transferred and deposited in the Fund shall be available for the purposes of section 1012 of the Oil Pollution Act of 1990 [33 U.S.C. 2712] after funding sections 5001 [33 U.S.C. 2731] and 8103 [43 U.S.C. 1651 note] to the extent that funds have not otherwise been provided for the purposes of such sections."

## LIABILITIES OF TRUSTEES OF TAPS FUND

Pub. L. 101-380, title VIII, § 8102(a)(5)(B), Aug. 18, 1990, 104 Stat. 566, provided that: "Upon the effective date of the repeal pursuant to subparagraph (A) [see Effective Date of 1990 Amendment note above], the trustees of the TAPS Fund shall be relieved of all responsibilities under section 204(c) of the Trans-Alaska Pipeline Authorization Act [43 U.S.C. 1653(c)], but not any existing legal liability."

## PRESERVATION OF RIGHTS AND REMEDIES OF CONTRIBUTORS TO TAPS FUND

Pub. L. 101-380, title VIII, § 8102(a)(6), Aug. 18, 1990, 104 Stat. 566, provided that: "This subsection [amending this section and enacting provisions set out as notes above] is intended expressly to preserve any and all rights and remedies of contributors to the TAPS Fund under section 1491 of title 28, United States Code (commonly referred to as the 'Tucker Act')."

## § 1654. Antitrust laws

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws.

(Pub. L. 93-153, title II, § 205, Nov. 16, 1973, 87 Stat. 588.)

## § 1655. Roads and airports

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

(Pub. L. 93-153, title II, § 206, Nov. 16, 1973, 87 Stat. 588.)

## § 1656. Civil penalties

## (a) Penalty

Except as provided in subsection (c)(4) of this section, the Secretary of the Interior may assess and collect a civil penalty under this section with respect to any discharge of oil—

(1) in transit from fields or reservoirs supplying oil to the trans-Alaska pipeline; or

(2) during transportation through the trans-Alaska pipeline or handling at the terminal facilities, that causes damage to, or threatens to damage, natural resources or public or private property.

## (b) Persons liable

In addition to the person causing or permitting the discharge, the owner or owners of the oil at the time the discharge occurs shall be jointly, severally, and strictly liable for the full amount of penalties assessed pursuant to this section, except that the United States and the several States, and political subdivisions thereof, shall not be liable under this section.

## (c) Amount

(1) The amount of the civil penalty shall not exceed \$1,000 per barrel of oil discharged.