



amount of ballast water discharged on each occasion, the amount of other oily water discharged on each occasion, and the amount of Oil that was loaded on each occasion from the terminal facility.

J. Permittees shall retain, for an appropriate period, as prescribed by the Authorized Officer, all documents furnished to Permittees pursuant to subsections E and F of this Section and the books and records specified in subsection I of this Section; and the Authorized Officer shall have access thereto at all reasonable times for the purpose of inspection and copying.

K. Permittees shall comply with all Federal, State and local laws and regulations existing or hereafter enacted or promulgated affecting in any manner the construction and operation of the terminal facility. If any such law or regulation governs specifically any particular requirement or standard that is prescribed in this Section. Permittees shall comply with the requirement or standard established by such law or regulation and, so long as compliance is required, Permittees shall be relieved of any obligation to comply with the particular requirement or standard of this Section that is governed by such law or regulation.

24. Duty of Permittees To Abate

A. Permittees promptly shall abate, either completely or, as the case may be, as completely as possible using their best efforts, any physical or mechanical procedure, activity, event or condition, existing or occurring at any time: (1) that is susceptible to abatement by Permittees, (2) which arises out of, or could affect adversely, the construction, operation, maintenance or termination of all or any part of the Pipeline System, and (3) that causes or threatens to cause: (a) a hazard to the safety of workers or to public health or safety (including but not limited to personal injury or loss of life with respect to any Person or Persons), or (b) serious and irreparable harm or damage to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource).

B. Permittees shall cause their respective agents, employees, contractors and subcontractors (at any tier) to observe and comply with the foregoing provisions of this Section.

25. Temporary Suspension Orders of Authorized Officer

A. The Authorized Officer may at any time order the temporary suspension of any or all construction, operation, maintenance or termination activities of Permittees, their agents, employees, contractors or subcontractors (at any tier) in connection with the Pipeline System, including but not limited to the transportation of Oil, if in the judgment of the Authorized Officer:

- (1) An immediate temporary suspension of such activities is necessary to protect: (a) public health or safety (including, but not limited to, personal injury or loss of life with respect to any Person or Persons); or (b) the environment from immediate, serious, substantial and irreparable harm or damage (including, but not limited to, harm or damage to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource); or
- (2) Permittees, their respective agents, employees, contractors or subcontractors (at any tier) are failing or refusing, or have failed or refused, to comply with or observe: (a) any provision of this Agreement necessary to protect public health, safety or the environment; or (b) any order of the Authorized Officer implementing any such provision of this Agreement or of any other agreement, permit or authorization that shall have been duly approved, issued or granted by the Secretary in connection with all or any part of the Pipeline System.

B. The following shall be applicable to any temporary suspension order that may be issued in accordance with the provisions of subsection A of this Section, if the order would have the effect of suspending (1) operation of the entire Pipeline, (2) transportation of Oil through the Pipeline, (3) operation of the entire Valdez terminal facility, or (4) construction of an entire Construction Subdivision:

- (a) If the order is issued in accordance with subsection A(1) of this Section, the Authorized Officer shall transmit a copy of the order, and a preliminary report with respect to the order, to the Secretary



within six (6) hours after the order has been issued and, thereafter, the Authorized Officer's report and the order will be reviewed promptly by the Secretary; *provided, however*, that nothing herein shall require the Secretary to take any action following such review; or

- (b) If the order is to be issued in accordance with subsection A (2) of this Section, the Authorized Officer shall not issue the order unless and until the Secretary gives to the Authorized Officer the Secretary's prior written approval with respect to the order.

C. The Authorized Officer shall give Permittees prior notice of the temporary suspension order as he deems practicable. If circumstances permit, the Authorized Officer shall consult with Permittees, prior to issuing the order, to discuss appropriate measures to (1) forthwith abate or avoid the harm or threatened harm that is the reason for the issuance of the order, or (2) effect compliance with the provision or order, whichever is applicable.

D. After a temporary suspension order has been given by the Authorized Officer, Permittees shall promptly comply with all of the provisions of the order and shall not resume any activity suspended or curtailed thereby except as provided in this Agreement or pursuant to court order.

E. Any temporary suspension order which, in an emergency, is given orally shall be confirmed in writing, as provided for in Stipulation 1.6.2. Each written order or written confirmation of an order shall set forth the reasons for the suspension. Each temporary suspension order shall be limited, insofar as is practicable, to the particular area or activity that is or may be affected by the activities or conditions that are the basis of the order. Each order shall be effective as of the date and time given, unless it specifies otherwise. Each order shall remain in full force and effect until modified or revoked in writing by the Authorized Officer or the Secretary.

F. Resumption of any suspended activity shall be promptly authorized by the Authorized Officer in writing when he is satisfied that (1) the harm or threatened harm has been abated or remedied, or (2) Permittees have effected, or are ready, willing and able to effect compliance with the provision or order, whichever is applicable.

G. Any temporary suspension order that is given or issued in accordance with this Section shall be subject to the provisions of Stipulation 1.5.1.

26. Appeal Procedure

A. *Appeals from Temporary Suspension Orders of Authorized Officer; Appeals from Denials of Resumption of Suspended Activities*

(1) Permittees may appeal directly to the Secretary: (a) any temporary suspension order issued by the Authorized Officer pursuant to Section 25 of this Agreement; and (b) any denial by the Authorized Officer of a request for resumption of activities suspended pursuant to such a temporary suspension order. If a right of appeal is to be preserved, Permittees shall file a notice of appeal with the Secretary within fifteen (15) days from the effective date of the order or denial being appealed. The notice shall set forth with particularity the order or denial being appealed. To perfect an appeal, Permittees shall file with the Secretary within thirty (30) days from the effective date of the order or denial being appealed a statement of the facts of the matter and a statement of the applicable law, supplemented by such documentation and arguments on the facts and the law as Permittees may wish to present to justify modification or reversal of the order or denial. All statements of fact shall be under oath.

(2) Except as provided hereinafter in this Section, the Secretary shall decide the appeal within thirty (30) days from the date Permittees' appeal is perfected. If the Secretary does not render a decision within that time, the appeal shall be considered to have been denied by the Secretary, and such denial shall constitute the final administrative decision of the Department.

(3) Except for any decision that may be made by the Secretary after his review as provided for in subsection B(a) of Section 25 hereof, any decisions of the Secretary, with respect to any appeal within the Department as to any matter arising out of this Agreement, shall constitute the final administrative decision of the Department.

B. *Expedited Appeals*

(1) Permittees shall be entitled to an expedited appeal to the Secretary from any temporary suspension order, or order denying resumption of suspended activities (except any refusal to issue a Notice to Proceed or the issuance of a Notice to



Proceed that may not be substantially in accord with the application therefor), issued by the Authorized Officer and that suspends, or denies resumption of, the following: (a) operation of the entire Pipeline; (b) transportation of Oil through the Pipeline; (c) operation of the entire Valdez terminal facility; or (d) construction of an entire Construction Subdivision.

(2) Permittees may occasionally, from time to time, during construction of the Pipeline System, designate an order not covered by subsection B(1) of this Section but which the Permittees deem critical and which the Secretary shall consider as an expedited appeal. Such designation shall be made in the notice of appeal, and shall be supported by factual information, under oath, to confirm that the affected activity is one of critical importance.

(3) The Secretary shall render a decision so as to dispose of the expedited appeal within the shortest possible time and in all events within seven (7) days of the date of filing of the documents required to perfect an appeal. If the Secretary does not render a decision within such time, the appeal may be deemed by Permittees to have been denied by the Secretary, and such denial shall constitute the final administrative decision of the Department.

C. Appeals with Respect to Notices to Proceed

(1) Permittees may appeal to the Secretary if, with respect to a particular application for a Notice to Proceed: (a) the Authorized Officer has refused to issue the Notice to Proceed within the time prescribed pursuant to Stipulation 1.7.4; or (b) the Authorized Officer has issued a Notice to Proceed not substantially in accord with the application therefor. If the Authorized Officer has not acted within the prescribed time to either issue or deny the issuance of the Notice to Proceed, such failure to act shall be deemed to be a refusal by the Authorized Officer to issue the Notice to Proceed.

(2) The ground or grounds for such an appeal shall be one or more of the following:

- (a) The Authorized Officer has construed the applicable Stipulations erroneously; or
- (b) The Authorized Officer has imposed arbitrary and capricious requirements to enforce the Stipulations; or

- (c) Permittees have made a bona fide effort to meet the requirements of the Authorized Officer, but are unable to comply; or
- (d) By failing to act upon the requested Notice to Proceed, within the prescribed time, the Authorized Officer has been unreasonable.

(3) Each appeal under this subsection shall be subject to the appeal procedure set forth in subsection A of this Section.

27. Requests To Resume; Appeals

A. If by a temporary suspension order issued pursuant to Section 25 of this Agreement, the Authorized Officer has ordered the suspension of an activity of Permittees, Permittees may at any time thereafter file with the Authorized Officer a request for permission to resume that activity on the ground that the reason for the suspension no longer exists. The request shall contain a statement, under oath, of the facts which in Permittees' view support the propriety of resumption.

B. The Authorized Officer shall render a decision, either granting or denying the request, within five (5) days of the date that the request was filed with him. If the Authorized Officer does not render a decision within that time, the request shall be considered denied and Permittee may appeal the denial to the Secretary in accordance with the provisions of Section 26 of this Agreement.

C. If, at the time the request to resume is filed with the Authorized Officer, the Authorized Officer's order suspending the activity is pending before the Secretary pursuant to a perfected appeal, the Authorized Officer shall nonetheless proceed to act upon the request. If the Authorized Officer grants the request that action shall be determinative of both the request and the pending appeal.

28. Nondiscrimination and Equal Employment Opportunity

A. Permittees shall assure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from receiving or participating in any activity, including all aspects of employment and contracting, conducted under any permit, right-of-way, public land order, or other Federal authorization granted or issued under the Trans-Alaska Pipeline Authorization Act. Permittees shall comply with all regulations that shall be



promulgated by the Secretary to implement this provision.

B. Permittees agree that, during the period of construction of the Pipeline System and for so long as the Pipeline System, or any portion thereof, shall be in operation, or for so long as this Agreement shall be in effect, whichever is the longer:

- (1) Permittees will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Permittees will take affirmative action to ensure that applicants are employed, and that employees are equally treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Permittees agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authorized Officer setting forth the provisions of this equal opportunity clause.
- (2) Permittees will, in all solicitations or advertisements for employees placed by or on behalf of Permittees, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Permittees will send to each labor union or representative of workers with which Permittees have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authorized Officer, advising the labor union or workers' representative of Permittees' commitments under this equal opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Permittees will comply with Executive Order No. 11246 of September 24, 1965, as

amended, and rules and regulations and relevant orders of the Secretary of Labor.

- (5) Permittees will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Permittees' books, records, and accounts by the Authorized Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of Permittees' noncompliance with this equal opportunity clause or with any of said rules, regulations or orders, this Agreement may be terminated or suspended in whole or in part by the Secretary, in accordance with the provisions of Section 403 of the Act of November 16, 1973, 87 Stat. 590 (1973) and in the manner provided in Section 31 hereof, and Permittees may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) Permittees will include the provisions of an equal opportunity clause as established by regulation of the Secretary in every contract, subcontract or purchase order unless exempted so that such provisions will be binding upon each contractor, subcontractor (at any tier) or vendor. Permittees will take such action with respect to any contract, subcontract, or purchase order as the Authorized Officer may direct as a means of enforcing such provisions including sanctions for noncompliance; *provided, however*, that in the event Permittees become involved in or are threatened with litigation with a contractor, subcontractor (at any tier) or vendor as a result of such direction by the Authorized Officer, Permittees may request the United States to enter into such liti-



gation to protect the interests of the United States.

Permittees further agree that they will be bound by the equal opportunity clause (i.e., subsections (1) through (7) of this subsection B) with respect to their own employment practices when they participate in federally assisted construction work.

C. Permittees agree that they will assist and cooperate actively with the Authorized Officer and the Secretary of Labor in obtaining the compliance of contractors and subcontractors (at any tier) with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, pursuant to the Executive Order, that they will furnish the Authorized Officer and the Secretary of Labor such information as they may require for the supervision of such compliance, and that they will otherwise assist the Authorized Officer in the discharge of the Department's primary responsibility for securing compliance.

D. Permittees further agree that they will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from Government contracts and federally assisted construction contracts and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Authorized Officer or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Permittees agree that if they fail or refuse to comply with these undertakings, the Secretary may take any or all of the following actions: terminate or suspend the Right-of-Way in whole or in part, in accordance with the provisions of Section 403 of the Act of November 16, 1973, 87 Stat. 590 (1973), and in the manner provided in Section 31 hereof; refrain from extending any further assistance to Permittees under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from Permittees; and refer the case to the Department of Justice for appropriate legal proceedings.

E. By accepting this Agreement, Permittees certify that Permittees do not and will not maintain or provide for Permittees' employees any Segregated Facilities at any of Permittees' establishments and that Permittees do not and will

not permit Permittees' employees to perform their services at any location, under Permittees' control, where Segregated Facilities are maintained. Permittees agree that a breach of this certification is a violation of the equal opportunity clause of this Agreement. As used in this certification, the term "Segregated Facilities" means, but is not limited to, any waiting rooms, work areas, rest rooms, and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom or otherwise. Permittees further agree that (except where Permittees have obtained identical certifications from proposed contractors and subcontractors (at any tier) for specific time periods) Permittees will obtain identical certifications from proposed contractors and subcontractors (at any tier) prior to the award of contracts or subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that Permittees will retain such certifications in Permittees' files; and that Permittees will forward the following notice to such proposed contractors and subcontractors (except where the proposed contractors or subcontractors have submitted identical certifications for specific time periods): "NOTICE TO PROSPECTIVE CONTRACTORS AND SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES." A Certification of Nonsegregated Facilities, as required by the order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, by the Secretary of Labor, must be submitted prior to the award of a contract or subcontract exceeding \$10,000 which is not exempt from the provisions of the equal opportunity clause. The certification may be submitted either for each contract and subcontract or for all contracts and subcontracts during a period (i.e., quarterly, semiannually, or annually).

29. Training of Alaska Natives

A. Permittees shall enter into an Agreement with the Secretary regarding recruitment, testing, training, placement, employment, and job counselling of Alaska Natives.



B. During construction and operation of the Pipeline System, Permittees shall conduct a pre-employment and on-the-job training program for Alaska Natives designed to qualify them for initial employment in connection with the Pipeline System and for advancement to higher paying positions thereafter.

C. Permittees shall do everything practicable to secure the employment, in connection with the Pipeline System, of those Alaska Natives who successfully complete Permittees' training program. Permittees shall inform the Authorized Officer of the discharge from such employment of each and every Alaska Native and of the reason therefor, in advance of such discharge whenever possible or, if advance notice is impossible, as soon thereafter as is practicable.

D. Permittees shall furnish such information and reports concerning Alaska Native employment as the Authorized Officer shall require from time to time.

30. Native and Other Subsistence

A. To the extent practicable, Permittees shall not damage any fish, wildlife or biotic resources in the general area of the Right-of-Way upon which Persons living in the area rely for subsistence purposes; and Permittees will comply promptly with all requirements and orders of the Secretary to protect the interests of Persons living in the general area of the Right-of-Way who rely on the fish, wildlife and biotic resources of the area for subsistence purposes.

B. Upon the order of the Secretary, Permittees shall provide emergency subsistence and other aid, as required by the Secretary, to any affected Alaska Native, Native organization or other Person pending expeditious filing of, and determination of, a claim by such Alaska Native, Native organization or other Person under Section 204(a) of the Trans-Alaska Pipeline Authorization Act. The Secretary's decision to issue an order may be based on statements, made under oath, by such Alaska Native, Native organization or other Person seeking emergency aid.

31. Termination or Suspension of Right-of-Way

A. Any failure or refusal of any Permittee, its agents, employees, contractors or subcontractors (at any tier), or any of them, to observe or comply

substantially with any applicable provision of Section 28 of the Mineral Leasing Act of 1920, as amended, the Trans-Alaska Pipeline Authorization Act, the regulations of the Secretary implementative thereof, or any provision of this Agreement required or authorized by such statutes, shall be deemed to constitute a breach of this Agreement, said breach being determined to be joint and several or several according to the provisions of Section 21 hereof, and, at the option of the Secretary, may be grounds for termination or formal suspension of such Permittee's interest in the Right-of-Way; *provided, however*, if, as determined in accordance with the provisions of Section 21 hereof, the breach results in several (as opposed to joint and several) liability, the interest in the Right-of-Way of a Permittee which is not liable for the breach shall not be subject to termination or formal suspension on account of the breach.

B. The failure or refusal of Permittees to proceed with reasonable diligence to construct the Pipeline shall be grounds for termination or formal suspension of the Right-of-Way in a proceeding brought under Section 28(o) of the Mineral Leasing Act, as amended; *provided, however*, that the Right-of-Way shall not be terminated or suspended if the failure to proceed to construct the Pipeline is due to circumstances beyond the control of the Permittees.

C. Abandonment of the Right-of-Way shall not constitute a breach of this Agreement but may, at the option of the Secretary, be grounds for termination of the Right-of-Way. Deliberate failure of Permittees, for any continuous two-year period (whether or not calculated on a calendar-year basis), to use the Right-of-Way for the purpose for which it was granted shall constitute a rebuttable presumption of abandonment of the Right-of-Way. However, where such failure to use the Right-of-Way is due to circumstances not within Permittees' control, the Secretary is not required to commence proceedings under Section 28(o) of the Mineral Leasing Act of 1920, as amended.

D. Administrative proceedings to terminate or formally suspend the Right-of-Way under subsections A and B of this Section shall be conducted pursuant to Title 5, United States Code, Section 554, and the applicable regulations of the Secretary.

E. Before the Secretary authorizes the commencement of any administrative proceeding un-