

Western Australia

Dangerous Goods Safety Act 2004

**Dangerous Goods Safety (Goods in Ports)
Regulations 2007**

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Dangerous Goods Safety (Goods in Ports) Regulations 2007

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Dangerous Goods Safety (Goods in Ports) Regulations 2007

Part 1 — Preliminary matters

1. Citation

These regulations are the *Dangerous Goods Safety (Goods in Ports) Regulations 2007*.

2. Commencement

These regulations come into operation as follows:

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which Part 3 of the Act comes into operation.

3. Terms used in these regulations

- (1) In these regulations, unless the contrary intention appears — ***accountable person*** for a vessel, means each of the owner and the master of the vessel;

Act means the *Dangerous Goods Safety Act 2004*;

AS 3846 means the Australian Standard AS 3846—2005, *The handling and transport of dangerous cargoes in port areas*, published by Standards Australia (ISBN 0 7337 7000 2);

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class of dangerous goods other than combustible liquids, means the class assigned to the goods in accordance with the IMDG Code;

classification code of dangerous goods other than combustible liquids, means the classification code assigned to the goods in accordance with the IMDG Code;

consignor of a dangerous cargo, has the meaning given by regulation 4;

dangerous goods means any article or substance that is dangerous goods within the meaning given to that term by the Act section 3(1);

Division, in relation to dangerous goods, means the Division assigned to the goods in accordance with the IMDG Code;

explosives has the meaning given to that term by the *Dangerous Goods Safety (Explosives) Regulations 2007*;

handle has the meaning given to that term by AS 3846 clause 1.4.41, despite the meaning given to the term by the Act section 3(1), and includes to transport;

harbour master —

- (a) of a port subject to the *Port Authorities Act 1999*, has the meaning given to the term by that Act section 3(1);
- (b) of a port subject to the *Shipping and Pilotage Act 1967*, has the meaning given to the term by that Act section 3;

level 1 fine means —

- (a) for an individual, a fine of \$10 000;
- (b) for a body corporate, a fine of \$50 000;

level 2 fine means —

- (a) for an individual, a fine of \$5 000;
- (b) for a body corporate, a fine of \$25 000;

liquid dangerous goods includes a gas that is dangerous goods and that is liquefied;

owner of a vessel, means a person —

- (a) who is the sole owner, a joint owner or a part owner of the vessel; or
- (b) who has possession or use of the vessel under a credit, hire purchase, lease or other agreement;

port means —

- (a) a port as that term is defined in the *Port Authorities Act 1999* section 3(1); or
- (b) a port as that term is defined in the *Shipping and Pilotage Act 1967* section 3;

port area means the area associated with a port being —

- (a) if the port is subject to the *Port Authorities Act 1999* — the area or areas described in relation to the port under that Act section 24; and
- (b) if the port is subject to the *Shipping and Pilotage Act 1967* — the area bounded by the limits specified in relation to the port under that Act section 10;

prime contractor has the meaning given to that term by regulation 5;

vessel means anything, including a hovercraft, capable of transporting people or things by water.

- (2) If a term used in these regulations is not defined in subregulation (1) but is defined in AS 3846 clause 1.4, it has the same meaning in these regulations as it has in that clause, unless the contrary intention appears.

[Regulation 3 amended in Gazette 19 Feb 2013 p. 986.]

4. “Consignor”, meaning of

For the purposes of these regulations, a person is the consignor of dangerous goods in a port area —

- (a) if the person, with the person’s authority, is named or otherwise identified as the consignor of the goods in documentation associated with transporting the goods into or from the port area; or

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- (b) if paragraph (a) does not apply to the person or anyone else — if the person —
 - (i) engages another person, either directly or through an agent or other intermediary, to transport the goods into or from the port area; or
 - (ii) has possession of, or control over, the goods immediately before the goods are transported into or from the port area;

or

- (c) if neither paragraph (a) nor (b) applies to the person or anyone else and the goods are being imported into Australia — if the person is the importer.

5. “Prime contractor”, meaning of

For the purposes of these regulations, a person is a prime contractor —

- (a) for the transport of dangerous goods by road if the person, in conducting a business for or involving the transport of dangerous goods by road, undertakes to be responsible, or is responsible, for the transport of the dangerous goods by road;
- (b) for the transport of dangerous goods by rail if the person undertakes to be responsible, or is responsible, for —
 - (i) the transport of the goods by rail; or
 - (ii) the condition of a unit of rolling stock transporting the goods by rail;
- (c) for the transport of dangerous goods by water if the person, in conducting a business for or involving the transport of dangerous goods by water, undertakes to be responsible, or is responsible, for the transport of the goods by water.

6. “Risk assessment”, meaning of

For the purposes of regulations 20 and 33, a risk assessment for a berth is a document that —

- (a) identifies all hazards relating to dangerous goods that are or will be handled at the berth; and
- (b) for each hazard, assesses —
 - (i) the probability of the hazard causing a fire or explosion; and
 - (ii) the nature and extent of the harm to people, property and the environment that is likely to result from any such fire or explosion;and
- (c) for each hazard, identifies the measures that will eliminate or, if it is not reasonably practicable to eliminate, that will reduce so far as reasonably practicable —
 - (i) the probability of the hazard causing a fire or explosion; and
 - (ii) the harm to people, property and the environment that is likely to result from such a fire or explosion;and
- (d) records the method of reasoning used to determine the matters referred to in paragraphs (a) to (c); and
- (e) is in a form acceptable to the Chief Officer.

7. Specific Parts do not affect others

The application of a Part of these regulations to dangerous goods is not affected by the application of any of Parts 4 to 8 to the goods.

8. These regulations in addition to others

- (1) These regulations are additional to and not in substitution for the other regulations made under the Act.
- (2) If a provision of these regulations conflicts or is inconsistent with a provision of other regulations made under the Act, other than the *Dangerous Goods Safety (General) Regulations 2007*, the provision of these regulations prevails to the extent of the inconsistency.

9. Regulations do not apply to some dangerous goods

- (1) In this regulation —
emergency device means an article, containing one or more explosives with or without other substances, that is designed to be used in distress or an emergency for signalling, warning or rescue purposes —
 - (a) to produce light, sound, gas, smoke, or a combination of them, by means of an exothermic chemical reaction that does not rely on oxygen from external sources to sustain the reaction; or
 - (b) to propel an article, such as a line or a flare, through the air.
- (2) These regulations do not apply to or in relation to a vehicle in a port area if the only dangerous goods it is carrying is an emergency device to be used in an emergency involving the vehicle or if the vehicle is in distress.
- (3) These regulations do not apply to or in relation to an emergency device in a port area if it is in the area for the purposes of being used in an emergency involving a vehicle in the area or if a vehicle in the area is in distress.
- (4) These regulations do not apply to or in relation to dangerous goods, other than bunkering fuel, in a port area that are required for the operation, safety or maintenance of a vessel and that are or will be part of the vessel's stores or equipment.

10. AS 3846, general provisions about

- (1) This regulation operates for the purposes of these regulations.
- (2) A reference in AS 3846 to “regulatory authority” is to be taken to be a reference to the Chief Officer or a person delegated by the Chief Officer under regulation 11.
- (3) The Chief Officer may appoint a person to be a designated port officer for a port.
- (4) In a provision of AS 3846 to which these regulations refer directly or indirectly —
 - (a) a reference to “designated port officer” for a port is to be taken to be a reference to a person appointed under subregulation (3) to be a designated port officer for the port; and
 - (b) a reference to a dangerous cargo is to be taken to be a reference to dangerous goods; and
 - (c) a reference to a bulk liquid dangerous cargo is to be taken to be a reference to bulk liquid dangerous goods; and
 - (d) a reference to a liquefied gas is to be taken to be a reference to a gas that is dangerous goods and that is liquefied; and
 - (e) a reference to a bulk solid dangerous cargo is to be taken to be a reference to bulk solid dangerous goods; and
 - (f) a reference to a flammable liquid is to be taken to be a reference to dangerous goods of class 3, despite AS 3846 clause 1.4.30.
- (5) If a term used in AS 3846 is defined in regulation 3(1), it has the same meaning in AS 3846 as it has in regulation 3(1), despite AS 3846 clause 1.4, unless the contrary intention appears.
- (6) If a provision of AS 3846 conflicts or is inconsistent with a provision of these regulations, the provision of these regulations prevails to the extent of the inconsistency.

Part 2 — Administrative matters

11. Chief officer may delegate some matters

- (1) The Chief Officer may delegate a power or duty of the Chief Officer under these regulations or under AS 3846 that may be exercised or performed in relation to a port to —
 - (a) if the port is subject to the *Port Authorities Act 1999*, the chief executive officer of the port authority for the port or the harbour master of the port; or
 - (b) if the port is subject to the *Shipping and Pilotage Act 1967*, the harbour master of the port.
- (2) Despite subregulation (1), the Chief Officer cannot delegate —
 - (a) the power in subregulation (1) to delegate;
 - (b) any power in regulation 20 or 33.
- (3) A delegation made under subregulation (1) must be in writing and be signed by the Chief Officer.
- (4) A person exercising or performing a power or duty delegated to the person under this regulation is to be taken to do so in accordance with the delegation's terms unless the contrary is shown.
- (5) This regulation does not limit the ability of the Chief Officer to perform a function through an agent.

Part 3 — Dangerous goods generally

12. Advance notice of dangerous goods to be given to port

Each of the following persons must give the harbour master of a port notification in accordance with AS 3846 section 3 —

- (a) the prime contractor for the transport of any dangerous goods into the port area;
- (b) the accountable person of a vessel transporting any dangerous goods into the port area.

Penalty: a level 1 fine and imprisonment for 10 months.

13. Consignor to ensure goods are correctly classified

If the classification code shown in shipping documentation for any dangerous goods in a port area is not the classification code determined in accordance with the IMDG Code, the consignor of the goods commits an offence.

Penalty: a level 1 fine and imprisonment for 10 months.

14. Harbour master's powers

- (1) In this regulation —
safety requirement means a requirement of these regulations, or of a clause of AS 3846 that is referred to by these regulations.
- (2) If the harbour master of a port is satisfied that a safety requirement is being contravened on or in respect of a vessel in the port area, the harbour master may direct the master of the vessel to stop or not to start handling dangerous goods on the vessel until the requirement is obeyed.
- (3) If the harbour master of a port is satisfied that a safety requirement is being contravened at a berth in the port area, the harbour master may direct the berth operator to stop or not to start handling dangerous goods at the berth until the requirement is obeyed.

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- (4) The harbour master of a port may direct the master of a vessel transporting dangerous goods not to enter the port area except with the permission of the harbour master.
- (5) A person who is given a direction under this regulation must obey it.
Penalty: a level 1 fine and imprisonment for 10 months.

15. Berth operators to provide fire fighting resources

- (1) The berth operator of a berth at which dangerous goods are being handled in a port area commits an offence if there are insufficient equipment and other resources —
 - (a) to quickly control and extinguish any fire that might occur at the berth; and
 - (b) to protect the dangerous goods from being affected by any nearby fire.
- (2) The berth operator of a berth at which dangerous goods are being handled in a port area commits an offence if a requirement of AS 3846 clause 10.3, 10.4, 10.5, 10.6 or 10.7 is contravened at the berth.
- (3) The berth operator of a berth at which flammable dangerous goods are being handled in a port area commits an offence if —
 - (a) a recommendation of AS 3846 Appendix G paragraph G3 (other than paragraph G3.2.4 and G3.2.6) is not complied with at the berth; or
 - (b) a recommendation of AS 3846 Appendix G paragraph G5 is not complied with at the berth.
- (4) The berth operator of a berth at which flammable dangerous goods that are gaseous are being handled in a port area commits an offence if a requirement or recommendation of AS 3846 Appendix G paragraph G4 is not complied with at the berth.
Penalty: a level 1 fine and imprisonment for 10 months.

16. Repair work, master's responsibilities

The master of a vessel in a port area on which there are dangerous goods commits an offence if a requirement of AS 3846 clause 11.2, 11.3, 11.4, 11.5 or 11.6 is contravened on board or in respect of the vessel.

Penalty: a level 1 fine and imprisonment for 10 months.

17. "Reportable situations" prescribed (Act s. 9)

- (1) Each of the following is prescribed to be a reportable situation for the purposes of the definition of "reportable situation" in the Act section 9(1) —
 - (a) a dangerous situation in a port area;
 - (b) a fire or explosion in a port area that involves or affects dangerous goods;
 - (c) a leak, release or spill of dangerous goods in a port area that results from a failure of a container or pipeline or that is unplanned.
- (2) The following is prescribed as the information to be included in the report required by the Act section 9(2) in respect of a reportable situation —
 - (a) when and where the situation happened;
 - (b) the name and other identifying details and a description of any vehicle involved or affected;
 - (c) the shipping name, classification code (if any) and quantity of the dangerous goods involved;
 - (d) a description of the situation and how it arose and of events preceding it;
 - (e) a description of the likely cause of the situation;
 - (f) whether any person died or was injured or suffered harm to his or her health;
 - (g) whether property was damaged or harmed;
 - (h) whether the environment was damaged or harmed;

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- (i) the measures taken to control, contain and clean up any spill or unplanned release of dangerous goods;
- (j) the measures taken to control any fire or explosion;
- (k) the measures taken to prevent a similar situation happening again.

Part 4 — Explosives

18. Terms used in this Part

In this Part —

special berth means a berth declared under regulation 20.

19. Interpretation of AS 3846

In a provision of AS 3846 to which this Part refers directly or indirectly, a reference to a special berth is to be taken to be a reference to a special berth as that term is defined in regulation 18.

20. Special berths, declaration of

- (1) Each of the following persons may apply to the Chief Officer for a declaration that a berth in a port area is a special berth for the purposes of this Part —
 - (a) the harbour master of the port; or
 - (b) the berth operator of the berth.
- (2) An application made under subregulation (1) must be accompanied by —
 - (a) a risk assessment for the berth that —
 - (i) complies with regulation 6; and
 - (ii) contains the information in and addresses the items listed in AS 3846 clause 4.6.2; and
 - (b) a fee of \$511.
- (3) The Chief Officer, on an application made under this regulation, may declare the berth to be a special berth for the purposes of this Part for a period, not over 5 years, specified in the declaration.
- (4) The Chief Officer must not make a declaration under subregulation (3) unless he or she has considered the items in AS 3846 clause 4.6.2.

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- (5) A declaration made under subregulation (3) may specify any of the following that the Chief Officer considers necessary to ensure that explosives are handled safely at the special berth —
 - (a) the maximum quantity of explosives that can be handled at the special berth;
 - (b) any requirements that must be obeyed when explosives are handled at the special berth.
- (6) The Chief Officer may at any time amend or cancel a declaration made under subregulation (3).
- (7) Any decision made by the Chief Officer under this regulation must be in writing.

[Regulation 20 amended in Gazette 25 Jun 2010 p. 2879.]

21. Consignor's responsibilities

The consignor of an explosive that is to be transported by water from a port commits an offence if a representative of the consignor is not present as required by AS 3846 clause 4.3.5.

Penalty: a level 1 fine and imprisonment for 10 months.

22. Consignee's responsibilities

The consignee of an explosive that is to be transported by water to a port commits an offence if a representative of the consignee is not present as required by AS 3846 clause 4.3.5.

Penalty: a level 2 fine.

23. Prime contractor's responsibilities

- (1) The prime contractor for the transport of an explosive into or from a port area must ensure the explosive is segregated from any different explosive in accordance with AS 3846 clause 4.2.
- (2) The prime contractor for the transport of an explosive by road into or from a port area commits an offence if any of the requirements of AS 3846 clause 4.3.1(j), (k), (l) or (m) is

contravened in relation to the transport of the explosive into, in or from the port area.

Penalty: a level 1 fine and imprisonment for 10 months.

24. Berth operator's responsibilities

- (1) The berth operator of a berth at which an explosive is being handled in a port area commits an offence if a requirement or recommendation of any of these clauses of AS 3846 is contravened —

- (a) clause 4.3.1 (other than paragraphs (e), (h) and (m));
- (b) clause 4.3.3(a);
- (c) clause 4.3.4;
- (d) clause 4.3.5;
- (e) clause 4.3.6.

- (2) The berth operator of a berth in a port area that is not a special berth commits an offence if a requirement of AS 3846 clause 4.5 is contravened at the berth.

- (3) The berth operator of a special berth in a port area commits an offence if a term of a declaration made under regulation 20 is contravened at the berth.

Penalty: a level 1 fine and imprisonment for 10 months.

25. Master's responsibilities

- (1) The master of a vessel in a port area that is transporting or about to transport an explosive commits an offence if any of the requirements of AS 3846 clause 4.3.1(b), (d), (f), (h), (k), (l), (n), (o) or (p) is contravened on board or in respect of the vessel.

- (2) The master of a vessel on which there is an explosive commits an offence if any of the requirements of AS 3846 clause 4.4 is contravened while the vessel is in a port area.

Penalty: a level 1 fine and imprisonment for 10 months.

Part 5 — Dangerous goods other than explosives

26. Terms used in this Part

In this Part —

dangerous goods means dangerous goods of class 2, 3, 4, 5, 6.1, 8 or 9 and that are packaged;

restricted area means an area in a port area declared to be a restricted area under regulation 28.

27. Interpretation of AS 3846

In a provision of AS 3846 to which this Part refers directly or indirectly —

- (a) a reference to dangerous goods or a dangerous cargo is to be taken to be a reference to dangerous goods as that term is defined in regulation 26; and
- (b) a reference to a restricted area is to be taken to be a reference to a restricted area as that term is defined in regulation 26.

28. Restricted areas, declaration of

- (1) Each of the following persons may apply to the Chief Officer for a declaration that an area within a berth in a port area is a restricted area for the purposes of this Part —
 - (a) the harbour master of the port; or
 - (b) the berth operator of the berth.
- (2) An application made under subregulation (1) must be accompanied by —
 - (a) a risk assessment for the berth done in accordance with AS 3846 clause 2.2; and
 - (b) the information necessary to allow the Chief Officer to consider the features listed in AS 3846 clause 5.3.

- (3) The Chief Officer, on an application made under this regulation, may declare an area in a port area to be a restricted area for the purposes of this Part.
- (4) The Chief Officer must not make a declaration under subregulation (3) unless he or she has considered the features in AS 3846 clause 5.3 and the risk assessment accompanying the application.
- (5) A declaration made under subregulation (3) may specify any of the following that the Chief Officer considers necessary to ensure that explosives are handled safely at the special berth —
 - (a) the maximum quantity, type and classification code of dangerous goods that can be handled in the restricted area;
 - (b) any requirements that must be obeyed when dangerous goods are handled in the restricted area.
- (6) The Chief Officer may at any time amend or cancel a declaration made under subregulation (3).
- (7) Any decision made by the Chief Officer under this regulation must be in writing.

29. Prime contractor's responsibilities

The prime contractor for the transport of dangerous goods by road or rail to or from a port area commits an offence if a requirement of AS 3846 clause 5.2.1 or 5.2.2 is contravened in relation to the goods and a berth in a port area.

Penalty: a level 1 fine and imprisonment for 10 months.

30. Berth operator's responsibilities

- (1) The berth operator of a berth in a port area commits an offence if a requirement of AS 3846 clause 5.2 (other than clause 5.2.5) or 5.4.1 is contravened at the berth.

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- (2) The berth operator of a berth in a port area commits an offence if dangerous goods described in AS 3846 Table 5.1 remain in a restricted area for more than 5 consecutive days.
- (3) The berth operator of a berth in a port area commits an offence if a term of a declaration made under regulation 28 is contravened at the berth.

Penalty: a level 1 fine and imprisonment for 10 months.

Part 6 — Ammonium nitrate and calcium hypochlorite

31. Terms used in this Part

In this Part —

ammonium nitrate means any substance that is or contains ammonium nitrate and that is dangerous goods of class 5.1;

calcium hypochlorite means any substance that is or contains calcium hypochlorite and that is dangerous goods of class 5.1;

special berth means a berth declared under regulation 33.

32. Interpretation of AS 3846

In a provision of AS 3846 to which this Part refers directly or indirectly, a reference to a special berth is to be taken to be a reference to a special berth within the meaning given to that term by regulation 31.

33. Special berths, declaration of

- (1) Each of the following persons may apply to the Chief Officer for a declaration that a berth in a port area is a special berth for the purposes of this Part —
 - (a) the harbour master of the port; or
 - (b) the berth operator of the berth.
- (2) An application made under subregulation (1) must be accompanied by the following —
 - (a) a risk assessment for the berth that —
 - (i) complies with regulation 6; and
 - (ii) contains the information in and addresses the items listed in AS 3846 clause 6.5.2;
 - (b) a fee of \$500.
- (3) The Chief Officer, on an application made under this regulation, may declare the berth to be a special berth for the purposes of

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this Part for a period, not over 5 years, specified in the declaration.

- (4) The Chief Officer must not make a declaration under subregulation (3) unless he or she has considered the items in AS 3846 clause 6.5.2 and the risk assessment accompanying the application.
- (5) A declaration made under subregulation (3) may specify any of the following that the Chief Officer considers necessary to ensure that ammonium nitrate and calcium hypochlorite are handled safely at the special berth —
 - (a) the maximum quantity of those substances that can be handled at the special berth;
 - (b) any requirements that must be obeyed when those substances are handled at the special berth.
- (6) The Chief Officer may at any time amend or cancel a declaration made under subregulation (3).
- (7) Any decision made by the Chief Officer under this regulation must be in writing.

34. Consignor's responsibilities

- (1) A consignor of bulk ammonium nitrate in a port area must give the harbour master of the port a copy of a test certificate, issued and signed by the manufacturer of the ammonium nitrate, that states —
 - (a) the tests prescribed in the BC Code have been carried out on the ammonium nitrate; and
 - (b) the requirements of the tests have been met.
- (2) If the packaging of, or any freight container that contains, ammonium nitrate in a port area does not comply with AS 3846 clause 6.8.1, the consignor of the ammonium nitrate commits an offence.

- (3) If the packaging of any calcium hypochlorite in a port area does not comply with AS 3846 clause 6.8.1, the consignor of the calcium hypochlorite commits an offence.

Penalty: a level 1 fine and imprisonment for 10 months.

35. Berth operator's responsibilities

- (1) For the purposes of this regulation and AS 3846 Table 6.1, the maximum aggregate quantity of ammonium nitrate in the form of emulsion precursors (explosives ingredients) that can be handled at an ordinary berth is —
- (a) if the precursors are in freight containers, 400 t;
 - (b) otherwise, 150 t.
- (2) The berth operator of a berth in a port area that is not a special berth commits an offence if a requirement of AS 3846 clause 6.4 is contravened at the berth.
- (3) The berth operator of a special berth in a port area commits an offence if a quantity of ammonium nitrate or calcium hypochlorite exceeding that in AS 3846 Table 6.1 is handled at the berth without a written permit from the harbour master of the port.
- (4) An application by the berth operator of a special berth in a port area for a permit referred to in subregulation (3) for a berth must be made to the harbour master of the port in accordance with AS 3846 clause 6.5.1(b).
- (5) A permit issued by a harbour master to handle ammonium nitrate or calcium hypochlorite at a special berth must —
- (a) comply with AS 3846 clause 6.5.1(c); and
 - (b) if the permit allows bulk ammonium nitrate to be handled at the berth, take account of AS 3846 clause 6.8.3.
- (6) The berth operator of a special berth in a port area commits an offence if —

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- (a) a term of a declaration made under regulation 33 in relation to the berth; or
- (b) a term of a permit issued by the harbour master under this regulation in relation to the berth,

is contravened at the berth.

- (7) The berth operator of a special berth in a port area commits an offence if a requirement of AS 3846 clause 6.6.1 or 6.6.3 is contravened at the berth.

Penalty: a level 1 fine and imprisonment for 10 months.

36. Master's responsibilities

- (1) The master of a vessel in a port area that is handling or about to handle ammonium nitrate or calcium hypochlorite commits an offence if —
 - (a) any of the requirements of AS 3846 clause 6.6.1(i) is contravened; or
 - (b) any of the requirements of AS 3846 clause 6.6.1(b), (e), (f), (g), (j), (k) or (l) is contravened on board the vessel; or
 - (c) any of the requirements of AS 3846 clause 6.6.2 is contravened.
- (2) The master of a vessel in a port area that is handling or about to handle bulk ammonium nitrate commits an offence if any requirement of AS 3846 clause 6.8.2(b) is contravened.
- (3) The master of a vessel in a port area commits an offence if bulk ammonium nitrate is loaded into the vessel without, or in contravention of, the prior written permission of the harbour master of the port.

Penalty: a level 1 fine and imprisonment for 10 months.

Part 7 — Bulk liquid dangerous goods

37. Berth operator’s responsibilities

- (1) The berth operator of a berth in a port area commits an offence if a requirement of a clause of AS 3846 that is listed in the Table to this regulation is contravened at the berth or by the operator.

Table

AS 3846 cl.	AS 3846 cl.	AS 3846 cl.	AS 3846 cl.
8.2.1	8.2.3.1(a)	8.3.4	8.4
8.2.2.2	8.2.3.2	8.3.6	8.5.2
8.2.2.3	8.2.4	8.3.7.1	8.5.3
8.2.2.4	8.2.5	8.3.7.3	8.5.4
8.2.2.7	8.2.8		8.5.5
8.2.2.8	8.2.11		8.6
	8.2.12.1		
	8.2.12.2		

- (2) The berth operator of a berth in a port area commits an offence if bulk liquid dangerous goods are handled at the berth and the completed ship/shore safety check list required by AS 3846 clause 8.2.2.7 is not approved and signed by the harbour master of the port.

Penalty: a level 1 fine and imprisonment for 10 months.

38. Master’s responsibilities

- (1) For the purposes of this regulation, a reference in AS 3846 clause 8.2.6 to permission or a direction given to a ship in a port area is to be taken to be a reference to permission or a direction given by the harbour master of the port.
- (2) The master of a vessel in a port area that is handling or about to handle bulk liquid dangerous goods commits an offence if a requirement of a clause of AS 3846 that is listed in the Table to this regulation is contravened on board or in respect of the vessel or by the master.

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Table

AS 3846 cl.	AS 3846 cl.	AS 3846 cl.	AS 3846 cl.
8.2.1	8.2.6	8.3.2	8.4
8.2.2.5	8.2.7	8.3.3	8.5.2
8.2.2.6	8.2.8	8.3.4	8.5.5
8.2.2.7	8.2.9	8.3.5	8.6
8.2.3.1(b)	8.2.10	8.3.7	
8.2.3.3	8.2.12		
8.2.5			

- (3) The master of a vessel in a port area that is handling bulk liquid dangerous goods commits an offence if the completed ship/shore safety check list required by AS 3846 clause 8.2.2.7 is not approved and signed by the harbour master of the port.
- (4) The master of a vessel in a port area that is handling or about to handle bulk liquid dangerous goods commits an offence if warning signs described in AS 3846 clause 8.2.4 are not displayed on the vessel.
- Penalty: a level 1 fine and imprisonment for 10 months.

39. Unauthorised entry to berth or vessel

- (1) A person who contravenes AS 3846 clause 8.2.3.1(a) or (b) commits an offence.
- Penalty: a level 1 fine and imprisonment for 10 months.
- (2) Subregulation (1) does not apply to —
- (a) a DGO, a police officer or a person employed in the FES Department, acting in the course of his or her duties as such; or
 - (b) a person acting at the direction of any such person.
- (3) In subregulation (2) —
- FES Department*** means the department of the Public Service principally assisting in the administration of the *Fire and Emergency Services Act 1998*.

[Regulation 39 amended in Gazette 19 Feb 2013 p. 987.]

40. Vehicles etc. to keep away from vessel handling cargo

- (1) The master of a vessel in a port area commits an offence if the vessel disobeys a sign displayed in accordance with AS 3846 clause 8.2.4 without the permission of the harbour master of the port.
- (2) The person in control of a vehicle or equipment who contravenes AS 3846 clause 8.3.6 commits an offence.
Penalty: a level 1 fine and imprisonment for 10 months.

Part 8 — Bulk solid dangerous goods

41. Consignor's responsibilities

The consignor of bulk solid dangerous goods that are to be handled at a berth in a port area must, before the goods are transported into the port area, give the berth operator this information —

- (a) the information listed in AS 3846 clause 9.2(a);
- (b) the material safety data sheet for the goods;
- (c) a list of any special equipment necessary for the safe handling of the goods.

Penalty: a level 1 fine and imprisonment for 10 months.

42. Berth operator's responsibilities

- (1) The berth operator of a berth in a port area at which bulk solid dangerous goods are being handled commits an offence if —
 - (a) the operator does not have the information listed in regulation 41; or
 - (b) the special equipment (if any) in the list supplied under regulation 41 is not present at the berth.
- (2) The berth operator of a berth in a port area commits an offence if a requirement of AS 3846 clause 9.3, 9.4, 9.5, 9.6, 9.7 or 9.8 is contravened at the berth or by the operator.

Penalty: a level 1 fine and imprisonment for 10 months.

43. Master's responsibilities

- (1) The master of a vessel at a berth in a port area that is handling or about to handle bulk solid dangerous goods commits an offence if —
 - (a) the master does not have the information listed in regulation 41; or
 - (b) the special equipment (if any) in the list supplied under regulation 41 is not present at the berth.

- (2) The master of a vessel in a port area that is handling or about to handle bulk solid dangerous goods commits an offence if a requirement of AS 3846 clause 9.3, 9.4, 9.5, 9.6, 9.7 or 9.8 is contravened on board or in respect of the vessel or by the master.

Penalty: a level 1 fine and imprisonment for 10 months.

Part 9 — Safety management

Division 1 — Safety management by ports

44. Port emergency plan

(1A) In this regulation —

FES Commissioner has the meaning given in the *Fire and Emergency Services Act 1998* section 3.

- (1) The harbour master of a port must not permit dangerous goods to be handled in the port area of the port unless —
- (a) the harbour master and the FES Commissioner have agreed on a port emergency plan for the port; and
 - (b) both the harbour master and the FES Commissioner have a copy of the plan.

Penalty: a level 1 fine and imprisonment for 10 months.

- (2) A port emergency plan for a port is a written plan to deal with any dangerous situation that arises at the port that includes but is not limited to the following —
- (a) the procedures listed in AS 3846 Appendix D paragraph D1;
 - (b) the information listed in AS 3846 Appendix D paragraph D3;
 - (c) a list of the safety and other equipment that will be available to deal with the situation.
- (3) A harbour master must review any port emergency plan for the port —
- (a) if any of the circumstances described in AS 3846 Appendix D paragraph D2 arises at the port; or
 - (b) if there is any significant change to the facilities or operating procedures at the port; or
 - (c) if a review is required under subregulation (4),

and, having done so, ensure any changes needed are made to the plan.

Penalty: a level 2 fine.

- (4) Not more than 5 years is to elapse between the date on which a port emergency plan for a port is first approved by the harbour master of the port and the FES Commissioner and a review of the plan or between one review and another.

[Regulation 44 amended in Gazette 19 Feb 2013 p. 987.]

Division 2 — Safety management by berth operators

45. Berth emergency plan

- (1) The berth operator of a berth in a port area must not handle dangerous goods at the berth unless —
- (a) the berth operator and the harbour master of the port have agreed on a berth emergency plan for the berth; and
 - (b) both the berth operator and the harbour master have a copy of the plan.

Penalty: a level 1 fine and imprisonment for 10 months.

- (2) A berth emergency plan for a berth is a written plan to deal with any dangerous situation that arises at the berth that includes but is not limited to the following —
- (a) the procedures listed in AS 3846 Appendix D paragraph D1;
 - (b) the information listed in AS 3846 Appendix D paragraph D3;
 - (c) a list of the safety and other equipment that will be available to deal with the situation;
 - (d) if the berth is a special berth declared under regulation 33, the procedures to ensure the instructions in AS 3846 clause 6.7 are followed.

- (3) A berth operator must review the berth emergency plan for the berth —
- (a) if any of the circumstances described in AS 3846 Appendix D paragraph D2 arises at the berth; or
 - (b) if there is any significant change to the facilities or operating procedures at the berth; or
 - (c) if a review is required under subregulation (4),

and, having done so, ensure any changes needed are made to the plan.

Penalty: a level 2 fine.

- (4) Not more than 5 years is to elapse between the date on which a berth emergency plan for a berth is first approved by the operator and the harbour master and a review of the plan or between one review and another.

46. Risk assessment required before handling dangerous goods

The berth operator of a berth in a port area must not handle dangerous goods at the berth unless the operator has assessed the risks in handling the goods and made a record of the assessment.

Penalty: a level 1 fine and imprisonment for 10 months.

47. Chief Officer may require berth safety (dangerous goods) plan for berth

- (1) The Chief Officer may give the berth operator of a berth in a port area a written direction to prepare a berth safety (dangerous goods) plan for the berth in accordance with this regulation.
- (2) A berth safety (dangerous goods) plan required for a berth is prescribed to be a safety management document for the purposes of the definition of “safety management document” in the Act section 3.

Note: the Act s. 10 (Safety management documents).

- (3) A berth safety (dangerous goods) plan for a berth must be in writing and include the following —
- (a) procedures for the following —
 - (i) ensuring the safe operation of any storage or handling system for dangerous goods at the berth;
 - (ii) ensuring any such system is mechanically sound;
 - (iii) shutting down or decommissioning any such system;
 - (b) procedures for isolating the whole or any part of the berth in the event of a dangerous situation or emergency;
 - (c) procedures for managing alarm systems at the berth;
 - (d) procedures for preventing acts engaged in for the purpose of causing a dangerous situation at the berth;
 - (e) procedures for informing employees of the berth operator about —
 - (i) assessing the risks in handling dangerous goods at the berth; and
 - (ii) the berth safety (dangerous goods) plan for the berth;
 - (f) procedures to ensure that each employee of the berth operator who is allocated a function under the berth safety (dangerous goods) plan has the necessary skills and knowledge and equipment to perform the function;
 - (g) procedures for instructing people who are not employees of the berth operator, but who are present when dangerous goods are being handled at the berth, of the safety measures they must take when present;
 - (h) procedures for monitoring the effectiveness of the measures taken to eliminate or minimise the risks in handling dangerous goods at the berth;

- (i) procedures for monitoring the effectiveness of, and compliance with, the berth safety (dangerous goods) plan;
- (j) procedures for reviewing the berth safety (dangerous goods) plan.

Division 3 — Safety management by masters of vessels

48. Emergency plan

The master of a vessel transporting dangerous goods must not take the vessel into a port area unless —

- (a) the vessel has a written emergency plan for dealing with any dangerous situation arising from the handling or transport of the goods in a port area; and
- (b) the vessel has adequate crew and equipment to carry out the plan should the need to do so arise; and
- (c) the master has consulted the berth operator about the management of any emergency that might arise from handling or transporting the cargo in the port area.

Penalty: a level 1 fine and imprisonment for 10 months.

Part 10 — Miscellaneous matters

49. Prescribed offences and modified penalties (Act s. 56)

For the purposes of the Act section 56 —

- (a) each offence under these regulations the penalty for which is a level 2 fine is a prescribed offence; and
- (b) the modified penalty for each such prescribed offence is 10% of the maximum fine for the offence under these regulations.

Note: The *Dangerous Goods Safety (General) Regulations 2007* prescribe the form of an infringement notice and other matters for the purposes of the Act s. 56.

50. Transitional provisions

- (1) In this regulation —
2001 regulations means the *Dangerous Goods (Transport) (Dangerous Goods in Ports) Regulations 2001*.
- (2) If immediately before the commencement of this regulation a berth is a special berth for the purposes of regulation 25 of the 2001 regulations, then on the commencement of this regulation the berth is to be taken to be a special berth for the purposes of Part 4 of these regulations until the fifth anniversary of the date on which the berth was last declared to be a special berth for the purposes of regulation 25 of the 2001 regulations.
- (3) If immediately before the commencement of this regulation a berth is a special berth for the purposes of regulations 21 and 27 of the 2001 regulations, then on the commencement of this regulation the berth is to be taken to be a special berth for the purposes of Part 6 of these regulations until the fifth anniversary of the date on which the berth was last declared to be a special berth for the purposes of regulations 21 and 27 of the 2001 regulations.

Notes

¹ This is a compilation of the *Dangerous Goods Safety (Goods in Ports) Regulations 2007* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Dangerous Goods Safety (Goods in Ports) Regulations 2007</i>	31 Dec 2007 p. 7101-41	r. 1 and 2: 31 Dec 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Mar 2008 (see r. 2(b) and <i>Gazette</i> 29 Feb 2008 p. 669)
<i>Dangerous Goods Safety (Goods in Ports) Amendment Regulations 2010</i>	25 Jun 2010 p. 2878-9	r. 1 and 2: 25 Jun 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2010 (see r. 2(b))
<i>Dangerous Goods Safety (Goods in Ports) Amendment Regulations 2012</i>	19 Feb 2013 p. 986-7	r. 1 and 2: 19 Feb 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 20 Feb 2013 (see r. 2(b))