



- Provide public crossings—Stip. 1.12.3.
- Screen, filter, suppress electronic devices—Stip. 1.13.1.
- Post the Right-of-Way against hunting, etc.—Stip. 1.14.1.
- Restore survey monuments, etc.—Stip. 1.16.2.
- Take measures to protect health and safety; abate hazards—Stip. 1.20.
- Provide for environmental briefings—Stip. 2.1.1.
- Remove waste—Stip. 2.2.6.2.
- Stabilize disturbed areas—Stip. 2.4.2.2.
- Remove temporary fill ramps—Stip. 2.4.3.2.
- Seed and plant disturbed areas—Stip. 2.4.4.1.
- Dispose of excavated material—Stip. 2.4.5.
- Provide for uninterrupted movement and safe passage of fish—Stip. 2.5.1.1.
- Screen pump intakes—Stip. 2.5.1.2.
- Plug, stabilize abandoned water diversion structures—Stip. 2.5.1.3.
- Construct levees, etc.—Stip. 2.5.1.4.
- Construct new channels—Stip. 2.5.2.2.
- Protect Fish Spawning Beds from sediment; construct settling basins—Stip. 2.5.2.3.
- Repair damage to Fish Spawning Beds—Stip. 2.5.2.4.
- Assure big game passage—Stip. 2.5.4.1.
- Remove certain debris—Stip. 2.7.2.5.
- Dispose of slash (where “otherwise directed.”)—Stip. 2.7.2.8.
- Take certain mitigation measures—Stip. 2.8.1.
- Restore disturbed areas—Stip. 2.12.1.
- Stabilize slopes—Stip. 2.12.2.
- Dispose of certain materials—Stip. 2.12.3, Stip. 2.12.4.
- Remove equipment and supplies—Stip. 2.12.5.
- Clean up, repair, if Oil or other pollutant is discharged—Stip. 2.14.4.
- Inspect welds—Stip. 3.2.2.3.
- Inspect Pipeline System construction—Stip. 3.2.2.4.
- Perform seismic monitoring—Stip. 3.4.2.3.
- Construct stilling basins; stabilize pool sides—Stip. 3.6.2.1.
- Provide Oil spill containment structures—Stip. 3.11.1, Stip. 3.11.2.

## 19. Liens

A. Each Permittee shall, with reasonable diligence, discharge any lien against Federal Lands

that results from any failure or refusal on its part to pay or satisfy any judgment or obligation that arises out of or is connected in any way with the construction, operation, maintenance or termination of all or any part of the Pipeline System.

B. However, Permittees shall prevent the foreclosure of any lien against any title, right, or interest of the United States in said lands.

C. The foregoing provisions of this Section shall not be construed to constitute the consent of the United States to the creation of any lien against Federal Lands or to be in derogation of any prohibition or limitation with respect to such liens that may now or hereafter exist.

## 20. Insolvency

If at any time there shall be filed by or against any Permittee, or any guarantor furnishing a guaranty in accordance with the provisions of Section 15 hereof, in any court of competent jurisdiction, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of the Permittee's or such guarantor's property, or if any Permittee, or any such guarantor, makes an assignment for the benefit of creditors or takes advantage of any insolvency act, and, in the case of an involuntary proceeding, within sixty (60) days after the initiation of the proceeding the Permittee or such guarantor fails to secure a discontinuance of the proceeding, the Secretary may, if the Secretary so elects, at any time thereafter, declare such to be a breach of this Agreement by the Permittee or, in cases involving a guarantor, the Permittee for which the guaranty was furnished.

## 21. Breach; Extent of Liability of Permittees

A. The liabilities and obligations of each Permittee under this Agreement are joint and several except that the liabilities and obligations of each Permittee are several under the following Sections: 2.D (Purpose of Grant; Limitation of Use to Permittees), 3 (Transportation of Oil), 8 (Use Charge for Right-of-Way), 12 (Reimbursement of Department Expenses), 13.C (Damage to United States Property; Repair, Replacement or Claim for Damages), 14 (Indemnification of United States), 15 (Guaranty), 18 (Right of the United States to Perform), 19.A (Liens), 20 (Insolvency), 22 (Transfer), 32 (Release of



Right-of-Way), 33.B and 33.C, to the extent that performance may be required by less than all of the Permittees (Agreements Among Permittees), 34. (Access to Documents), 41 (Authority to Enter Agreement), Stipulation 1.4 (Common Agent), and Stipulation 1.10.1 (Completion of Use); *provided, however*, that as to any obligation to pay money to the United States, each such Permittee shall not be liable for any greater portion thereof than an amount which is equal to the product of the total obligation or liability when multiplied by a fraction, the numerator thereof being the individual Permittee's interest in the Right-of-Way at the time of the breach (such interest being expressed as a percentage for purposes of the numerator), and the denominator thereof being the aggregate of all of the interests in the Right-of-Way that were held by all of the Permittees at the time the obligation becomes due and payable (the aggregate of such interest being expressed as a percentage for purposes of the denominator).

## 22. Transfer

A. Permittees, and each of them, shall not, without obtaining the prior written consent of the Secretary, Transfer in whole or in part any right, title or interest in this Agreement or the Right-of-Way. Any such Transfer other than with respect to an Involuntary Passage of Title, without in each instance obtaining the prior written consent thereto of the Secretary, shall be absolutely void, and, at the option of the Secretary, shall be deemed to be a breach of this Agreement by each Permittee so violating this Agreement.

B. Any Involuntary Passage of Title with respect to any right, title or interest in this Agreement or the Right-of-Way that shall be attempted or effected without in each instance obtaining the prior written consent thereto of the Secretary shall, to the extent permitted by law, be voidable at the option of the Secretary, and, in addition, at the option of the Secretary, shall be deemed to be a breach of this Agreement by the affected Permittee; *provided, however*, that nothing in this subsection shall be deemed to prohibit, or to limit in any way, the exercise of any right or option of the United States under Section 20 of this Agreement.

C. With respect to any Transfer that shall relate to this Agreement or the Right-of-Way, the Transferor, the Transferee and the guarantor or guarantors, if any, of the Transferee shall apply

for the Secretary's written consent to the Transfer by filing with the Secretary all documents or other information that may be required by law or regulation, this Agreement or any other agreement, permit, or authorization of the United States relating to the Pipeline System or any part thereof and, upon request from the Secretary, such other documents and information as may be relevant to the Secretary's determination.

D. Before the Secretary acts in connection with an application for his consent with respect to the Transfer of an interest in the Right-of-Way, the Transferee shall demonstrate, to the satisfaction of the Secretary, that the Transferee is capable of performing all of the liabilities and obligations of the Transferor relating to the interest to be transferred. In considering an application for such consent, the Secretary shall make a determination, in accordance with Section 28(j) of the Mineral Leasing Act of 1920, as amended, concerning: (1) the technical capability of the Transferee, and (2) the financial capability of the Transferee, or of the Transferee together with, if any, its proposed guarantor or guarantors as approved by the Secretary, to perform all of the liabilities and obligations of the Transferor relating to the interest to be transferred.

E. In connection with any Transfer, the Secretary may request the right to audit and/or inspect, in whole or in part, the pertinent books, records, accounts, contracts, commitments, and property of the Transferee and of the proposed guarantor or guarantors, if any, of the Transferee, at the sole expense of the Transferor, which expense shall be paid to the United States upon completion of the inspection and/or audit and before the Secretary acts in connection with the application for his consent to the Transfer. If any such request shall be refused such refusal shall be deemed to be a sufficient reason for the Secretary to withhold his consent to the pertinent Transfer. The Transferee and its guarantor or guarantors, if any, shall consent in writing to the provisions of this subsection when applying for the consent of the Secretary.

F. The Secretary, shall not unreasonably withhold his consent to any Transfer hereunder, but may withhold or revoke his consent to any Transfer if:

- (1) At the time of, or before, the consummation of the Transfer, there shall have oc-



curred any breach, by the Transferor or any predecessor of the Transferor, of this Agreement or of any other agreement, permit, or authorization relating to the Pipeline System that the United States may make with, issue to, or grant to the Transferor, and that was not cured to the satisfaction of the United States before the consummation of the Transfer, or

- (2) With respect to Transfers other than those referred to in subsection H of this Section, the Transferee, or the Transferee together with, if any, its guarantor or guarantors as approved by the Secretary:
  - (a) is not, or are not, capable, in the judgment of the Secretary, of performing all of the liabilities and obligations of the Transferor relating to the right, title or interest to be transferred, or
  - (b) shall refuse to allow an audit and/or inspection as provided for in subsection E of this Section; or
- (3) Applicable laws and regulations in effect at the time of a Transfer shall not have been complied with by the parties to the Transfer.

G. A Permittee seeking to be divested in whole or in part of its right, title, and interest in and to the Right-of-Way and this Agreement in connection with a Transfer shall be released from its liabilities and obligations (accrued, contingent, or otherwise) to the United States under this Agreement to the extent and limit that the Transferee assumes unconditionally the performance and observance of each such liability and obligation, *provided*:

- (1) All of the provisions of this Agreement with respect to the approval or disapproval of the Transfer have been fully complied with to the satisfaction of the Secretary;
- (2) The Secretary has consented in writing to the Transfer; and
- (3) Thereafter the Transfer and the attendant assumption agreement, if any, are in fact duly consummated on the basis of the documents previously presented to the Secretary for his review, and the Secretary is so notified in writing by the parties to the Transfer.

H. The Secretary shall consent to the Transfer of an interest in the Right-of-Way between:

- (1) Any of the Original Permittees, their Affiliates or any of them, or
- (2) One or more of the Original Permittees, their Affiliates or any of them, and a corporate Transferee, all of the outstanding capital stock of which Transferee at the time of the Transfer is owned by one or more of the Original Permittees or their Affiliates, or
- (3) One or more of the Original Permittees, their Affiliates or any of them, and a partnership consisting of two (2) or more of the Original Permittees or their Affiliates;

*provided*, that the Transferor or Transferee are not in breach of this Agreement; *provided further*, that all applicable laws and regulations in effect at the time of Transfer are complied with; *provided further*, that the application for any such Transfer be filed with the Secretary within eight (8) years of the Effective Date hereof or prior to completion of construction of the Pipeline at its maximum design capacity (i.e. approximately two million (2,000,000) barrels per day) whichever shall first occur; and *provided further*, that no substantial reduction in the financial worth of the Transferee (or its Parent), or of the Transferee (or its Parent) together with its guarantors, if any, has occurred since the date the Transferee (or its Parent) acquired its original interest in the Right-of-Way.

### 23. Port Valdez Terminal Facility

A. The provisions of this Section shall apply to the construction and operation of the terminal facility of the Pipeline System located at Port Valdez, Alaska.

B. Permittees shall maintain and operate a waste-water treatment facility in conjunction with the terminal facility at Port Valdez. All oily-water (including, but not limited to, discharge from fuel tanks, cargo tanks, ballast tanks, and bilges) discharged from any tanker or other seagoing, bulk Oil carrier (hereinafter referred to as a "Vessel") loading at or from the terminal facility shall be received and treated by said waste-water treatment facility. Water discharged from the waste-water treatment facility shall not con-



tain more than 10 parts of oil per million parts of water, on a weekly (seven (7) day) average.

C. At reasonable intervals, but at least once in every five (5) year period, the Authorized Officer and Permittees, at the request of either, shall meet to review and consider in depth: (1) the operation of the waste-water treatment facility; (2) such advances and improvements in water pollution control and waste-water treatment, technology and equipment, as they relate to the terminal facility, as have taken place; and (3) the feasibility of improving the performance of the facility through installation of new or additional equipment, or modification of existing equipment. Consideration of such feasibility shall include consideration of the degree of technological advances that have occurred, costs and economic feasibility, the types of equipment commercially available, and the benefits that would be derived from the installation of new or additional equipment or the modification of existing equipment.

D. Permittees, and their respective agents, employees, contractors and subcontractors (at any tier) shall not release, or suffer to be released, from the terminal facility any Oil to be loaded on any Vessel unless the provisions of subsections E and F of this Section have, in each case, been fully complied with.

E. Prior to loading Oil on any Vessel, Permittees shall require the master thereof to provide Permittees with a legible copy, certified under oath by the master as being true and correct, of:

- (1) in the case of Vessels of United States registry, that part of the oil record book of such Vessel that pertains to the voyage of the Vessel to the terminal facility from its last Oil discharge port;
- (2) in the case of Vessels of foreign registry that may now or hereafter be required to maintain an oil record book, or similar records, that part of the oil record book, or said records, that pertains to the voyage of the Vessel to the terminal facility from its last Oil discharge port; and
- (3) in the case of any Vessel of foreign registry that is not required to maintain an oil record book, or similar records, Permittees shall require the master thereof to provide Permittees with an affidavit, duly sworn to and signed by the master, stating any and all facts bearing upon

any discharge of Oil or oily water from the Vessel during its voyage to the terminal facility from its last Oil discharge port.

F. If the said record book entries or affidavit, as provided by the master, disclose:

- (1) that the Vessel has discharged any Oil or oily water from its fuel tanks, cargo tanks, bilge, or otherwise, and
- (2) that such discharge was not necessary for the safety of the Vessel or its crew,

Permittees shall promptly notify the Authorized Officer of the pertinent facts and shall not load the Vessel or suffer the Vessel to be loaded, unless at the time of such discharge:

- (a) The United States Coast Guard or other agency of the United States has promulgated and implemented regulations under one or more treaties, conventions, or statutes that are designed to deter Vessels subject to such treaties, conventions or statutes from discharging any Oil or oily water at sea and that apply to, and can be enforced by the United States Coast Guard or such other agency of the United States against, the offending Vessel; or
- (b) In the absence of the aforesaid regulations, or the inapplicability thereof to the offending Vessel, there shall be in effect port rules, approved in writing by the Authorized Officer for the purposes of this subsection F, for the port of Valdez or, as the case may be, the terminal facility, (which rules may provide for a demurrage charge against offending vessels) that are designed to deter any Vessel using the terminal facility from discharging Oil or oily water at sea and that apply to, and can be enforced against, the offending vessel; or
- (c) If neither subsection F(a) or F(b) above in this Section shall be applicable, Permittees may proceed subject to applicable laws and regulations, to load the Vessel at the terminal facility; *provided, however*, that during its next return voyage to the terminal facility, one of either of the following alternatives must be complied with before the Vessel can be loaded:
  - (i) (AA) The Vessel shall, prior to loading, remain for ten



- (10) consecutive hours (the "Standdown Period") in an area designated by the Authorized Officer, not nearer than fifty (50) nautical miles or farther than one hundred (100) nautical miles from the port of Valdez;
- (BB) The Vessel's master shall enter in the ship's log the time and position of the Vessel at the commencement and termination of the Standdown Period, as well as the hourly positions of the Vessel during said period;
- (CC) The Vessel's position at the point of departure, upon completion of the Standdown Period, shall not be greater than five (5) nautical miles from the Vessel's position at the commencement of such period; and
- (DD) Prior to loading the Vessel, Permittees shall receive from the master of the Vessel a legible copy, certified under oath by the master as being true and correct, of the aforementioned entries in the ship's log; or
- (ii) (AA) The Vessel shall proceed to Valdez at a reduced rate of speed so that the voyage to Valdez (from its last port of call before such voyage) requires at least ten (10) hours additional to the period of time the voyage would otherwise have taken; and
- (BB) Prior to loading the Vessel, Permittees shall receive from the master of the Vessel a legible copy, certified as being true and correct, of the entries in the ship's log which demonstrate compli-

ance with the aforementioned return-voyage requirements.

Notwithstanding the foregoing provisions of subsections F(c)(i) and F(c)(ii), the Authorized Officer may temporarily waive compliance with the return-voyage requirements (on such terms as the Authorized Officer may prescribe) if, from the ship's log and corroborative evidence, it is clearly demonstrated that compliance would have seriously jeopardized the safety of the ship or crew.

G. If a Vessel shall have been loaded at the terminal facility without being subjected to any of the alternatives that are prescribed in subsection F of this Section, and it should later be determined that the portion of the oil record book, a copy of which was furnished to Permittees prior to such loading, or affidavit, as the case may be, contained any false or misleading statement or did not contain a required entry or statement, and if the entry or statement had been properly made the Vessel would have been subject to the aforesaid alternatives, then the Vessel shall be subject to the provisions of subsections E and F on its return voyage to the terminal facility next following the date on which the Authorized Officer notifies Permittees and the owner and/or, if any, the charterer of such Vessel of the aforementioned determination.

H. Permittees shall:

- (1) Publish the restrictions placed on the loading of Vessels at the terminal facility under this Section in the port manual for the port of Valdez or, as the case may be, the terminal facility and, if legally permissible, in the tariff or tariffs pertaining to the transportation of Oil through the Pipeline; and
- (2) Give the public such other notice of said restrictions as Permittees or the Authorized Officer may, from time to time, consider to be necessary or appropriate.

I. Permittees shall maintain books and records in connection with the operation of the waste-water treatment facility. Said books and records shall at least show, for each Vessel discharging into said facility, the name, tonnage (D.W.T.) and such other information as may be appropriate to identify the Vessel, the date of each discharge, the