

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILE 8672

2028 SCOMM 78: SENATE SPEC. COMM. ON OIL & GAS, 1991-1992

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SCOMM

78:14

Response Contractor Liability Work Meeting

February 20, 1992

- I. Alaska Department of Environmental Conservation - Comments of CCC report and department recommendations
- II. Prince William Sound Regional Citizen's Advisory Council - Tim Robertson, chair of the council's Spill Prevention and Response Committee, Report on the status of the Coast Guard OPA 90 rulemaking related to response action contractor liability and certification



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Alyeska pipeline
SERVICE COMPANY

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February 20, 1992

**ALYESKA PIPELINE SERVICE COMPANY
Prevention and Initial Response Services**

● *Why are oil discharge prevention and contingency plans necessary?*

Under federal and state law, a vessel owner is responsible for the discharge of oil from its vessel. Crude oil tankers transiting Prince William Sound must have oil spill contingency plans, contract for various spill response resources, and post evidence of financial responsibility. Contingency plans allow the state to determine whether plan holders have access to sufficient resources to protect environmentally sensitive areas and to contain, clean up, and mitigate potential oil spills from tankers. The state also requires plan holders to demonstrate their ability to carry out contingency plans, including periodic training, exercises, and verification of ready access to equipment, supplies, and personnel. A tank vessel may not be operated within state waters without an approved contingency plan.

● *Who are the plan holders for crude oil tankers operating in Prince William Sound?*

As required by state law, tank vessel oil discharge prevention and contingency plans are held by tanker owners or operators. Alyeska operates the Trans Alaska Pipeline System on behalf of seven pipeline companies which own it. None of these own, operate, or charter tankers.

● *What are Alyeska's prevention and initial response services?*

Alyeska has developed an initial response plan (the Prince William Sound Tanker Spill Prevention and Response Plan or "Plan") which describes the services it offers to tanker vessels as an initial response contractor. The state has approved the Plan's incorporation into individual tanker contingency plans. Under the terms of the Plan and Oil Spill Response Services Agreements signed with tanker owners, operators, and charterers ("Contracting Vessels"), Alyeska provides response vessels, equipment, personnel, and training described in the Plan for as long as 72 hours following an oil spill. The initial response plan and the tanker contingency plans anticipate that, during the first 72 hours after a spill, the management of the response will transfer from Alyeska either to the appropriate Contracting Vessel or to the federal on-scene coordinator.

● *What resources has Alyeska developed to support these services?*

Alyeska has chartered escort response vessels, tugs, barges, and an oil spill recovery vessel. It has also purchased ocean and rapid deployment boom, seaskimmers, and related response equipment. In addition, Alyeska has developed area response centers, placed fishing vessels on contract to supplement response efforts, and prestaged equipment to protect hatcheries and other sensitive areas. Escort/response vessels are used for day-to-day escort of loaded tankers in Prince

William Sound as a prevention measure. Vessel crews are drilled in responding to large spills and in employing multi-vessel and multi-boom configurations. Storage capacity for recovered oil and water is unprecedented: five large barges, each ranging in true volume from 70,000 to 120,000 barrels, are part of the plan to receive collected oil and water. This capacity is also augmented by smaller barges. The selection of equipment has been balanced between using high-volume recovery equipment in the early stages of a spill, and to adjust response strategies and equipment as the oil becomes viscous and aged.

- *During the first 72 hours of an oil spill response, how will management of the response be transitioned from Alyeska to a Contracting Vessel?*

When Alyeska discovers or is advised that an oil spill from a covered vessel has occurred, it will provide the initial response, employing its response equipment and personnel. Alyeska will also notify the Contracting Vessel. Unless otherwise directed by the Contracting Vessel, or the U.S. Coast Guard, Alyeska may elect to manage and control the response to an oil spill of 1,000 barrels or less which can be contained and cleaned up by local Alyeska resources in accordance with the Plan. For larger spills, the company which has contracted for Alyeska's initial response services will assume management and control of the oil spill response either itself or through a third party approved by ADEC. The transfer of command and management of spill response operations from Alyeska must occur in a smooth and efficient manner satisfactory to the U.S. Coast Guard and ADEC. In addition, transition of spill response management could be from Alyeska to the U.S. Coast Guard in the event a spill response is federalized.

- *Following transition of the management of an oil spill response, will Alyeska resources exit the response?*

One of the requirements for transfer of command and management of spill response operations is agreement on present and future resources of people and equipment, including Alyeska resources. It is expected that Alyeska resources will remain fully engaged in a response following transition of management of spill response operations. As soon as reasonably practical, Alyeska's core equipment and personnel should be replaced in an orderly fashion with the Contracting Vessel's response organization and equipment so that Alyeska can resume normal operations at the Terminal, when tanker operations can be restored.

- *What will happen if a Contracting Vessel fails to assume management and control of an oil spill response within 72 hours?*

Under the terms of the response services agreement, Alyeska may tender management of the oil spill response directly to the U.S. Coast Guard, and acquire additional equipment and personnel, all at the Contracting Vessel's expense. When the spill management is federalized, Alyeska resources will be placed as directed by the U.S. Coast Guard.

2/13 OK

WORKGROUP 2 - CONTRACTOR CERTIFICATION
WALL CHARTS FROM FEBRUARY 11, 1992 MEETING

Proposed definition of "certification":

Certification is the process by which the President's designee will verify a contractor's inventory of available spill response equipment, personnel, management, structure, and associated support; and will assign a quantification value of those resources within a standardized classification of designated response services for a specific geographic area, for purposes of preparation spill response plans.

Self-assessment:

- Submittal of Information (Application)
 - A) Equipment
 - B) People
 - C) Management
 - D) Mobilization
- Inspection/Validation
 - A) Conducted by USCG or their designated representative
- Related Issues:
 - Certify in terms of--
 - A) Types of services offered
 - B) Capacity/quantity of service
 - C) Geographic location

Notification of down status

- A) Significant impact on major capability level

- B) Qualified party
- C) To area authority

Equipment:

- A) Inventory
 - Status -- owned
 - leased
 - contracted
 - what equipment
 - from whom
 - location
 - terms of contract
- B) Maintenance Statement
 - Inspection/verification

People:

- A) Listing by -- (a) job category
 - (b) match equipment list and scope of services per 24 hour day
 - (c) training where applicable
 - (d) status
 - full time
 - part time
 - pool
 - (e) total personnel
- B) Agreement to inspection/verification of above listings

Mobilization:

From notification to initial departure to the scene

Management:

- A) To carry out services offered
- B) Regulatory awareness and compliance
 - includes violations
 - use State of Washington model (sections 317-10-090 2(b) and 317-10-092 7 in regulations)
- C) Supervision
- D) Experience - included as a qualitative measure

Regulatory Drafting Committee:

Joe Lees, Tom Mullen, Mark Miller, Lee Rees, Mark Shaye, and Joe Smith

Issues to Consider:

- A) Role of Agency in dealing with applications
 - How verified?
 - How often verified or resubmitted?
 - How to establish or test capability to aggregate resources?
- B) How to fund major drills required to validate capability?
 - Access to Federal fund?
 - Inspection funding?

ACTION ITEM: ADM Costello and CAPT Willis will draft letter to RADM Henn to pose these questions.

- C) Contracts with contractors
 - What constitutes a valid contract?

For Next Meeting:

- A) Regulatory drafting committee to provide draft regulation for review and discussion.
- B) Group to consider capacities for on-water recovery treatment and shoreline remediation. Tie this to four environments: offshore, inland, river, great lakes. Based on input from workgroup 4.

(b) Such actions must be performed immediately in response to unforeseen conditions to avoid additional environmental damage; or

(c) The plan holder has been directed to perform such actions by the department or the United States Coast Guard.

NEW SECTION

WAC 317-10-080 PLAN UPDATE TIMELINE. (1) The office shall be notified in writing as soon as possible and within twenty-four hours of any significant change which could affect implementation of the plan, including a substantial decrease in available spill response equipment or personnel. The plan holder shall also provide a schedule for the prompt return of the plan to full operational status. A facsimile will be considered written notice for the purposes of this subsection. Changes which are not considered significant include minor variations in equipment or personnel characteristics, call out lists, or operating procedures. Failure to notify the office of significant changes shall be considered noncompliance with this Chapter and subject to provisions of WAC 317-10-065 (7)(e).

(2) If the office finds that, as a result of the change, the plan no longer meets approval criteria pursuant to WAC 317-10-065, the office may, in its discretion, place conditions on approval or revoke approval in accordance to WAC 317-10-065 (7)(e). Plan holders are encouraged to maintain back-up resources in order to ensure that their plans can always be fully implemented.

(3) Within thirty calendar days of an approved change, the covered vessel owner or operator or their designee shall distribute the amended page(s) of the plan to the office and other plan holders.

(4) Plans shall be reviewed by the office every five years pursuant to WAC 317-10-065. Plans shall be submitted for reapproval unless the plan holder submits a letter requesting that the office review the plan already in the office's possession. The plan holder shall submit the plan or such a letter at least sixty-five calendar days in advance of the plan expiration date.

(5) The office may review a plan following any spill for which the plan holder is responsible.

NEW SECTION

WAC 317-10-085 NONCOMPLIANCE WITH PLAN REQUIREMENTS. (1) Any violation of this chapter may be subject to the enforcement and penalty sanctions of chapter 200, Laws of 1991.

(2) The office may deny entry onto the waters of the state to any covered vessel that does not have an approved plan and is so required.

(3) The office may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this section. Each day that a person or covered vessel is in violation of this section shall be considered a separate violation.

NEW SECTION

WAC 317-10-090 CONTRACTOR STANDARDS. (1) Primary response contractors listed in a covered vessel contingency plan must be approved by the office. Response contractors which are listed in a contingency

plan only its subcontractors to a primary response contractor do not have to be approved by the office.

(2) Primary response contractors shall be approved by the office subject to the following conditions:

(a) Equipment, equipment maintenance, and equipment and personnel deployment readiness must be verifiable by inspection by the office. Any resources not on site at the time of an inspection must be accounted for by company records. Approval of personnel readiness shall require capability of a one hour call out time in which personnel must be able to begin mobilization of response efforts. Equipment readiness shall include being available and able to be deployed to a spill site without delay, not counting normal maintenance and repairs;

(b) Response personnel shall comply with all appropriate safety and training requirements listed in WAC 296-62-300. Training records may be audited for verification; and

(c) Determination of an acceptable safety history by review of pertinent records on a case-by-case, best-professional-judgment basis. Lack of a safety history will not be grounds for denying approval.

(3) The office shall work with the department to ensure that no duplication of regulatory responsibilities occurs in the review of primary response contractors.

NEW SECTION

WAC 317-10-092 CONTRACTOR APPROVAL INFORMATION REQUIRED. To apply for approval, contractors shall submit the following items to the office:

- (1) Contractor's name, UBI number, address, and phone number;
- (2) Response capability, including geographic area of response coverage, with any exclusions;
- (3) The types of oil and media (e.g., marine, fresh water, or land) to which the contractor is willing and able to respond;
- (4) An organizational diagram depicting chain of command;
- (5) A call out list as described in WAC 317-10-050 (11)(a)(i);
- (6) A list of all response equipment and personnel pursuant to WAC 317-10-050 (12)(a), (b), and (c) and (13)(a) and (c); and
- (7) A list of all OSHA/WHSA citations and reports, lost-time accidents, and accident claims related to oil spill response operations for the last five years. Any applicant with less than five years under their current business name or organization shall provide a listing of any oil spill response contract businesses owned or operated by the principals in the new company within the last five years, including a brief description of the companies and their safety history information as listed above.

NEW SECTION

WAC 317-10-094 SUBMITTAL OF CONTRACTOR APPROVAL APPLICATIONS.
(1) Three copies of the contractor's approval application shall be delivered to:

Response Contractor Approval
Washington Office of Marine Safety
P.O. Box 42407
Olympia, WA 98504-2407

(2) Applications may be submitted at any time after adoption of this chapter. If submitted with a contingency plan, the information required pursuant to WAC 317-10-092 shall be presented separately.

NEW SECTION

WAC 317-10-096 CONTRACTOR APPLICATION REVIEW. (1) The office shall endeavor to review each application for primary response contractor approval in forty-five calendar days. Upon receipt of an application, the office shall evaluate promptly whether the application is incomplete. If the office determines that an application is incomplete, the submitter shall be notified of deficiencies. The forty-five-day review period shall begin when the application is complete.

(2) An application shall be approved if it meets the conditions specified in WAC 317-10-090.

(3) The office shall endeavor to notify the applicant that the application has been approved/not approved within five working days after the review is completed.

(a) If the application is approved, the contractor shall receive a certificate of approval describing the terms of approval, including expiration dates.

(b) If the application is not approved, the contractor shall receive an explanation of the factors for disapproval and a list of actions to be taken to gain approval. The contractor may not act as a primary response contractor for a covered vessel contingency plan until approved by the office.

(c) If the application is not approved, the contractor shall have thirty calendar days from the date of the notice of nonapproval to appeal the office's decision. The appeal shall be perfected by serving an application for an adjudicative proceeding upon the office within the time specified herein.

(d) Approval of a response contractor by the office does not constitute an express assurance regarding the adequacy of the contractor nor constitute a defense to liability imposed under state law.

(4) Response contractor approvals shall be reviewed by the office every two years pursuant to WAC 317-10-094. Reapproval applications shall be submitted sixty calendar days in advance of the approval expiration date.

(5) An approved contractor shall notify the office in writing as soon as possible and within twenty-four hours of any significant change in the information reported in the approval application, such as a substantial change in equipment ownership. A facsimile received by the office will be considered written notice for the purposes of this subsection. Failure to notify the office may result in loss of approval status. Upon notification, the office may review and modify the approval of the primary response contractor pursuant to this section. If the department determines that approval conditions are no longer met, approval may be withdrawn.

NEW SECTION

WAC 317-10-098 SEVERABILITY. If any provision of this chapter is held invalid, the remainder of the rule is not affected.

PRESENT REGULATIONS

18 AAC 75.305 APPLICATION FOR APPROVAL

(d) Applicants may employ oil discharge response organizations, cooperative agreements, cleanup contracts or other arrangements to satisfy the requirements of this chapter and are responsible to ensure that those services are in full compliance with the provisions of this chapter.

OCTOBER 26, 1991 DRAFT REGULATIONS

**18 AAC 75.425. OIL DISCHARGE PREVENTION AND CONTINGENCY
PLAN CONTENTS.**

PART 2 -- PREVENTION PLAN

(H) **RESPONSE CONTRACTOR INFORMATION** - if a plan holder proposes to use the services of a response action contractor to meet a requirement of AS 46.04.030 or this chapter, the plan holder shall include a true, correct, and complete list of each contractor, with name, address, telephone number, and affiliation by company, a summary of each agreement or contract, and the response equipment and services provided; the use of a contractor does not relieve the plan holder's responsibility to provide the information required by this subsection, and to meet all other applicable requirements of this chapter;

18 AAC 75.445. APPROVAL CRITERIA.

(i) **RESPONSE CONTRACTOR INFORMATION.** If a plan holder proposes to use the services of a response action contractor to meet a requirement of AS 46.04.030 or this chapter, the plan holder shall include a true, correct, and complete list of all contractors, with names, addresses, telephone numbers, and affiliation by company, and a copy of the contract or a summary which clearly demonstrates

(1) the contractor's obligation to respond if a discharge occurs, and the contractor's liability to the plan holder for the contractor's failure to respond or for an inadequate response;

(2) the contractor's availability to respond to a department-conducted discharge exercise as well as an actual discharge; and

(3) that equipment and other spill response resources to be provided by the contractor are maintained in a state of readiness and are compatible with the type of facility or operation and the oil product handled by the plan holder.

APPLICABILITY: The owner or operator of an oil tank vessel, oil barge, pipeline, oil terminal, exploration facility, or production facility subject to the requirements of AS 46.04.030 is responsible for meeting the applicable requirements for preparing contingency plans and for preventing the discharge of oil into waters or onto land of the state. All vessels which carry oil as bulk cargo, regardless of storage capacity, are required to apply.

TYPES OF APPROVALS

A. New Facilities/Vessel

The owner or operator of an oil tank vessel, oil barge, pipeline, oil terminal, exploration facility, or production facility must apply for each facility before beginning any operation. Owners or operators of existing facilities without approved plans shall provide a compliance schedule for applying and meeting the requirements of an approved plan.

B. Amendment

Plan holders must apply for an amendment before any change to an oil discharge prevention and contingency plan is proposed. This includes significant amendments which may diminish the planholder's ability to respond to an oil discharge. Addition of vessels operating under an approved plan would require an amendment. Also, a routine plan update requires application for approval as an amendment.

C. Renewal

Plan holders must apply for renewal of their approved plan before it expires. Change of ownership requires a renewal of the approved plan. The planholder shall apply for renewal following each three years of operation by the planholder.

APPLICATION FOR APPROVAL

NEW FACILITIES/VESSELS

60 days prior -At least 60 days before filing an application for approval of a new oil discharge prevention and contingency plan, the applicant shall notify the Department of Environmental Conservation regional office in the primary region of operation of the intent to file a plan.

10 days prior -Upon receipt, the Department has 10 days to determine completeness of the plan and application form.

Upon receipt of the complete application, the department will determine the need for additional copies of the plan for review purposes.

- Day 1 - The Department will notify the applicant of completeness or request additional information to make the application complete. Review will be held in abeyance until additional information is received and the application is determined complete.
The review process begins.
- Day 10 - The Department will initiate a thirty (30) day public comment period. Comments will be received by the department during the review period.
- Day 40 - Public comment periods ends.
- Day 45 - Department will notify applicant if additional information is needed. Review will be held in abeyance until additional information is received.
- Day 65 - Final Department decision.

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION
APPLICATION FOR APPROVAL FOR AN
OIL DISCHARGE AND PREVENTION CONTINGENCY PLAN**

This application for an oil discharge and prevention contingency plan is submitted to the Department of Environmental Conservation for approval as required by Alaska Statute 46.04.030. The following information as applicable, must be provided for each contingency plan submitted.

Basic Information:

1. Facility Name & Location: _____

Mailing Address: _____

City/State/Zip Code: _____

Phone: (____) _____ Fax: (____) _____

If vessel: Name & Home Port: _____

Official Number: _____ Country of Registry: _____

2. Applicant's Name and Official Title: _____
(Check one below)

Oil Terminal:

____ Owner

____ Operator

Tank Vessel or Barge:

____ Charterer

____ Operator

____ Owner

____ Person with Primary Control

Exploration or Production Facility:

____ Lease Holder

____ Operator

Pipeline:

____ Lease holder

____ Operator

3. Application is for: ☐ New facility/vessel
 ☐ Amendment
 ☐ Renewal (If no changes have been made a copy of the
 plan need not accompany this application form)
 ☐ Exemption (18AAC 75.400 b-c)

4. Expected start date of operations: _____
If existing facility, date operations started: _____

5. Applicant has completed a coastal project questionnaire for operations as required by the Alaska Coastal Zone Management Program, 6 AAC 50:

YES() NO()

6. Applicant is aware of:
- | | YES | NO |
|---|-----|-----|
| a. Alaska Oil Pollution Statutes, Title 46 | () | () |
| b. Alaska Oil Pollution Prevention & Control Regulations
18 AAC 75 | () | () |
| c. Alaska Financial Responsibility Regulations
18 AAC 75 Article 2 | () | () |

Facility Information

1. () Oil Terminal () Exploration Well:
() Onshore () Offshore
() Production Facility
() Tank Vessel () Pipeline Facility
() Barge () Other(specify) _____
2. Type of petroleum product handled:
() Crude Oil () Noncrude Oil
3. If terminal, storage capacity is:
() Less than 5,000 barrels () 5,000 - 10,000 barrels
() Greater than 10,000 barrels
4. If vessel, cargo volume is:
() Less than 500,000 barrels () Greater than 500,000 barrels
5. Area of operations for vessels operating in Alaska waters: _____

C. CERTIFICATION

I, _____, certify under penalty of perjury that the above information and accompanying exhibits are true, correct, and complete.

Applicant's Signature(Official Title) _____ Date _____

During this review process the Department determines if the plan submitted contains the information necessary for a successful response and cleanup of a discharge. The amount of equipment and material required for this response is dependent on the response planning standard required for the individual vessel or facility. If the contingency plan holder has a contract with a response organization for a part or all of the response capabilities necessary for this plan, the contract is reviewed by the Department to ensure that they in fact have the necessary response capabilities. The Department has the authority to conduct inspections and spill drills during the year to ensure that the organization designated in the contingency plan for response does in fact have the capability for response that is contained in the plan. The legalities of the contract between the contingency plan holder and the contractor are not reviewed.

February 4, 1992 Revision

(G:\SPPM\CLERK\AL\HB567\cplanrvw.ltr)

OIL DISCHARGE PREVENTION
AND CONTINGENCY PLAN APPROVAL

Name of plan holder
Address

Dear:

Re: (Name of facility) Oil Discharge Prevention and Contingency Plan

The Alaska Department of Environmental Conservation (ADEC) has completed review of the (date of application) application for approval of the following oil spill contingency plan:

Plan Title: _____, consisting of _____ volumes

Supporting Documents, if any (list): _____

Plan Holder: _____
[Be specific, as in "ABC Oil Co., A Delaware Corporation."]

Covered Vessels or Facilities: _____
[If vessel, U.S. Official Number: _____]

PLAN APPROVAL: The (name of plan) plan is hereby approved, effective [_____, 199_].

A certificate of approval stating that the contingency plan has been approved by the department is enclosed. This approval is subject to the following terms and conditions:

TERMS AND CONDITIONS:

1. Revisions to contingency plans demonstrating full compliance with the implementing regulations for HB 567 must be submitted to the Department within 90 days of their effective date. The Department's implementation schedule for demonstrating compliance with the new regulations is contained in the enclosed January 7, 1992 letter from the Commissioner.

2. Notice of Changed Relationship with Response Contractor [DELETE THIS PARAGRAPH IF NO RESPONSE CONTRACTOR INVOLVED IN THE PLAN].
Because the plan relies on the use of response contractor(s) for its

implementation, the plan holder must immediately notify the Department in writing of any change in the contractual relationship with the plan holder's response contractor(s), and of any event including but not limited to any breach by either party to the response contract that may excuse a response contractor from performing, that indicates a response contractor may fail or refuse to perform, or that may otherwise affect the response, prevention, or preparedness capabilities described in the approved plan.

This condition is reasonably necessary because there are certain risks associated with allowing a plan holder to rely in part or total upon a response contractor instead of obtaining its own response capability. The risks arise, in part, because the certainty of the contractor's response is dependant upon the continuation of the legal relationship between it and the plan holder. Given this risk, the Department must be promptly informed of any change of the contractual relationship between the plan holder and the response contractor, and of any other event that may arguably excuse the response contractor from performing or that would otherwise affect the response, prevention, or preparedness capabilities described in the approved plan. The Department may seek appropriate modifications to the plan or take other steps to ensure that the plan holder has continuous access to sufficient resources to protect the environment and to contain, cleanup, and mitigate potential oil spills.

3. (Additional facility specific conditions and their basis should be included here)

EXPIRATION: This approval expires _____, 199_. After the approval expires, operation of the facility/vessel is prohibited by Alaska law until an approved plan is once again in effect.

RENEWAL: To renew the approval, the plan holder must submit a complete renewal application to this office on or before _____, 199_.

REVOCATION, SUSPENSION, OR MODIFICATION: This approval is effective only while the plan holder is in "compliance with the plan" and with all of the terms and conditions described above. The Department may, after notice and opportunity for a hearing, revoke, suspend, or require the modification of an approved plan if the plan holder is not in compliance with it, or for any other reason stated in AS 46.04.037(f). In addition, Alaska law provides that a vessel or facility that is not in "compliance with the plan" may not operate (AS 46.04.030). The department may terminate approval prior to the expiration date if deficiencies are identified that would adversely affect spill prevention, response or preparedness capabilities.

DUTY TO RESPOND: Notwithstanding any other provisions or requirements of this contingency plan a person causing or permitting the discharge of oil is required by law to immediately contain and cleanup the discharge regardless of the adequacy or inadequacy of a contingency plan (AS 46.04.020).

BEST AVAILABLE TECHNOLOGY: The contingency plan must provide for use by the applicant of the best available technology at the time it is submitted or renewed (AS 46.04.030 (e)).

NOTIFICATION OF NON-READINESS: Within three days after any significant response equipment specified in the plan becomes nonoperational or is removed from its designated storage location the plan holder must notify the department in writing and provide a schedule for the equipments substitution, repair, or return to service (18AAC 75.375).

CIVIL AND CRIMINAL SANCTIONS: Failure to comply with the plan may subject the plan holder to civil liability for damages and to civil and criminal penalties. Civil and criminal sanctions may also be imposed for any violation of AS 46.04, any regulation issued thereunder, or any violation of a lawful order of the Department.

INSPECTIONS, DRILLS, RIGHTS TO ACCESS AND VERIFICATION OF EQUIPMENT, SUPPLIES AND PERSONNEL: The Department has the right to verify the ability of the plan holder to carry out the provisions of its contingency plan and access to inventories of equipment, supplies and personnel through such means as inspections and discharge exercises, without prior notice to the plan holder. The Department has the right to enter and inspect the covered vessel or facility in a safe manner at any reasonable time for these purposes and to otherwise ensure compliance with the plan and the terms and conditions (AS 46.04.030(e) and AS 46.04.060). The plan holder shall conduct exercises for the purpose of testing the adequacy of the contingency plan and its implementation (18 AAC 75.385).

FAILURE TO PERFORM: In granting approval of the plan, the Department has determined that the plan, as represented to it by the applicant in the plan and application for approval, satisfies the minimum planning standards and other requirements established by applicable statutes and regulations, taking as true all information provided by the applicant. The Department does not warrant to the applicant, the plan holder, or any other person or entity: (1) the accuracy or validity of the information or assurances relied upon; (2) that the plan is or will be implemented; or (3) that even full compliance and implementation with the plan will result in complete containment, control, or clean-up of any given oil spill, including a spill specifically described in the planning standards. The plan holder is encouraged to take any additional precautions and obtain any additional response capability it deems appropriate to further guard against the risk of oil spills and to enhance its ability to comply with its duty under AS 46.04.020(a) to immediately contain and clean up an oil discharge.

COMPLIANCE WITH APPLICABLE LAWS: If amendments to the approved plan are necessary to meet the requirements of any new laws or regulations, the plan holder must submit an application for amendment to the Department at the above address. The plan holder must adhere to all applicable state statutes and regulations as they may be amended from time to time. Copies of those currently in effect are enclosed. The department is currently developing regulations to implement Ch. 191, SLA 1990.

Amendments to comply with the regulations will be necessary upon promulgation.

ADJUDICATORY HEARING: Any person who disagrees with the decision may request an adjudicatory hearing by serving upon the Commissioner a request for hearing that complies with the requirements of 18 AAC 15.200-310. The hearing request must be received by the Commissioner within 30 days from the date of this letter. Hearing requests must be delivered to the Commissioner of the Department of Environmental Conservation at 3220 Hospital Drive, P.O. Box 0, Juneau, AK 99811-1800 within 30 days of receipt of this letter. If a hearing is not requested within 30 days, the right to a hearing is waived and the decision becomes final.

If you have any questions, please do not hesitate to contact _____ of this office.

Sincerely,

Regional Administrator
or
Regional Environmental Supervisor

Enclosures:

1. Certificate of Approval
2. Alaska Statutes 46.03, 46.04, 46.08 and 46.09 (white statute book)
3. 18 AAC 75, Article 4
4. October 26 Draft Regulations
5. Commissioner's January 7, 1992 letter

cc: (To be completed by the regions. Standard distribution should include one copy to Central Office SPPM c/o Larry Dietrick)



From the desk of:
Senator Drue Pearce

P.O. Box V
Juneau, AK 99811
Capitol, Room 101
(907) 465-4993

Some
solution might be
resolutionary material ???

The whole issue deserves
attention and concern.

A handwritten signature, likely "Drue Pearce", enclosed within a large, loopy oval stroke.

Oil Pollution Act Fouls the Regulatory Waters

By CHARLES ANDERSON

While there are many examples of how over-regulation harms U.S. interests, few are as representative of the power of legislation to inflict unintended harm on the public as the Oil Pollution Act of 1990.

Today, protection and indemnity (P&I) clubs—mutual insurance organizations providing oil pollution coverage for shipowners—are meeting in London to decide whether to continue to insure vessels transporting oil to the U.S. This is more than an academic exercise—more than half of U.S. oil is imported, 74% of that by the independent tanker owners insured by P&I clubs.

It's likely that the P&I clubs will refuse to provide coverage if the implementing regulations covering financial responsibility are adopted. Should that happen, the oil could stop flowing.

Hardly anyone expects the spigot to be shut immediately. It is more likely that an interim compromise will be reached. Yet this current impasse shows how Congress, acting in a vacuum, passes legislation that ignores economic realities and frequently ends up harming the public good the policy makers were elected to advance.

In this instance, the U.S. is attempting to regulate an industry that exists almost entirely beyond its borders. The P&I clubs are almost exclusively based outside the U.S., and nearly all the independent tankers fly foreign flags. Thus, Congress may enact laws, but the shipping industry still maintains some measure of control over where vessels will trade.

The provisions of the Oil Pollution Act

that set off the loudest alarms are those that deal with liability and financial responsibility. The act requires tank vessels of more than 3,000 gross tons (the vast majority) to provide proof of financial responsibility of \$1,200 per gross ton or \$10 million, whichever is greater. On top of that, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires tankers that carry hazardous substances in addition to oil to provide added proof of financial responsibility of the greater of \$5 million or \$300 per gross ton.

While these requirements are onerous, it could be reasonably argued that tough measures are required to guarantee the safety of America's waters. In fact, neither shipowners nor the P&I clubs have balked at these requirements, though insurance premiums have nearly doubled—even for fleets that are fully in compliance with the act's safety provisions, such as the regulations calling for double hulls. The Oil Pollution Act, however, goes one step further, allowing claimants to sue the underwriter directly in the U.S. for pollution clean-up costs and damages.

Claimants could include not only the federal government, but also the state government in any one of the numerous coastal states that currently have oil pollution statutes (many of which provide for unlimited liability), or a third party that claims it has been harmed by a spill.

This last highlights the true problem: It's not regulation per se that is harmful to business, but multiple layers of regulation, each administered by its own regulatory

body, all regulating the same behavior.

In effect, the P&I clubs are being asked to submit to potentially unlimited liability—from a cascade of civil and federal claimants—every time a ship calls on a U.S. port. They are understandably reluctant to do so.

On the other side of the coin, many foreign-flag tankers primarily serve the U.S. market, and their owners would almost certainly lose substantial revenues were they forced to stop calling here. Recognizing the value of this trade, most are responding positively to the Oil Pollution Act and are attempting to comply with its provisions, even though implementing regulations are still being drafted by the Coast Guard. They are constructing new double-hulled tankers and developing detailed oil-spill contingency plans and training programs for ship's personnel.

Nonetheless, the mere threat of higher liability has already resulted in an increase in freight rates of as much as 10%, according to some published estimates. These increases will ultimately mean higher consumer prices for petroleum products. Further, some ship masters and officers are reluctant to operate vessels in U.S. waters, fearful that they may be held personally or even criminally liable in the event of an accident.

Oddly enough, there is nothing in the Oil Pollution Act to encourage charterers to charter vessels from responsible operators. Cargo owners are not considered responsible parties in the event of a spill. This is counter-productive in at least two ways. First, it undermines the efforts of

responsible ship owners to modernize their vessels to meet or exceed current safety standards; second, it provides no incentive for the cargo owners to do business only with responsible shipping companies. If cargo owners can escape liability in the event of a spill, there is no incentive to charter safer, but perhaps more expensive, tankers.

A reasonable solution exists to resolve the current impasse. For example, in California a certificate of financial responsibility may be obtained by providing "other evidence of financial responsibility." This includes proof of entry in one of the associations making up the international P&I clubs, with oil pollution coverage of not less than \$500 million. California does not require the P&I club to submit to state jurisdiction. The Coast Guard has so far refused to incorporate this option into its proposed rule-making.

A multitude of overlapping laws now governs the transportation of oil to the U.S.: international conventions, most of which the U.S. has refused to ratify; the Oil Pollution Act of 1990; and state laws. Tanker owners must be prepared to respond to the sometimes contradictory demands of all three. This is an inefficient and expensive proposition that serves neither the public interest nor the needs of a nation that still needs imported oil to compete in the world marketplace.

Mr. Anderson is a partner in a New York law firm whose practice focuses on oil pollution and environmental law.

* CRUISE
* SENT: 02/20/92 TIME: 17:27
* FROM: LIOCMIL
* SUBJECT: HAND OUT
* PRINT DATE: 02/20/92 TIME: 17:41

~~DEB~~ Sen. Catten's Support Person

CAN YOU FAX US THE HANDOUT THEY ARE REFERING TO, PLEASE?

THANKS

JUDY

Note: in Anchorage observing: L.
Leo Hannan Citizen's Oversight
Scott Sterling

*
* REPLY
* SENT: 02/20/92 TIME: 17:34
* FROM: LIOCDEB
*

JUDY

I'LL PASS YOUR NOTE TO THE SENATOR'S STAFF PERSON AND LET YOU
KNOW WHAT THEY SAY, OK?

DEB

* SENT: 02/20/92 TIME: 17:22 *
* FROM: LTCCHOM *
* SUBJECT: 92-02-082; PL#2; (S) O&G; 2-20-92 *
* PRINT DATE: 02/20/92 TIME: 17:22 *
*

SUBJECT LINE TO READ: TC NO.; PL NO. QB FS; SHORT SUBJECT; DATE

JNU MOD: DEB

T/C NO: 92-02-082
DATE: FEBRUARY 20, 1992
SPONSOR: (S) OIL AND GAS
SUBJECT: HB 196 LIABILITY RESPONSE ACTION
MODERATOR: ELLEN
SITE: HOMER LTC

PARTICIPANT LIST #2

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. KEN CASTNER	BOX 558, HOMER 99603	235-8252	HB196
2.			
3.			
4.			
5.			

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. LARRY SMITH	1520 LAKESHORE DR., HOMER 99603	235-7090	
2.			

3.

4.

SCOMM

78:15

SENATE THIRD READING

SB 2040 (Keene) - As Amended: August 30, 1990

ASSEMBLY ACTIONS:

COMMITTEE JUD. VOTE 6-0 COMMITTEE NAT. RES. VOTE 8-3

Ayes:

Ayes: Sher, Bates, Connelly, Farr, Frazee,
Hansen, Margolin, Tanner

Nays:

Nays: Frizzelle, Harvey, La Follette

COMMITTEE W. & M. VOTE 18-3Ayes: Vasconcellos, Burton,
Campbell, Clute, Felando,
Friedman, Frizzelle,
Hannigan, Hansen, Harris,
Mojonnier, O'Connell, Peace,
Quackenbush, Roos,
Roybal-Allard, Speier,
M. Waters

Nays: Baker, Nolan, Wright

DIGESTExisting law authorizes:

- 1) The Governor to establish a state oil spill contingency plan.
- 2) By regulation, the State Interagency Oil Spill Committee (SIOSC), consisting of 18 state agencies, to develop the state oil spill contingency plan.
- 3) Civil and criminal penalties to be levied for the unlawful discharge of oil or petroleum products into state waters.
- 4) The Department of Fish and Game to order responsible parties to clean up oil spills in state waters and to abate the spill if the responsibility party does not.
- 5) The State Lands Commission (SLC) to lease and regulate state tidelands for oil development.
- 6) The Division of Oil and Gas in the Department of Conservation to regulate oil and gas production and drilling within the state.

- continued -

Existing law provides that:

- 7) Any person responsible for the discharge of oil "into or onto marine waters" is "absolutely liable without regard to fault" for any resulting damage incurred by any injured party, including:
- * Injury or harm to real or personal property.
 - * Business loss, including loss of income.
 - * Costs of cleanup and removal.
 - * Cost of wildlife rehabilitation.
- 8) If the injured party is a public entity, damages also include monitoring costs, loss of taxes, and costs to assess damages to wildlife and other natural resources.
- 9) The following damages are not recoverable from responsible parties:
- * Damages caused by war, insurrection, acts of God, or unanticipated grave natural disasters. (This limitation does not apply to public entities and the recovery of their costs of removal.)
 - * Damages caused solely by the injured party.
 - * Damages caused by a third party's criminal conduct.
 - * Damages caused by natural seepage, discharges from pleasure boats, or authorized discharges.
- 10) Strict liability does not apply to claims for personal injury or wrongful death.

*More expansive than
just fishing?
ie tourism?*

This bill establishes a comprehensive oil spill response and prevention program within the Resources Agency. The major provisions do the following:

- 1) Provide that the Governor has overall responsibility for oil spill response in the state.
- 2) Require any person who causes an oil spill to begin an immediate cleanup, follow approved contingency plans, carry out the directions of the administrator, and fully mitigate for adverse impacts to wildlife.

Oil Spill Administrator

- 3) Require the Governor to appoint, subject to Senate confirmation, an Administrator for Oil Spill Response as a Deputy Director in the Department of Fish and Game.

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- 4) Require the administrator to appoint a deputy administrator and an assistant deputy administrator who may act in behalf of the administrator.
- 5) Require the Administrator to do all of the following:
 - a) Adopt and implement regulations, guidelines and policies for the programs required by the bill.
 - b) Develop an oil spill response training program.
 - c) Study and evaluate dispersants, new oil spill response equipment and techniques.
 - d) Conduct periodic drills to test oil spill response.
 - e) Coordinate federal, state and local planning and preparation for oil spill response.
 - f) Negotiate with Alaska, Oregon, and Washington to develop an interstate compact regarding tanker safety and oil spill response and prevention.
 - g) Promote the adoption of federal regulations to improve the tanker safety equipment and operating procedures.
 - h) Implement the state's oil spill contingency plan.
 - i) Insure that trained persons are at the scene of an oil spill as quickly as possible.
 - j) Determine the cause of any spill.
 - k) Establish rescue and rehabilitation stations for wildlife.
- 6) Authorize the administrator to:
 - a) Direct industry and state agency response to oil spills.
 - b) Determine use of dispersants.

SIOSC And SIOSC Review Subcommittee

- 7) Place in statute the present composition of SIOSC, with the addition of representatives of the Secretary of Environmental Affairs and the Energy Commission as members, and designate the administrator as the chair of SIOSC.
- 8) Establish the SIOSC review subcommittee (SRS) consisting of the Administrator (Chair), the executive officers of the Coastal Commission, the State Lands Commission, the State Water Resources Control Board, and the State Oil and Gas Supervisor.

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- 9) Require the State Oil Spill Response Plan (SIOSC Plan) to be updated biennially by SIOSC and to include specified new elements.

Contingency Plans

- 10) Require that all marine facilities (defined to mean facilities which handle oil and from which a discharge could affect tidal waters) and vessels which transport oil, submit to the Administrator interim and final contingency plans for responding to oil spills.
- 11) By December 31, 1991, specify that regulations adopted by the Administrator for industry oil spill contingency plans which:
- a) Are consistent with the relevant state and federal requirements.
 - b) Are drafted in consultation with SIOSC and the Oil Spill Technical Advisory Committee.
 - c) Insure that:
 - 1) Marine waters are protected by response and cleanup equipment and operations.
 - 2) Standards are regularly improved for protection of state resources.
 - d) Provide for public review and comment prior to plan approval.
- 12) Require that each industry oil spill contingency plan:
- a) Provides for training.
 - b) Demonstrates that necessary resources will be available for responding to a reasonable worst case oil spill. *how has this been defined in Regs?*
 - c) Includes protective measures to reduce oil spill risks at marine facilities.
 - d) Are based on studies of hazards associated with marine facilities.
 - e) Includes measures to protect recreational and environmentally sensitive areas in the event of a reasonable worst case oil spill.
 - f) Be submitted within 90 days of the adoption of contingency plan regulations.
 - g) Be resubmitted every two years or more frequently if required by the administrator.
 - h) Includes an implementation schedule.
 - i) Protects against oil spills from disabled tankers.

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Tankers

- 13) Mandate that regulations affecting marine terminals require tanker have:
 - a) Specified equipment.
 - b) A tugboat escort when navigating in a harbor unless the administrator finds that the escort will not improve navigational safety.
 - c) At least one English-speaking person on the vessel's bridge.
- 14) Require the Administrator to implement a vessel inspection program if Coast Guard programs are determined to be inadequate, and the Administrator to develop a vessel traffic system to be operated by the Coast Guard.
- 15) Authorize tankers which infrequently visit the state to operate under contingency plans prepared by terminals or other oil facilities.

Marine Facilities And Terminals

- 16) Require the State Lands Commission (SLC) to adopt regulations which minimize the discharge of oil from marine terminals and facilities.
- 17) Provide that operators of marine facilities submit an operations manual to the SLC with one year of the adoption of regulations by the SLC.
- 18) Require the SLC to periodically update its regulations and authorizes the SLC to require modification of operations manuals to conform with modifications to the regulations.

Harbor Safety Committees

- 19) Require the Administrator to create harbor safety committees for San Diego, Los Angeles/Long Beach, Port Hueneme, Humboldt Bay, and the San Francisco Bay Area, to be composed of industry, port, labor, governmental, and environmental representatives.
- 20) Require that harbor safety committees prepare a harbor safety plan, pursuant to regulations adopted by the administrator, which include recommendations on tugboat escorts, harbor operations, and vessel traffic systems.
- 21) Require the Administrator, upon his/her approval, to implement harbor safety plans.

Oil Spill Technical Advisory Committee

- 22) Establish an Oil Spill Technical Advisory Committee, appointed by the Legislature and the Governor, for the purpose of making recommendations concerning programs established by the bill.

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Standard

- 23) Require that regulations, adopted by the Administrator or the the SLC for implementation of this measure, provide the "best achievable protection".
- 24) Define "best achievable protection" to mean the highest level of protection which can be achieved through the best achievable technology and procedures, with the Administrator's determination of this protection to be guided by the critical need to protect coastal resources and waters while considering several specified factors.

*economics}*Procedures

- 25) Require the SRS to review and make recommendations on regulations drafted by the Administrator.
- 26) After a public hearing, require the Administrator to adopt findings if the SRS recommendations are not followed.
- 27) Provide that regulations for contingency plans be exempt from review by the Office of Administrative Law (OAL).
- 28) Require that submitted contingency plans be made available for review to the members of SIOSC and the Technical Advisory Committee.
- 29) Require the Administrator to act on a contingency plan within 180 days of submittal.
- 30) Require the Administrator to provide reasons and recommendations if a contingency plan is found inadequate.
- 31) Require resubmittal of a contingency plan within 90 days of denial.
- 32) Provide that regulations governing onshore terminals and facilities shall be reviewed annually and require that the best achievable oil spill prevention technologies be employed.
- 33) One year after adoption of regulations, require the administrator to evaluate all contingency plans and remand relevant plans for revision if deficiencies exist which prevent the best achievable protection of the coastline.

Notification

- 34) Require notification of the Coast Guard of disabled tankers or barges,
- 35) Require persons responsible for oil spills or threatened oil spills to report them to the Office of Emergency Services.

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- 36) Require the Office of Emergency Services (OES) to report oil spills, oil spill threats and disabled tankers or barges to the administrator, and oil spills to the SLC, the Coastal Commission (or the San Francisco Bay Conservation and Development Commission as appropriate) and the appropriate regional water quality control board.

Fiscal Provisions

- 37) Establish the Oil Spill Prevention and Administration Fund to be funded by assessments of up to four cents for each barrel of oil received at a marine terminal with the revenues used for administrative costs to implement the programs established by the bill - with \$12 million appropriated from the fund in 1990-91.
- 38) Establish an Oil Spill Response Trust Fund (Trust Fund) of \$150 million to be funded by an assessment of \$.25 for each barrel of product imported into or produced in the state, excluding oil produced by an independent crude oil producer.
- 39) Specify that the Trust Fund can only be used after an oil spill and for the purposes of:
- a) Prompt oil spill cleanup, damage assessment, and wildlife rehabilitation.
 - b) Emergency loans and to pay damage claims by the state and any other person not adequately or quickly compensated by a responsible party.
 - c) Reimburse state and local agencies for oil spill response expenses, when not paid by the oil spiller.
- 40) Require the Governor, upon request of the Administrator, to request the Treasurer to borrow any funds necessary to pay for oil spill expenses which are greater than the amount of funds in the Trust Fund.
- 41) Authorize local governments to apply for grants for preparation or revision of an oil spill contingency plan element.
- 42) Authorize the Administrator to raise assessments to \$1.00 per barrel if needed to repay borrowed funds.
- 43) Require operators of tankers, pipelines and other oil facilities to obtain a certificate of financial responsibility from the administrator by demonstrating the ability to pay at least \$500 million for damages. Certificate requirements would be raised to \$750 million in 1995 and \$1 billion in 2000.

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- 44) Allocates \$500,000 annually for three years from the state's share of federal offshore oil revenues for establishing wildlife rehabilitation programs.

Enforcement

- 45) Specify that failure to obtain approval of a contingency plan after three submittals is a violation of the act.
- 46) Authorize the Administrator and others to obtain a court order to stop violations of the bill's programs.
- 47) Provide for imprisonment of up to one year and/or varying fines for all of the following:
- a) Willful refusal to follow oil spill contingency plan or directions of the administrator during oil spill cleanup.
 - b) Failure to provide notice of oil spills or that a tanker is disabled.
 - c) Knowingly causing an oil spill.
 - d) Knowing failure by an oil spiller to begin responding to an oil spill.
 - e) Continued operations after failure to submit a contingency plan.
 - f) Knowing violation of the provisions of the bill or implementing regulations or rules.
- 48) Authorize judicial or Administrative civil penalties of varying amounts for:
- a) Failure to follow an applicable contingency plan or the directions of an administrator in connection with a spill.
 - b) Failure to notify the Coast Guard of a tanker disability if an oil spill results.
 - c) Discharge of oil into marine waters.
 - d) Failure of an oil spiller to begin cleanup.
 - e) Intentional or negligent violation of the bill's provisions or implementing regulations.
- 49) Authorize the Administrator to impose a civil fine of up to \$10 per gallon of spilled oil, and mandate imposition of a \$30 per gallon fine if the spill was caused by gross negligence or willful misconduct, limited to oil not properly recovered.

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- 50) Establish the Environmental Enhancement Fund and require that all civil and some criminal fines be placed in the fund.
- 51) Require that the Environmental Enhancement Fund be used for environmental enhancement projects within or adjacent to marine waters.
- 52) Authorize the Administrator to issue cease and desist orders to stop activities which are inconsistent with the bill's programs or which may cause an oil spill.

Liability

- 53) State that "any responsible person," shall be "absolutely liable without regard to fault" for any damage incurred by any injured party which arises out of, or is caused by, "the discharge or leaking of oil into or onto marine waters," including:
 - a) All costs of response, including containment, treatment, removal, and monitoring.
 - b) Injury to, or economic loss resulting from injury to, real or personal property of which the claimant is either owner or lessee.
 - c) Injury to, or destruction or loss of, natural resources, including the cost of assessment and rehabilitation.
 - d) Loss of "subsistence use of natural resources."
 - e) Loss of taxes, royalties, rents, or profit caused by the injury, destruction, loss, or impairment of real property, personal property, or natural resources.
 - f) Loss of profits due to injury to realty, personalty, or natural resources if the claimant derives at least 25% of his or her earnings from activities which utilize the damaged property or resources.

[NOTE: It is not clear if this is a limitation on the damages recoverable under point 2. above.]

- g) Loss of "use and enjoyment" of natural resources, public beaches, or other public resources in any action brought by a public entity.
- 54) Provide that, except as provided by Civil Code Section 1431.2 (Proposition 51), liability under this bill is joint and several. Claims for personal injury and wrongful death are excluded.
- 55) Define "Responsible party" to mean:

- a) The owner or transporter of oil, or the person or entity "accepting responsibility for the oil."

*discourage shell companies
to hide deep pockets of
the owners?*

- continued -

- b) The owner, operator, or lessee of, or a person who chartered by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.
- 56) Grant an immunity of unlimited duration to persons, including cooperatives, its agents, subcontractors, and employees, for any injury to any person resulting from "actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with" federal and state contingency plans in "response to a spill or threatened spill of oil," if the person is not regularly engaged in the business of responding to oil spills. (196)
- 57) Grant to persons whose "primary" purpose is the business of responding to oil spills and who are regularly engaged in the business of responding to oil spills same immunity described above for 60 days.
- 58) Exclude from immunity, acts of gross negligence or willful misconduct, actions for personal injury or wrongful death, cooperatives which have not contracted with the State to respond to oil spills in accordance with applicable contingency plans, and any person responsible for the spill.
- 59) Retain joint and several liability for all damages caused by a responsible party's agent, employee, subcontractor, or cooperative of which it is a member, in responding to an oil spill, unless the responsible party has a defense to the spill.
- 60) Provide for reimbursement from the Trust Fund in some circumstances when immunity (or insolvency) has been asserted.

FISCAL EFFECT

Appropriation of \$12 million to implement bill's programs and unknown state costs to respond to oil spills, to be offset by assessments on oil.

COMMENTS

- 1) Background. The author has introduced this measure to improve oil spill response and prevention in California. The author contends that the experience gained in recent oil spills demonstrates that state and industry programs are not adequate for preventing or responding to oil spills.

Studies of the Exxon Valdez oil spill generally conclude that existing contingency plans and the ability to carry them out were inadequate. The February, 1990, oil spill from the American Trader off Huntington Beach in Southern California also demonstrated the need for improved state programs. In spite of generally favorable weather conditions for oil recovery, much of the oil washed ashore, forcing beach closures, killing wildlife and threatening some of the few remaining southern California wetlands. Many believe that equipment and personnel were not quickly deployed, personnel were not adequately trained, coordination among state agencies was insufficient and local volunteers were not used.

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The Assembly has previously passed out AB 2603 (Lempert), a comprehensive oil spill bill which is similar to SB 2040. As of this date, AB 2603 has been amended to substantially conform with SB 2040. As of 8/29/90, AB 2603 was on the Third Reading file on the Senate Floor.

- 2) Remaining Issues. Most differences among AB 2603, SB 2040, the administration, public interest groups and the oil industry have been resolved. Those that remain include:

Immunity. Presently the bill authorizes limited immunity to oil spill responders for sixty days. The oil industry and the administration have argued for immunity for an indefinite period. They contend that without immunity, efficient and professional response services will simply not be available, or responses will be timid and less than effective. Industry also contends that existing insurance ceilings make it unfeasible for organizations to respond to large spills without immunity. Industry also contends that alternate means of paying for damages caused by spill responders are established by the bill, including the responsible party, the federal fund, and, ultimately, the state Trust Fund.

The oil industry also asserts that California has enacted numerous "Good Samaritan" immunities similar to that proposed in SB 2040. Good Samaritan statutes generally immunize public entity employees, typically public safety employees, for emergency care rendered at the scene of an emergency. In contrast, industry spill responders are private entities which receive compensation. Health and Safety Code Section 25400, which immunizes public safety employees for their negligent conduct in responding to "imminent perils" created by the release, or threatened release, of a hazardous substance, also extends to private parties who have contracted with public entities to provide the above-described services. However, to the extent that completely private contract work is immunized by this bill, SB 2040 represents a departure from California precedent.

Opponents to immunity for spill responders contend that this immunity will encourage negligence on the part of responders. They also point out that the oil industry itself is made responsible by SB 2040 for responding to oil spills and that this obligation would have to be met with or without immunity.

The California Trial Lawyers Association and some environmental groups have argued that indemnification agreements between private responsible parties and spill responders is the preferred approach to this problem. Through indemnification, damage caused by negligence in oil spill response would be paid for by the responsible party. In those cases, in which a responder is requested by the State to clean up an "orphan" spill, for which no responsible party may be readily identified, the State could indemnify oil responders using the Trust Fund.

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At a recent hearing on AB 2603, the oil industry supported an amendment which would have provided immunity for 90 days following a spill with the administrator having the authority to extend that immunity by an additional 45 days.

Fund Level. The administration and the oil industry have argued for lowering the Trust Fund from \$150 million, the present level in the bill, to \$50 million. These entities have also advocated reducing the bill's appropriation for its programs to \$10 million annually. They contend that \$50 million provides for adequate funds in case of a spill until the state can exercise the borrowing authority provided by the bill. They also argue that \$10 million is sufficient to fund the bill's programs.

Public interest groups like the Sierra Club and the Planning and Conservation League counter by stating that multiple spills or difficulties in borrowing additional funds mandate keeping the Trust fund at its present level. The author has recently amended the SB 2040 to reduce the initial appropriation from \$20.5 million to the present \$12 million. The author believes that further reduction will prevent adequate implementation of the bill's programs.

Article	Section
3. Marine Safety	8670.16
4. Oil Spill Response	8670.25
5. Contingency Planning	8670.28
5.5. Financial Responsibility	8670.37.51
6. The Oil Spill Prevention and Administration Fund	8670.38
7. Oil Spill Response Trust Fund	8670.46
7.5. Borrowing Authority	8670.53.15
8. Oil Spill Technical Advisory Committee	8670.54
8.5. Damages	8670.56.5
9. Enforcement	8670.57
10. Environmental Enhancement Fund	8670.70

Chapter 7.4 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

ARTICLE 1. GENERAL PROVISIONS

Section

- 8670.1. Short title.
 8670.2. Legislative findings and declaration.
 8670.3. Definitions.
 8670.4. Administrator for oil spill response.
 8670.5. Duties of administrator; full and adequate response to marine oil spills.

Article 1 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.1. Short title

This chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of the Government Code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be known, and may be cited as, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation: Stats.1990, c. 1248, § 17, eff. Sept. 24, 1990.
 Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code

§ 8574.1.

§ 8670.2. Legislative findings and declaration

The Legislature finds and declares as follows:

- Each year, billions of gallons of crude oil and petroleum products are transported by vessel or pipeline across and through the marine waters of this state.
- Recent accidents in southern California, Alaska, and other parts of the nation have shown that marine transportation of oil can be a significant threat to the environment of sensitive coastal areas.
- Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.
- Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.
- California's coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources which the state cannot afford to place at undue risk from an oil spill.
- Because of the inadequacy of existing cleanup and response measures, and technology, the emphasis must be put on prevention, if the risk and consequences of oil spills are to be minimized.
- Improvements in the design, construction, and operation of tankers, terminals, and pipelines; improvements in marine safety; maintenance of emergency response stations and personnel; and stronger inspection and enforcement efforts are necessary to reduce the risks of and from a major oil spill.
- A major oil spill in marine waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.

Additions or changes indicated by underline; deletions by asterisks * * *

(c) The California Earthquake Prediction Evaluation Council, an advisory committee established pursuant to Section 8690 of this chapter, may advise the Governor of the existence of an earthquake or volcanic prediction having scientific validity. In its review, hearings, deliberations, or other validation procedures, members of the council, jointly and severally, shall have the same degree of responsibility for their actions and enjoy the same immunities as officers and employees of the state and its political subdivisions engaged in similar work in their respective entities. Any person making a presentation to the council as part of the council's validation process, including presentation of a prediction for validation, shall be deemed a member of the council until the council has found the prediction to have or not have scientific validity.

(Amended by Stats.1984, c. 1284, § 3.)

§ 8659. Physicians, surgeons, hospitals, pharmacists, nurses and dentists; Immunity from liability for services requested; exception

Any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, nurse, or dentist who renders services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for any injury sustained by any person by reason of such services, regardless of how or under what circumstances or by what cause such injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission.

(Amended by Stats.1982, c. 391, p. 1726, § 2.)

Historical and Statutory Notes

1982 Amendment. Added "pharmacist" to list of immune individuals.

ARTICLE 19. PENALTIES AND SEVERABILITY

§ 8665. Violations; punishment

Any person who violates any of the provisions of this chapter or who refuses or willfully neglects to obey any lawful order or regulation promulgated or issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment.

(Amended by Stats.1983, c. 1092, § 131, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

Historical and Statutory Notes

1983 Amendment. Increased the maximum fine from \$500 to \$1,000.

Notes of Decisions

1. In general

Any modification or expiration of governor's emergency order dealing with medflies did not bar or negate prosecution.

tion under this section as the penal provision had not been modified. *Martin v. Municipal Court of State of California for Santa Clara County Judicial Dist. of Santa Clara County* (App. 1 Dist.1983) 196 Cal.Rptr. 218, 148 C.A.3d 693.

ARTICLE 20. EFFECT UPON EXISTING MATTERS

§ 8668. Effect of chapter on prior plans, mutual aid agreements and authority of cities, counties and cities and counties

Notes of Decisions

1. In general

Section 8634, which provides that during a local emergency the governing body of a political subdivision may promulgate orders and regulations necessary to provide for

the protection of life and property, permits a county to promulgate rules and regulations which apply in both corporate and unincorporated territory within the county even if the cities have not independently declared the existence of a local emergency. 62 Ops.Atty.Gen. 701, 11-16-79.

CHAPTER 7.4. OIL SPILL RESPONSE AND CONTINGENCY PLANNING [NEW]

Article

1. General Provisions

2. Duties of the Administrator

Section

8670.1

8670.6

Additions or changes indicated by underline; deletions by asterisks * * *

Article

3. Marine Safety
4. Oil Spill Response
5. Contingency Planning ...
- 5.5. Financial Responsibility ..
6. The Oil Spill Prevention a
7. Oil Spill Response Trust F
- 7.5. Borrowing Authority
8. Oil Spill Technical Advisor
- 8.5. Damages
9. Enforcement
10. Environmental Enhancem

Chapter 7.4 was added

Section

- 8670.1. Short title.
- 8670.2. Legislative findings a
- 8670.3. Definitions.
- 8670.4. Administrator for oil
- 8670.5. Duties of administrator

Article 1 was added

§ 8670.1. Short title.

This chapter, Article 3.5 (cor and Division 7.8 (commencing may be cited as, the Lempert- (Added by Stats.1990, c. 1248

Severability of provisions of Stat

historical and Statutory Notes under

§ 8574.1.

§ 8670.2. Legislative finding

The Legislature finds and d

(a) Each year, billions of ga

pipeline across and through t

(b) Recent accidents in sout

marine transportation of oil c

(c) Existing prevention pr

discharge of petroleum into r

(d) Response and cleanup

majority of spilled oil when t

(e) California's coastal wa

economic resources which t

(f) Because of the inadequ

emphasis must be put on pre

(g) Improvements in the d

improvements in marine saf

stronger inspection and enfor

spill.

(h) A major oil spill in m

discharged oil, protect sensit

Additions or cha

§ 8670.2

GOVERNMENT CODE

(i) Immediate action must be taken to improve control and cleanup technology in order to strengthen the capabilities and capacities of cleanup operations.

(j) California government should improve its response and management of oil spills that occur in marine waters.

(k) Those who transport oil through the marine waters of the state must meet minimum safety standards and demonstrate financial responsibility.

(l) The federal government plays an important role in preventing and responding to petroleum spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard, to the greatest degree possible.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.3. Definitions

Unless the context requires otherwise, the following definitions shall govern the construction of this chapter:

(a) "Administrator" means the administrator for oil spill response appointed by the Governor pursuant to Section 8670.4.

(b) "Barges" means any relatively flat-bottomed, waterborne vessel that does not have a crew, is propelled by being pulled by another vessel, and that is constructed or adapted to carry oil in commercial quantities as cargo.

(c) "Best achievable protection" means that the highest level of protection which can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods which provide the greatest degree of protection achievable. The administrator's determination of best achievable protection shall be guided by the critical need to protect valuable coastal resources and marine waters, while also considering (1) the protection provided by the measures, (2) the technological achievability of the measures, and (3) the cost of the measures.

It is not the intent of the Legislature that the administrator use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures to require. Instead, it is the intent of the Legislature that the administrator give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

(d) "Best achievable technology" means that technology which provides the greatest degree of protection taking into consideration (1) processes which are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development, and (2) processes which are currently in use anywhere in the world. In determining what is best achievable technology, the administrator shall consider the effectiveness and engineering feasibility of the technology.

(e) "Local government" means any chartered or general law city, chartered or general law county, or any city and county.

(f) "Marine facility" means any facility of any kind, other than a vessel, which is or was used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, refining, or transporting oil and is located in marine waters, or is located where a discharge could impact marine waters unless the facility (1) is subject to Chapter 6.67 (commencing with Section 25270) or Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code or (2) is placed on a farm, nursery, logging site, or construction site and does not exceed 20,000 gallons in a single storage tank. For the purposes of this chapter, a drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform is a "marine facility."

(g) "Marine terminal" means any marine facility used for transferring oil to or from tankers or barges. For the purposes of this section, a marine terminal includes all piping not integrally

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

connected to a tank facility as Code.

(h) "Marine waters" means Sacramento-San Joaquin Delta where Contra Costa, Sacramento

(i) "Oil" means any kind of petroleum or residues therefrom, including aviation fuel, oil sludge, oil residue, or natural gas.

(j) "Onshore facility" means a facility by marine waters.

(k) (1) "Owner" or "operator"

(A) In the case of a vessel, as by demise, or leases, the vessel

(B) In the case of a marine facility, the marine facility.

(C) Except as provided in subsection (A), control of which was conveyed to a similar means to an entity of substantial interest in, operated, or otherwise beforehand.

(D) An entity of the state or marine facility, when the entity or discharge or oil into marine

(2) "Owner" or "operator" document of a vessel or marine facility interest in the vessel or marine

(3) "Operator" does not include facility itself if the person is not

(l) "Person" means any individual not limited to, a government entity, city, county, city and county, or federal government, or any department.

(m) "Pipeline" means any pipe

(n) "Responsible party" or "person"

(1) The owner or transporter

(2) The owner, operator, or person or entity at facility, or a person or entity at

(o) "Spill" or "discharge" means waters which is not authorized

(p) "State Interagency Oil Spill" 3.5 (commencing with Section 8670.3)

(q) "State oil spill contingency" to Article 3.5 (commencing with

(r) "Tanker" means any self-propelled vessel or in commercial

(s) "Vessel" means a tanker

(Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under § 8574.1.

Additions or changes:

connected to a tank facility as defined in subdivision (k) of Section 25270.2 of the Health and Safety Code.

(h) "Marine waters" means those waters subject to tidal influence, except for waters in the Sacramento-San Joaquin Delta upstream from a line running north and south through the point where Contra Costa, Sacramento, and Solano Counties meet.

(i) "Oil" means any kind of petroleum, liquid hydrocarbons, or petroleum products or any fraction or residues therefrom, including, but not limited to, crude oil, bunker fuel, gasoline, diesel fuel, aviation fuel, oil sludge, oil refuse, oil mixed with waste, and liquid distillates from unprocessed natural gas.

(j) "Onshore facility" means any facility of any kind which is located entirely on lands not covered by marine waters.

(k) (1) "Owner" or "operator" means any of the following:

(A) In the case of a vessel, any person who owns, has an ownership interest in, operates, charters by demise, or leases, the vessel.

(B) In the case of a marine facility, any person who owns, has an ownership interest in, or operates the marine facility.

(C) Except as provided in subparagraph (D), in the case of any vessel or marine facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, any person who owned, held an ownership interest in, operated, or otherwise controlled activities concerning the vessel or facility immediately beforehand.

(D) An entity of the state or local government which acquired ownership or control of a vessel or marine facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into marine waters.

(2) "Owner" or "operator" does not include a person who, without participating in the management of a vessel or marine facility, holds indicia of ownership primarily to protect his or her security interest in the vessel or marine facility.

(3) "Operator" does not include any person who owns the land underlying a marine facility or the facility itself if the person is not involved in the operations of the facility.

(f) "Person" means any individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes any city, county, city and county, district, and the state or any department or agency thereof, and the federal government, or any department or agency thereof, to the extent permitted by law.

(m) "Pipeline" means any pipeline used at any time to transport oil.

(n) "Responsible party" or "party responsible" means any of the following:

(1) The owner or transporter of oil or a person or entity accepting responsibility for the oil.

(2) The owner, operator, or lessee of, or person who charters by demise, any vessel or marine facility, or a person or entity accepting responsibility for the vessel or marine facility.

(o) "Spill" or "discharge" means any release of at least one barrel (42 gallons) of oil into marine waters which is not authorized by any federal, state, or local government entity.

(p) "State Interagency Oil Spill Committee" means the committee established pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(q) "State oil spill contingency plan" means the state oil spill contingency plan prepared pursuant to Article 3.5 (commencing with Section 8574.1) of Chapter 7.

(r) "Tanker" means any self-propelled, waterborne vessel, constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(s) "Vessel" means a tanker or barge as defined in this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.4

GOVERNMENT CODE

§ 8670.4. Administrator for oil spill response

There shall be an administrator for oil spill response. The administrator shall be a chief deputy director of the Department of Fish and Game. The administrator shall be appointed by the Governor and shall serve at the pleasure of the Governor. The appointment by the Governor shall be subject to the advice and consent of the Senate. The compensation of the administrator shall be fixed by the Governor pursuant to law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.5. Duties of administrator; full and adequate response to marine oil spills

The Governor shall ensure that the state fully and adequately responds to all oil spills in marine waters. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including emergency drills and preparedness and spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 2. DUTIES OF THE ADMINISTRATOR

Section

- 8670.6. Support personnel; deputy administrators.
- 8670.7. Prevention and response to marine oil spills; implementation of oil spill contingency plan.
- 8670.8. Training programs.
- 8670.8.5. Volunteer workers.
- 8670.9. Interstate compact regarding marine oil transportation; discussion with coastal states.
- 8670.10. Emergency drills; coordination among agencies.
- 8670.12. Improvement of response to emergencies; studies and evaluations.
- 8670.13. New technologies; feasibility report.
- 8670.14. Coordination with federal programs.
- 8670.15. Annual report.

Article 2 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.6. Support personnel; deputy administrators

(a) The administrator shall ensure that he or she has available for support, either under direct employment, elsewhere in state government, or through contract for private or governmental services, personnel who are fully trained and familiar with oil spill response, containment, and cleanup technologies, procedures, and operations, risk evaluation and management, and emergency systems safety.

(b) The administrator shall appoint a deputy administrator and an assistant deputy administrator to whom the administrator may delegate all or some responsibilities under this article.

(c) The administrator, consistent with applicable civil service laws, shall appoint and discharge any officer, house staff counsel, or employee of the administrator, as determined to be necessary, to carry out this article.

(d) The administrator, including staff and the costs of training and equipping the staff, shall be funded by the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.7. Prevention and response plan

(a) The administrator, subject to removal, abatement, response, or spill in the marine waters of the state, shall develop and implement a contingency plan and the state oil spill response coordinator, as required by law.

(b) The administrator shall implement the plan to the fullest extent possible.

(c) The administrator shall do the following:

(1) The administrator shall be in marine waters, as soon as possible, to respond to, contain, and clean up the spill.

(2) The administrator shall ensure that the response is whether employed by the response team or not, to contain, and clean up the spill.

(d) Throughout the response at the State Interagency Oil Spill Coordination Center having jurisdiction over the spill, the administrator shall ensure that the response is whether employed by the response team or not, to contain, and clean up the spill.

(e) The administrator, with the assistance of the federal on-scene coordinator, shall ensure that the response is whether employed by the response team or not, to contain, and clean up the spill.

(f) The administrator shall have cleanup agents in connection with the assessment of damages to the state, which may help in determining the amount of damages.

(g) The administrator shall ensure that the assessment of damages to the state, which may help in determining the amount of damages.

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.8. Training programs

(a) The administrator shall ensure that the response is whether employed by the response team or not, to contain, and clean up the spill.

(b) The administrator may offer cleanup efforts under the state oil spill response plan prepared and approved under this article.

(c) Funding for activities under the state oil spill response plan prepared and approved under this article.

(d) All training provided by the state and state occupational safety and health.

Additions or changes

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.7. Prevention and response to marine oil spills; implementation of oil spill contingency plan

(a) The administrator, subject to the Governor, has the primary authority to direct prevention, removal, abatement, response, containment, and cleanup efforts with regard to all aspects of any oil spill in the marine waters of the state, in accordance with any applicable marine facility or vessel contingency plan and the state oil spill contingency plan. The administrator shall cooperate with any federal on-scene coordinator, as specified in the National Contingency Plan.

(b) The administrator shall implement the state oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

(c) The administrator shall do all of the following:

(1) The administrator shall be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) The administrator shall ensure that persons having training in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities which are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the federal on-scene coordinator, shall determine the cause and amount of the discharge.

(f) The administrator shall have the state authority over the use of dispersants and any oil spill cleanup agents in connection with an oil discharge, consistent with the regulations adopted pursuant to Section 13169 of the Water Code. The administrator shall consult with the federal on-scene coordinator prior to exercising authority under this subdivision.

(g) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of data and other evidence which may help in determining and recovering damages.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.8. Training programs

(a) The administrator shall carry out programs to provide training for individuals in response, containment, and cleanup operations and equipment, equipment deployment, and the planning and management of these programs. These programs may include training for members of the California Conservation Corps, other response personnel employed by the state, personnel employed by other public entities, personnel from marine facilities, commercial fishermen and other mariners, and interested members of the public. Training may be offered for volunteers.

(b) The administrator may offer training to anyone who is required to take part in response and cleanup efforts under the state oil spill contingency plan or under local governmental contingency plans prepared and approved under this chapter.

(c) Funding for activities undertaken pursuant to subdivisions (a) and (b) shall be from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.33.

(d) All training provided by the administrator shall follow the requirements of applicable federal and state occupational safety and health standards adopted by the Occupational Safety and Health

Additions or changes indicated by underline; deletions by asterisks * * *

Administration of the Department of Labor and the California Occupational, Safety, and Health Standards Board.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.8.5. Volunteer workers

The administrator may use volunteer workers in response, containment, restoration, and cleanup efforts for oil spills in marine waters. The volunteers shall be deemed employees of the state for the purpose of workers' compensation under Article 2 (commencing with Section 3350) of Chapter 2 of Part 1 of Division 4 of the Labor Code. Any payments for workers' compensation pursuant to this section shall be made from the Oil Spill Response Trust Fund created pursuant to Section 8670.46.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.9. Interstate compact regarding marine oil transportation; discussion with coastal states

The administrator shall enter into discussions on behalf of the state with the States of Alaska, Oregon, and Washington, for the purpose of developing an interstate compact regarding oil transport by tanker or barge. The compact shall address all of the following:

- (1) Coordination of vessel safety and traffic.
- (2) Spill prevention equipment and response required on tankers and barges and at terminals.
- (3) The availability of oil spill response and cleanup equipment and personnel.
- (4) Other matters which may relate to the transport of oil and oil spill prevention, response, and cleanup.

The administrator shall coordinate the development of the interstate compact with the Coast Guard, the Province of British Columbia in Canada, and the Republic of Mexico.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.10. Emergency drills; coordination among agencies

(a) In coordination with all appropriate federal, state, and local government entities, the administrator shall periodically carry out announced and unannounced drills to test response and cleanup operations, equipment, contingency plans, and procedures implemented under this chapter. If practical, the administrator shall coordinate drills with drills carried out by the State Lands Commission and the California Coastal Commission to test prevention operations, equipment, and procedures. In carrying out announced drills, the administrator shall coordinate with the private entities involved in the drill. All state and local entities and all operators of marine facilities and the operators of all vessels of all kind located in marine waters shall cooperate with the administrator in carrying out these drills.

(b) The administrator shall establish standards which all operators of vessels and marine facilities shall meet during the emergency drills carried out pursuant to subdivision (a). The administrator must establish a standard for the time allowable for adequate response. The standards shall also specify conditions for canceling a drill because of hazardous or other operational circumstances that may exist at a facility.

Additions or changes indicated by underline; deletions by asterisks * * *

(c) The administrator shall issue participants.

(Added by Stats.1990, c. 1248 (S.

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.12. Improvement of response

(a) The administrator shall improve response, containment, and cleanup oil transportation systems. The Administration Fund created pursuant to this section shall acquire necessary equipment and conduct evaluations.

(b) The administrator shall use and any other methods used to the best achievable protection of the record, the administrator shall provide by establishing requirements without imposing costs which shall be provided. The studies shall

(1) Evaluate the effectiveness of varying environmental conditions.

(2) Evaluate potential adverse limited to, adverse toxic impacts, bioaccumulation, and synergistic contact and consumption of oil.

(3) Recommend appropriate agents to ensure they are used effectively and safely.

(c) The administrator shall train mariners for oil spill containment.

(1) Equipment and technology.

(2) Coordination with private entities.

(3) Liability and insurance.

(4) Compensation.

(d) The studies shall be performed by international entities. The administrator shall

(Added by Stats.1990, c. 1248

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.13. New technologies

(a) The administrator shall require new technologies for rehabilitation. For the purpose of this section, "new technologies" means:

(1) Advanced electronic equipment.

(2) Advanced shipboard oil recovery systems.

(3) New designs for skimmers.

Additions or changes indicated by underline; deletions by asterisks * * *

(c) The administrator shall issue a report after every drill which evaluates the performance of the participants.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.12. Improvement of responses to emergencies; studies and evaluations

(a) The administrator shall conduct studies and evaluations necessary for improving oil spill response, containment, and cleanup and oil spill wildlife rehabilitation in marine waters and marine oil transportation systems. The administrator may expend moneys from the Oil Spill Prevention and Administration Fund created pursuant to Section 8670.38, enter into consultation agreements, and acquire necessary equipment and services for the purpose of carrying out these studies and evaluations.

(b) The administrator shall study the use and effects of dispersants, incineration, bioremediation, and any other methods used to respond to a spill. The study shall periodically be updated to ensure the best achievable protection from the use of those methods. Based upon substantial evidence in the record, the administrator may determine in individual cases that best achievable protection is provided by establishing requirements which provide the greatest degree of protection achievable without imposing costs which significantly outweigh the incremental protection that would otherwise be provided. The studies shall do all of the following:

(1) Evaluate the effectiveness of dispersants and other chemical agents in oil spill response under varying environmental conditions.

(2) Evaluate potential adverse impacts on the environment and public health including, but not limited to, adverse toxic impacts on water quality, fisheries, and wildlife with consideration to bioaccumulation and synergistic impacts, and the potential for human exposure, including skin contact and consumption of contaminated seafood.

(3) Recommend appropriate uses and limitations on the use of dispersants and other chemical agents to ensure they are used only in situations where the administrator determines they are effective and safe.

(c) The administrator shall evaluate the feasibility of using commercial fishermen and other mariners for oil spill containment and cleanup. The study shall examine the following:

- (1) Equipment and technology needs.
- (2) Coordination with private response personnel.
- (3) Liability and insurance.
- (4) Compensation.

(d) The studies shall be performed in conjunction with any studies performed by federal, state, and international entities. The administrator may enter into contracts for the studies.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.13. New technologies; feasibility report

(a) The administrator shall report to the Legislature by December 31, 1992, on the feasibility of requiring new technologies to aid prevention, response, containment, and cleanup and wildlife rehabilitation. For the purposes of this section, "new technologies" shall include all of the following:

- (1) Advanced electronic vessel location charts.
- (2) Advanced shipboard oil and water separation systems.
- (3) New designs for skimming vessels.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.13

GOVERNMENT CODE

- (4) Other new and emerging technologies.
- (b) After submission of the report, the administrator shall review the rules, regulations, and policies required pursuant to Section 8670.28, for conformity with the recommendations of the report required by this section.
- (c) The administrator shall include new technologies in the report pursuant to Section 8670.15. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.14. Coordination with federal programs

The administrator shall coordinate the oil spill prevention and response programs and marine facility, tanker, and barge safety standards of the state with federal programs to the maximum extent possible.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.15. Annual report

Beginning December 31, 1991, and annually thereafter, the administrator shall report to the Governor and the Legislature on the adequacy of prevention and response programs. The report shall also include an evaluation of marine safety in marine waters of the state. The administrator shall also report on all research conducted pursuant to this chapter that has been completed or is currently in progress.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 3. MARINE SAFETY

Section

- 8670.16. Promotion of federal statutes or regulations.
- 8670.17. Marine terminals; adoption of regulations; scope of regulations.
- 8670.18. Inspection of vessels; evaluation of inspection program.
- 8670.19. Oil spill contingency plans; review by administrator.
- 8670.20. Disabled tanker or barge within specified distance of state shore; notice; events disabling vessel.
- 8670.21. Vessel traffic service and monitoring systems; funding; restrictions on vessels with noncomplying equipment.
- 8670.22. Federal double hull requirements; docking of noncomplying vessels.
- 8670.23. Harbor safety committees; members; qualifications; harbor safety plans.
- 8670.24. Pilotage areas; evaluation.

Article 3 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.16. Promotion of federal statutes or regulations

The administrator shall take any action necessary and appropriate to promote the adoption of statutes or regulations by the federal government which establish all of the following requirements:

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

(a) Each tanker using ports warning any time an attempt is whether the attempt is success

(b) Each tanker using ports following:

- (1) Two "VHF" bridge-to-bridge
- (2) One single-side band radi
- (3) One satellite communicat
- (4) Two collision avoidance r (ARPA) capability.

(c) Tankers and barges use o spills reaching sensitive enviro Sur, the Farallones Islands, an (Added by Stats.1990, c. 1248 (

Historical and Statutor

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.17. Marine terminals;

(a) The administrator shall regarding the equipment, pers be used to transfer oil.

(b) All rules, regulations, and by the administrator, to ensure the environment is employed a

(c) The regulations adopted following:

(1) A requirement that all traffic control system which m

(2) A determination of the ci or tugboats of sufficient size, l in the harbors of the state. In recommendations of the harbo differ from the recommendatio public hearing. Additionally, i escorts in fewer instances in t which is recommended by the Bays, the administrator shall, i the requirement provides adeq

(3) A requirement that a tan the bridge who is able to comm the master of the vessel.

The rules, regulations, and g separate administrative proces escorts can improve tanker sa Suisun Bays, and that the rule shall be adopted as quickly as regulations, and guidelines req (Added by Stats.1990, c. 1248 (

Historical and Statutor

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or chang

(a) Each tanker using ports in the state is required to have alarms on the bridge which give warning any time an attempt is made to control the tanker manually while the autopilot is engaged, whether the attempt is successful or not, or any time the autopilot fails.

(b) Each tanker using ports in the state is required to have in good working order, all of the following:

- (1) Two "VHF" bridge-to-bridge radiotelephones.
- (2) One single-side band radiotelephone.
- (3) One satellite communication device.
- (4) Two collision avoidance radar devices, at least one of which has automatic collision avoidance (ARPA) capability.

(c) Tankers and barges use only shipping lanes designed to significantly reduce the likelihood of oil spills reaching sensitive environmental areas, including, but not limited to, the Channel Islands, Big Sur, the Farallones Islands, and the North Coast.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.17. Marine terminals; adoption of regulations; scope of regulations

(a) The administrator shall adopt rules, regulations, and guidelines governing marine terminals regarding the equipment, personnel, and operation of vessels, to and from which the terminals may be used to transfer oil.

(b) All rules, regulations, and guidelines shall be promulgated, and thereafter modified periodically by the administrator, to ensure that the best achievable protection of the public health and safety and the environment is employed at all times.

(c) The regulations adopted pursuant to this section shall include, but not be limited to, all of the following:

(1) A requirement that all tankers have functional equipment which is compatible with any vessel traffic control system which may be established along the California coast.

(2) A determination of the circumstances under which tankers shall be accompanied by a tugboat or tugboats of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbors of the state. In making that determination, the administrator shall be guided by the recommendations of the harbor safety committees. If the administrator adopts regulations which differ from the recommendations of the harbor safety committees, he or she shall do so only after a public hearing. Additionally, if the administrator adopts regulations which require the use of tug escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which is recommended by the harbor safety committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in public hearing, adopt findings, based on substantial evidence, that the requirement provides adequate protection and is consistent with the purposes of this chapter.

(3) A requirement that a tanker which is in marine waters has at all times at least one person on the bridge who is able to communicate fluently and effectively both in English and in the language of the master of the vessel.

The rules, regulations, and guidelines adopted pursuant to this subdivision shall be developed in a separate administrative process. The Legislature finds and declares that the appropriate use of tug escorts can improve tanker safety, particularly in the harbors of San Francisco, San Pablo, and Suisun Bays, and that the rules, regulations, and guidelines concerning tug escorts in those harbors shall be adopted as quickly as practicable and may be adopted before the adoption of all other rules, regulations, and guidelines required by this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.18

GOVERNMENT CODE

§ 8670.18. Inspection of vessels; evaluation of inspection program

- (a) The administrator may inspect or cause to be inspected on a regular basis all vessels.
- (b) The administrator shall, by December 31, 1991, prepare a report to the Legislature which evaluates the adequacy of the vessel inspection programs conducted by the Coast Guard and any other federal, state, or local agency. The evaluation shall consider all of the following:
- (1) The frequency and scope of inspections.
 - (2) The continuing commitment of the Coast Guard to conduct frequent vessel inspections.
 - (3) Any new or pending federal legislation that is likely to change the Coast Guard's inspection programs.
 - (4) Whether it is desirable for the state to contract with the Coast Guard for more frequent or expanded vessel inspections.
 - (5) Whether it is desirable and practical for the state to develop and implement a state vessel inspection program.
- (c) If the administrator determines in the report that the Coast Guard inspection program is inadequate, the administrator shall attempt to enter into an agreement with the Coast Guard to remedy the deficiencies.
- (d) If, within a reasonable time, the administrator cannot remedy the deficiencies in the Coast Guard inspection programs, the administrator shall report to the Legislature concerning the steps the administrator is taking to ensure that an adequate vessel inspection program is in place. The administrator shall adopt regulations for any vessel inspection program established pursuant to this section. Vessel inspections authorized pursuant to this section shall be conducted only for the purposes of determining compliance with relevant federal law and the Oil Spill Prevention, Abatement, and Removal Act, as defined in Section 8670.1. The administrator shall consult with the Coast Guard regarding state-mandated requirements for vessel inspections. The inspection program shall be in operation by December 31, 1992. If the administrator cannot comply with this deadline, he or she shall report to the Legislature on the reasons.
- (e) Any state vessel inspection program established pursuant to this section shall not duplicate the activities of the Coast Guard or other authorized federal agencies. The administrator shall maintain a record of these activities for each vessel inspected. Any violation of Coast Guard regulations shall immediately be reported to the Coast Guard.
- (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.19. Oil spill contingency plans; review by administrator

- (a) Within one year of the adoption of regulations pursuant to Section 8670.23, the administrator shall conduct a comprehensive review of all oil spill contingency plans. The administrator shall do both of the following:
- (1) Segment the coast into appropriate areas as necessary.
 - (2) Evaluate the contingency plans for each area to determine if deficiencies exist in equipment, personnel, training, and other area determined to be necessary to ensure the best achievable protection of the coastline, set forth in the state oil spill contingency plan, including the marine oil spill contingency planning section.
- (b) If the administrator finds that deficiencies exist, the administrator shall, by the process set forth in Section 8670.31, remand any oil spill contingency plans to the originating party with recommendations for amendments necessary to ensure that the coastline is protected.
- (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

§ 8670.20. Disabled tanker or disabling vessel

- (a) Any party responsible for disability if the disabled tank administrator and the Office of Emergency Services a tanker or barge within 12 miles negotiate an agreement with the state regarding disabled tank.
- (b) Whenever the Office of Emergency Services office shall immediately notify the source regarding the presence of the administrator shall immediately.
- (c) For the purposes of this section:
- (1) Any accidental or intentional safety of the vessel.
 - (2) Loss of main propulsion or a reduction in the maneuvering means that any system, component specified or required function.
 - (3) An occurrence material service, including, but not limited to.
 - (4) Any occurrence not meeting oil spill or an occurrence which.
 - (d) For the purposes of this section:
 - (1) The towing mechanism.
 - (2) The tugboat towing the

(Added by Stats.1990, c. 1248)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.21. Vessel traffic service noncomplying

- (a) The administrator shall, by December 31, 1991, for a vessel traffic service may include in the agreement for areas of the coast outside the agreement shall be negotiated the vessel traffic monitoring satellite tracking, radar, or collisions and groundings.
- (b) If the administrator cannot by December 31, 1991, the administrator shall for implementing vessel traffic service in the San Pedro Channel, the Santa Barbara Channel, and any other monitoring and communication for the regions described in the Coast Guard, or recommendations shall be completed by December 31, 1991. The plan shall be amended.

Additions or changes

§ 8670.20. Disabled tanker or barge within specified distance of state shore; notice; events disabling vessel

(a) Any party responsible for a tanker or barge shall notify the Coast Guard within one hour of the disability if the disabled tanker or barge is within 12 miles of the shore of the state. The administrator and the Office of Emergency Services shall request the Coast Guard to notify the Office of Emergency Services as soon as possible after the Coast Guard receives notice of a disabled tanker or barge within 12 miles of the shore of the state. The administrator shall attempt to negotiate an agreement with the Coast Guard governing procedures for Coast Guard notification to the state regarding disabled tankers.

(b) Whenever the Office of Emergency Services receives notice of a disabled tanker or barge, the office shall immediately notify the administrator. If the administrator receives notice from any other source regarding the presence of a disabled tanker or barge within 12 miles of the shore of the state, the administrator shall immediately notify the Office of Emergency Services.

(c) For the purposes of this section, a tanker shall be considered disabled if any of the following occurs:

(1) Any accidental or intentional grounding which creates a hazard to the environment or the safety of the vessel.

(2) Loss of main propulsion or primary steering or any component or control system which causes a reduction in the maneuvering capabilities of the vessel. For the purposes of this paragraph, "loss" means that any system, component, part, subsystem, or control system does not perform the specified or required function.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service, including, but not limited to, fire, flooding, or collision with another vessel.

(4) Any occurrence not meeting the above criteria, but which creates the serious possibility of an oil spill or an occurrence which may result in an oil spill.

(d) For the purposes of this section, a barge shall be considered disabled if any of the following occur:

(1) The towing mechanism becomes disabled.

(2) The tugboat towing the barge becomes disabled through occurrences defined in subdivision (c).

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.21. Vessel traffic service and monitoring systems; funding; restrictions on vessels with noncomplying equipment

(a) The administrator shall attempt to negotiate an agreement with the Coast Guard by December 31, 1991, for a vessel traffic service system to protect the harbors of the state. The administrator may include in the agreement provisions for vessel traffic monitoring and communications systems for areas of the coast outside of harbors or negotiate a separate agreement. Any such separate agreement shall be negotiated by December 31, 1993. The purpose of the vessel traffic service and the vessel traffic monitoring and communications systems shall be to aid navigation by providing satellite tracking, radar, or other information regarding ship locations and traffic to prevent collisions and groundings.

(b) If the administrator cannot negotiate an agreement on VTS systems pursuant to subdivision (a) by December 31, 1991, the administrator shall, in consultation with the Coast Guard, develop a plan for implementing vessel traffic service systems pursuant to subdivision (a) for the harbors of Los Angeles/Long Beach, the harbors of San Francisco, San Pablo and Suisun Bays, and the Santa Barbara Channel, and any other areas where establishing a vessel traffic service system or vessel monitoring and communications system is recommended by the Coast Guard. The plan shall provide for the regions described in this subdivision, and any other system and regions recommended by the Coast Guard, or recommended by the administrator and approved by the Coast Guard. The plan shall be completed by December 31, 1992. Only systems which will be operated by the Coast Guard shall be included in the plan. The system shall be installed and in operation by December 31, 1993. The plan shall be amended to reflect changes in Coast Guard recommendations, operations, and

Additions or changes indicated by underline; deletions by asterisks * * *

changes in the agreements specified in subdivision (a). If the administrator cannot comply with this deadline, he or she shall report to the Legislature on the reasons. The plan shall, to the extent allowable given federal requirements, provide for the best achievable protection.

(c) The administrator shall attempt to provide funding for a VTS and vessel monitoring and communications system through voluntary funding by the maritime industry. If agreement on voluntary funding has not been reached by July 1, 1992, the administrator shall establish a revenue system that reflects the commercial maritime activity of each of the respective harbors or areas for which there is a VTS or vessel monitoring and communications system. Using this revenue system, the administrator shall fund the VTS system and vessel monitoring and communications system. The moneys collected pursuant to this subdivision shall be deposited in the Vessel Safety Account, which is hereby created in the Oil Spill Prevention and Administration Fund. Moneys in the Vessel Safety Account are continuously appropriated solely to carry out the purposes of this section. Other than the fees imposed by this subdivision, no funds from the Oil Spill Prevention and Administration Fund may be used to pay for VTS or vessel tracking monitoring and communication systems. The administrator shall adopt regulations to implement this subdivision. The administrator may adopt regulations prohibiting barges and tankers from accepting or unloading oil at marine terminals if a barge or tanker is not in compliance with required vessel traffic service and vessel traffic monitoring and communications system equipment.

(d) All other vessel traffic service and vessel traffic monitoring and communications systems deemed necessary by the administrator, but not approved by the Coast Guard, shall not be included in the plan until receiving specific approval by the Legislature.

(e) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(f) It is the intent of the Legislature that VTS systems and vessel traffic monitoring and communications systems be completed and operated by the Coast Guard.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes
1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code

§ 8574.1. ...

§ 8670.22. Federal double hull requirements; docking of noncomplying vessels

Any vessel that is not in compliance with the time schedules and requirements relating to double hulls set forth in the federal Oil Pollution Prevention, Response, Liability and Compensation Act of 1990 shall be prohibited from docking, loading, or unloading at any marine terminal in the state. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes
1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code

§ 8574.1. ...

§ 8670.23. Harbor safety committees; members; qualifications; harbor safety plans

(a) The administrator shall create harbor safety committees for the harbors of San Diego; Los Angeles/Long Beach; Port Hueneme; San Francisco, San Pablo, and Suisun Bays; and Humboldt Bay by July 1, 1991.

(b) The administrator shall appoint to each harbor safety committee for a term of three years all of the following members:

(1) A designee of each of the port authorities within the harbor, except that the harbor safety committee for the harbor of San Francisco, San Pablo, and Suisun Bays shall have four designees.

(2) A representative of tanker operators, except that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall have two representatives.

(3) A representative of the pilots organizations within the harbor.

(4) A representative of dry cargo vessel operators, except that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall have two representatives.

Additions or changes indicated by underline; deletions by asterisks * * *

(5) A representative of commerce

(6) A representative of a recognized protection of marine resource

(7) A representative of the California Committee for San Francisco, and representative of the San Francisco

(8) A representative from a

(9) A representative of the California Navy to the extent each consents

(10) A representative of tugboats operating either tankers or dry cargo harbors of San Francisco, San Pablo, and one representative of bargeboats operating either tankers or dry cargo

Any members appointed from the above shall have navigational expertise. An individual meets any of the following

(A) Has held or is presently holding

(B) Has held or is presently holding responsibilities.

(C) Has held or is presently holding

(D) Has held or is currently holding the docking of vessels in and around

The administrator shall appoint the ship specified in this subdivision for actual and necessary expenses.

(c) Each harbor safety committee shall develop a harbor safety plan, encompassing the operation of tankers, barges, and harbor safety plan, encompassing the section, "vessels" means vessel

(d) The administrator shall adopt with the port authorities of the regulations and guidelines shall be of the recommendations of the administrator shall give his or her concerning tug escorts as contain regulations and guidelines relating harbors of San Francisco, San Pablo, of paragraph (1). The regulations following:

(1) A recommendation determine of sufficient size, horsepower, and The harbor safety committee for its highest priority to the adoption interim recommendations prior to shall be guided by the recommendations and guidelines pursuant administrator adopts regulations which he or she shall do so only a regulations which would require Francisco, San Pablo, and Suisun committee for San Francisco, hearing, adopt findings, based protection and is consistent with

(2) A review and evaluation of

(A) Anchorage designations and

(B) Communications systems.

Additions or changes

- (5) A representative of commercial fishing or pleasure boat operators.
- (6) A representative of a recognized nonprofit environmental organization that has as a purpose the protection of marine resources.
- (7) A representative of the California Coastal Commission, except that for the Harbor Safety Committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall appoint a representative of the San Francisco Bay Conservation and Development Commission.
- (8) A representative from a recognized labor organization involved with operations of vessels.
- (9) A representative of the Captain of the Port, the Coast Guard, the Corps of Engineers, and the Navy to the extent each consents to participate on the committee.
- (10) A representative of tug or barge operators, who is not also engaged in the business of operating either tankers or dry cargo vessels, except that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall have one representative of tug operators and one representative of barge operators, neither of whom shall also be engaged in the business of operating either tankers or dry cargo vessels.

Any members appointed from the categories listed in paragraphs (1), (2), (3), (4), (8), and (10) shall have navigational expertise. An individual is considered to have navigational expertise if the individual meets any of the following conditions:

- (A) Has held or is presently holding a Coast Guard Merchant Marine Deck Officer's license.
- (B) Has held or is presently holding a position on a commercial vessel that includes navigational responsibilities.
- (C) Has held or is presently holding a shoreside position with direct operational control of vessels.
- (D) Has held or is currently holding a position having responsibilities for permitting or approving the docking of vessels in and around harbor facilities.

The administrator shall appoint a chairperson for each harbor safety committee from the membership specified in this subdivision. Each member of a harbor safety committee shall be reimbursed for actual and necessary expenses incurred in the performance of committee duties.

(c) Each harbor safety committee shall be responsible for planning for the safe navigation and operation of tankers, barges, and other vessels within each harbor. Each committee shall prepare a harbor safety plan, encompassing all vessel traffic within the harbor. For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(d) The administrator shall adopt regulations and guidelines for harbor safety plans in consultation with the port authorities of the harbors listed in subdivision (a), and other affected parties. The regulations and guidelines shall require that the plan contain a discussion of the competitive aspects of the recommendations of the harbor safety committee. With respect to harbor safety plans, the administrator shall give his or her highest priority to the development of regulations and guidelines concerning tug escorts as contained in paragraph (1) and shall expeditiously adopt that portion of the regulations and guidelines relating to tug escorts so that the harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays can expeditiously conform to the requirements of paragraph (1). The regulations and guidelines shall ensure that each plan includes all of the following:

(1) A recommendation determining when tankers must be accompanied by a tugboat or tugboats, of sufficient size, horsepower, and pull capability while entering, leaving, or navigating in the harbor. The harbor safety committee for the harbors of San Francisco, San Pablo, and Suisun Bays shall give its highest priority to the adoption of tug escort recommendations and shall immediately adopt interim recommendations prior to the completion of the entire harbor safety plan. The administrator shall be guided by the recommendation of the harbor safety committees when adopting the regulations and guidelines pursuant to Section 8670.17. If pursuant to Section 8670.17 the administrator adopts regulations which differ from the recommendations of the harbor safety committees, he or she shall do so only after a public hearing. Additionally, if the administrator adopts regulations which would require the use of tug escorts in fewer instances in the harbors of San Francisco, San Pablo, and Suisun Bays than that which had been recommended by the harbor safety committee for San Francisco, San Pablo, and Suisun Bays, the administrator shall, in a public hearing, adopt findings, based on substantial evidence, that the requirement provides adequate protection and is consistent with the purposes of this chapter.

(2) A review and evaluation of the adequacy of, and any changes needed in, all of the following:

- (A) Anchorage designations and sounding checks.
- (B) Communications systems.

Additions or changes indicated by underline; deletions by asterisks * * *

most effective manner which minimizes environmental damage and in accordance with the applicable contingency plans, unless ordered otherwise by the Coast Guard or the administrator.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.25.5. Report of discharged oil; notice to public agencies; exemptions

(a) Without regard to intent or negligence, any party responsible for the discharge or threatened discharge of oil in marine waters shall report the discharge to the Office of Emergency Services pursuant to Section 25507 of the Health and Safety Code.

(b) Immediately upon receiving notification pursuant to subdivision (a), the Office of Emergency Services shall notify the administrator, the designated representatives of the State Lands Commission, the California Coastal Commission, the regional water quality control board having jurisdiction over the location of the discharged oil, and any public agency which may be affected by the spill. If the spill has occurred within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the Office of Emergency Services shall notify that commission. Each public agency specified in this subdivision shall adopt an internal protocol over communications regarding the discharge of oil and file the internal protocol with the Office of Emergency Services.

(c) The telephone number of the Office of Emergency Services shall be posted at every terminal, at the area of control of every marine facility, and on the bridge of every tanker in marine waters.

(d) This section does not apply to discharges, or potential discharges, of less than one barrel (42 gallons) of oil unless a more restrictive reporting standard is adopted in the state oil spill contingency plan prepared pursuant to Section 8574.1.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.26. Notification by responding agency

Any local or state agency responding to a spill of oil shall notify the Office of Emergency Services, if notification as required under Section 8670.25, Section 13272 of the Water Code, or any other notification procedure adopted in the state oil spill contingency plan has not occurred.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.27. Response and cleanup of spill; refusal to comply with cleanup order and plan

(a) All parties responsible or potentially responsible for the discharged oil, the tanker, barge, or marine facility from which the oil was discharged, all of their agents and employees, the operators of all vessels docked at a marine facility which is a source of a discharge, and all state and local agencies shall carry out response and cleanup operations in accordance with applicable contingency plans, unless directed otherwise by the administrator or the Coast Guard. Except as provided in subdivision (b), the responsible party, potentially responsible parties, their agents and employees, the operators of all vessels docked at a marine facility which is the source of the discharge, and all state and local agencies shall carry out whatever direction is given by the administrator in connection with the response, containment, and cleanup of the spill, if the directions are not in direct conflict with the directions of the Coast Guard.

(b) If a responsible party or potentially responsible party reasonably, and in good faith, believes that the directions or orders given by the administrator pursuant to subdivision (a) will substantially

Additions or changes indicated by underline; deletions by asterisks * * *

endanger the public safety or the environment, the party may refuse to act in compliance with the orders or directions of the administrator. The responsible party or potentially responsible party shall state, at the time of the refusal, the reasons why the party refuses to follow the orders or directions of the administrator. The responsible party or potentially responsible party shall give the administrator written notice of the reasons for the refusal within 48 hours of refusing to follow the orders or directions of the administrator. In any civil or criminal proceeding commenced pursuant to this section, the burden of proof shall be on the responsible party or potentially responsible party to demonstrate, by clear and convincing evidence, why the refusal to follow the orders or directions of the administrator was justified under the circumstances.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 5. CONTINGENCY PLANNING

Section

8670.28. Oil spill contingency plans; regulations and guidelines governing adequacy; minimum requirements.

8670.28.5. Level of readiness.

8670.29. Interim marine facility oil spill contingency plans; required elements.

8670.30. Interim vessel contingency plans; required elements.

8670.30.5. Review of interim plans.

8670.31. Vessel or marine facility oil spill contingency plans; review; resubmissions.

8670.33. Vessels without approved contingency plans; entrance into state marine waters.

8670.34. Emergency entrance into state marine waters; application of article.

8670.35. Business and area plans; review of oil spill contingency plan elements.

8670.36. Review of contingency plans; notice to state agencies; comments.

8670.37. Improvement of plans or responses; studies.

8670.37.5. Animal rescue and rehabilitation stations.

Article 5 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.28. Oil spill contingency plans; regulations and guidelines governing adequacy; minimum requirements

(a) The administrator, taking into consideration the marine facility or vessel contingency plan requirements of the national and state contingency plans, the State Lands Commission, the State Fire Marshal, and the California Coastal Commission shall adopt and implement regulations and guidelines governing the adequacy of oil spill contingency plans to be prepared and implemented under this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee, and the Oil Spill Technical Advisory Committee, and shall be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources. The regulations and guidelines shall permit the development, application, and use of blanket contingency plans for similar vessels, pipelines, terminals, and facilities within a single company or organization, and across companies and organizations. The regulations and guidelines shall, at a minimum, ensure all of the following:

- (1) All areas of the marine waters of the state are at all times protected by prevention, response, containment, and cleanup equipment and operations. For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.
- (2) Standards set for response, containment, and cleanup equipment and operations are maintained and regularly improved to protect the resources of the state.

(3) All appropriate personnel employed by operators required to have a contingency plan receives training in oil spill response and cleanup equipment usage and operations.

(4) Each contingency plan for a vessel or marine facility demonstrates that the marine facility or vessel has plans in place, including appropriate financial or contractual arrangements for all

Additions or changes indicated by underline; deletions by asterisks * * *

necessary equipment and services for each case oil spill scenario for each

(5) Each contingency plan describes the possibility of an oil spill occurring, protection measures shall include identification of those measures (Section 8750) of the Public Resources Code.

(6) Each contingency plan includes equipment, and the time taken

(7) Each marine facility contemplates the operation of the facility equipment, failure, and external studies, the facility shall conduct assumes pessimistic water and

(8) Each contingency plan includes discharge of oil, or discharge

(9) Each marine facility identifies recreational and environmental oil spill scenario.

(10) Standards for determining

(11) Each contingency plan

(b) The regulations and guidelines submitted contingency plans

(c) The regulations shall specify maximum time that will be allowed entities, the amounts of dispersants be approved. Upon the site and necessary to prepare engaged in lightering operations

(d) The administrator shall by December 31, 1991.

(e) The regulations adopted of Administrative Law. Subsequent from Office of Administrative Law (Added by Stats.1990, c. 1248)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Statutory and Statutory Notes under § 8574.1.

§ 8670.28.5. Level of readiness

An operator shall maintain applicable contingency plans.

(Added by Stats.1990, c. 1248)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Statutory and Statutory Notes under § 8574.1.

§ 8670.29. Interim marine

(a) Every operator of a marine facility oil spill contingency adequately undertake emergency

Additions or changes

necessary equipment and services, for the response, containment, and cleanup of a reasonable worst case oil spill scenario for each part of the coast the plan addresses.

(5) Each contingency plan demonstrates that all protection measures are being taken to reduce the possibility of an oil spill occurring as a result of the operation of the marine facility or vessel. The protection measures shall include, but not be limited to, response to disabled tankers and an identification of those measures taken to comply with requirements of Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(6) Each contingency plan identifies the types of equipment that can be used, the location of the equipment, and the time taken to deliver the equipment.

(7) Each marine facility conducts a hazard and operability study to identify the hazards associated with the operation of the facility, including the use of the facility by vessels, due to operating error, equipment failure, and external events. For the hazards identified in the hazard and operability studies, the facility shall conduct an offsite consequence analysis which, for the most likely hazards, assumes pessimistic water and air dispersion and other adverse environmental conditions.

(8) Each contingency plan contains a list of contacts to call in the event of a drill, threatened discharge of oil, or discharge of oil.

(9) Each marine facility identifies in its contingency plan the measures to be taken to protect the recreational and environmentally sensitive areas that would be threatened by a reasonable worst case oil spill scenario.

(10) Standards for determining a worst case oil spill.

(11) Each contingency plan includes a timetable for implementing the plan.

(b) The regulations and guidelines shall also include provisions for public review and comment on submitted contingency plans prior to approval.

(c) The regulations shall specifically address the types of equipment that will be necessary, the maximum time that will be allowed for deployment, the maximum distance to cooperating response entities, the amounts of dispersant, and the maximum time required for application, should the use of dispersants be approved. Upon a determination by the administrator that booming is appropriate at the site and necessary to provide best achievable protection, regulations shall require that vessels engaged in lightering operations be boomed prior to the commencement of operations.

(d) The administrator shall ensure the rules, regulations, and guidelines are in effect not later than December 31, 1991.

(e) The regulations adopted pursuant to subdivision (d) shall be exempt from review by the Office of Administrative Law. Subsequent amendments and changes to the regulations shall not be exempt from Office of Administrative Law review.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.28.5. Level of readiness

An operator shall maintain a level of readiness that will allow effective implementation of the applicable contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.29. Interim marine facility oil spill contingency plans; required elements

(a) Every operator of a marine facility in the state shall, by July 31, 1991, prepare an interim marine facility oil spill contingency plan to assure that the marine facility will promptly and adequately undertake emergency response and removal action in case of an oil spill. The marine

Additions or changes indicated by underline; deletions by asterisks * * *

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facility contingency plan shall be effective upon approval by a qualified person and the facility management, as required in paragraph (1). The plans shall be upgraded to be consistent with the state oil spill contingency plan and not in conflict with the National Contingency Plan pursuant to subdivision (c). The interim marine facility contingency plan shall meet all of the following requirements:

(1) Be a written document, specifically approved by a qualified person and the highest level of marine facility management. For the purposes of this section, "qualified person" means a person with specific training, knowledge, and experience in the area of oil spill prevention and response.

(2) Establish a specific chain of command and specify the overall responsibilities of employees, and supervisorial, contract, and volunteer personnel.

(3) Detail the procedures for reporting oil spills to local, state, and federal agencies.

(4) Detail the lines of communications between a marine facility and on-scene commanders, response teams, and local, state, and federal emergency and disaster responders.

(5) Provide for planning, including coordination with employees, outside contractors and volunteers, and local, state, and federal agencies.

(6) Provide for site security and control.

(7) Provide for emergency medical treatment and first aid.

(8) Provide for safety training as required by state and federal safety laws for all personnel likely to be engaged in oil spill response.

(9) Detail site layout, topography, and ocean and other marine characteristics such as tide, prevailing sea condition, weather for different seasons, and locations of sensitive ecological areas requiring special protection.

(10) Detail the specific procedures for responding and undertaking removal actions for different size oil spills, up to and including the reasonable worst case oil spill which may occur at the marine facility, including the procedures for undertaking special protection of environmentally and ecologically sensitive areas. The plan shall encompass provisions for vessels which are expected to be in the operational control of the marine facility for loading or unloading.

(11) Provide for at least annual rehearsal, training, and drills on all of the elements of the plan, with emphasis on the specific procedures for responding and undertaking removal action.

(b) The contingency plan shall be reviewed periodically and upgraded as necessary to meet new or changing marine facility conditions.

(c) The plan shall be available to response personnel as well as relevant state and federal agencies for inspection and review.

(d) The administrator may request that the operator of a marine facility submit the interim contingency plan for review of the administrator pursuant to Section 8670.30.5. The interim contingency plan shall be submitted within five working days of a request from the administrator. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.30. Interim vessel contingency plans; required elements

(a) On or before July 31, 1991, every vessel operating in the marine waters of the state shall submit to the administrator an interim vessel contingency plan which shall include at least all of the following elements:

(1) Proof of financial responsibility as provided by federal law. The State of California is to be named as an additional named insured on applicable insurance policies.

(2) A demonstration that the vessel operator is capable of providing timely and effective spill response and removal, directly, or through membership in, or contract with, private or public cooperatives or other organizations, consistent with the state contingency plan and not in conflict with the National Contingency Plan.

(3) Details of the procedures for reporting oil spills to state and federal agencies.

Additions or changes indicated by underline; deletions by asterisks * * *

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(b) Vessels entering the state a administrator at least three days of this section.

(c) For the purposes of this section commercial vessel traffic to the l (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.30.5. Review of Interim

(a) The administrator may review the plan to determine whether it complies with the requirements of this section.

(b) If the administrator finds the plan returned to the operator with written suggestions for modifications or alternative days which responds to the deficiencies, the administrator shall approve the plan. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.31. Vessel or marine facility

(a) In accordance with the requirements of Section 8670.28, the administrator shall implement an oil spill contingency plan for similar vessels.

(b) Each contingency plan shall be submitted within 90 days after the effective date of this section. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

(c) The administrator shall review the plan to determine whether it complies with the requirements of this section.

(d) Each contingency plan submitted to the administrator. The administrator shall not deem approved until all portions shall be subject to the provisions of this section.

(e) If the administrator finds the plan deficient, the administrator shall, if appropriate, return the plan to the operator with written suggestions for modifications or alternative days which responds to the deficiencies. The administrator shall not deem approved until all portions shall be subject to the provisions of this section, except that the resubmission shall be treated as a new submission pursuant to subdivision (d). Failure by the administrator to be a violation of this section.

(a) If the operator of a tanker or barge enters the state, the operator shall submit to the administrator a contingency plan approved by the administrator.

(f) Prior to considering a contingency plan, the administrator shall inspect the plan and require a drill of the vessel.

Additions or changes indicated by underline; deletions by asterisks * * *

(b) Vessels entering the state after July 31, 1991, shall submit their vessel contingency plan to the administrator at least three days prior to entering state waters, and shall meet all the requirements of this section.

(c) For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.30.5. Review of interim plans

(a) The administrator may review each submitted interim marine facility or vessel contingency plan to determine whether it complies with Sections 8670.29 and 8670.30.

(b) If the administrator finds the submitted contingency plan is deficient, the plan shall be returned to the operator with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives. The operator shall submit a new or modified plan within 90 days which responds to the deficiencies identified by the administrator.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.31. Vessel or marine facility oil spill contingency plans; review; resubmissions

(a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, each operator of a vessel or a marine facility shall prepare and implement an oil spill contingency plan applicable to the vessel or marine facility. Tanker contingency plans for similar vessels and marine facilities may be used for this purpose.

(b) Each contingency plan required under this section shall be submitted to the administrator within 90 days after the effective date of the rules, regulations, and policies required under Section 8670.28.

(c) The administrator shall review each submitted contingency plan to determine whether it complies with the administrator's rules, policies, and regulations.

(d) Each contingency plan submitted shall be approved or disapproved within 180 days after receipt by the administrator. The administrator may approve or disapprove portions of a plan. A plan is not deemed approved until all portions are approved pursuant to this section. The disapproved portion shall be subject to the procedures contained in subdivision (e).

(e) If the administrator finds the submitted contingency plan is inadequate under the rules, policies, and regulations of the administrator, the plan shall be returned to the submitter with written reasons why the plan was found inadequate and, if practicable, suggested modifications or alternatives, if appropriate. The submitter shall submit a new or modified plan within 90 days after the earlier plan was returned, responding to the findings and incorporating any suggested modifications. Such a resubmittal shall be treated as a new submittal and processed according to the provisions of this section, except that the resubmitted plan shall be deemed approved unless the administrator acts pursuant to subdivision (d). Failure to gain approval after the second submission may be determined by the administrator to be a violation of this chapter.

(a) If the operator of a tanker or barge for which a contingency plan has not been approved desires to have the tanker or barge enter marine waters of the state, the administrator may give approval by telephone or facsimile machine for the entry of the tanker or barge into marine waters under an approved contingency plan applicable to a terminal or tanker, if all of the following are met:

(f) Prior to considering a contingency plan for approval, the administrator may make an onsite inspection and require a drill of any contingency plan that is submitted.

Additions or changes indicated by underline; deletions by asterisks * * *

(g) After the plan has been approved, it shall be resubmitted at least once every two years from the date of the initial approval. The administrator may require earlier or more frequent resubmission, if warranted. Circumstances that would require an earlier resubmission include, but are not limited to, changes in regulations, new oil spill response technologies, deficiencies identified in the evaluation conducted pursuant to Section 8670.19, or a need for a different oil spill response because of increased need to protect endangered species habitat. The administrator may deny approval of the resubmitted plan if it is no longer considered adequate according to the adopted rules, regulations, and policies of the administrator at the time of resubmission.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.33. Vessels without approved contingency plans; entrance into state marine waters

(1) The terminal or tanker is the destination of the tanker or barge.

(2) The operator of the terminal or the tanker provides the administrator advance written assurance that the operator assumes all responsibility for the operations of the tanker or barge while it is in marine waters traveling to or from the terminal. The assurance may be delivered by hand or by mail or may be sent by facsimile machine, followed by delivery of the original.

(3) The approved terminal or tanker contingency plan includes all conditions the administrator requires for the operations of tankers or barges traveling to and from the terminal.

(4) The tanker or barge and its operations meet all requirements of the contingency plan for the tanker or terminal that is the destination of the tanker or barge.

(5) The tanker or barge without an approved contingency plan has not entered marine waters more than once in the 12-month period preceding the request made under this section.

(b) At all times that a tanker or barge is in marine waters pursuant to subdivision (a), its operators and all their agents and employees shall operate the vessel in accordance with the applicable operations manual or, if there is an oil spill, in accordance with the directions of the administrator and the applicable contingency plan.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.34. Emergency entrance into state marine waters; application of article

This article shall not apply to any tanker or barge which enters marine waters of the state because of imminent danger to the lives of crew members or if entering marine waters of the state will substantially aid in preventing an oil spill or other harm to public safety or the environment, if the operators of the tanker or barge comply with all of the following:

(a) The operators or crew of the tanker or barge complies at all times with all orders and directions given by the administrator, or his or her designee, while the tanker or barge is in marine waters of the state, unless the orders or directions are contradicted by orders or directions of the Coast Guard.

(b) Except for fuel, oil may be transferred to or from the tanker or barge while it is in marine waters of the state only if permission is obtained for the transfer of oil and one of the following conditions is met:

(1) The transfer is necessary for the safety of the crew.

(2) The transfer is necessary to prevent harm to public safety or the environment.

(3) A contingency plan is approved or made applicable to the tanker or barge under subdivision (c).

(c) The tanker or barge shall leave marine waters of the state as soon as it may do so without imminent risk of harm to the crew, public safety, or the environment, unless a contingency plan is approved or made applicable to it under this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.35. Business and area plan

(a) Prior to January 1, 1992, contingency plan, shall draft guide contingency plan elements of area Code. In developing the guideline Spill Committee and the Oil Spill

(b) Any local government with for a grant to complete, update,

(c) Each contingency plan element training fire and police personnel

(d) Each contingency plan element government's local coastal program the state oil spill contingency plan

(e) The administrator shall revert to this section. If, upon review is inadequate, the administrator shall and extent of the inadequacies, a agency shall submit a new or modified findings and incorporating

(f) The administrator shall review program of grants for completion continued. If the administrator shall the administrator shall request the Administration Fund for the purpose

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.36. Review of contingency

(a) The administrator shall, within 30 days after receiving a request pursuant to Section 8670.28 or 8670.29, submit the request to the Technical Advisory Committee. The San Francisco Coastal Commission shall submit comments to the administrator consider all comments in approving

(b) The State Interagency Oil Administration Fund for reason in public hearings on marine and

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.35. Business and area plans; review of oil spill contingency plan elements

(a) Prior to January 1, 1992, the administrator, taking into consideration the state oil spill contingency plan, shall draft guidelines, standards, and formats regarding the adequacy of oil spill contingency plan elements of area plans required pursuant to Section 25503 of the Health and Safety Code. In developing the guidelines, the administrator shall consult with the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee.

(b) Any local government with jurisdiction over or directly adjacent to marine waters may apply for a grant to complete, update, or revise an oil spill contingency plan element.

(c) Each contingency plan element established under this section shall include provisions for training fire and police personnel in oil spill response and cleanup equipment use and operations.

(d) Each contingency plan element prepared under this section shall be consistent with the local government's local coastal program as certified under Section 30500 of the Public Resources Code, the state oil spill contingency plan, and the National Contingency Plan.

(e) The administrator shall review and approve each contingency plan element established pursuant to this section. If, upon review, the administrator determines that the contingency plan element is inadequate, the administrator shall return it to the agency which prepared it, specifying the nature and extent of the inadequacies, and, if practicable, suggesting modifications. The local government agency shall submit a new or modified plan within 90 days after the plan was returned, responding to the findings and incorporating any suggested modifications.

(f) The administrator shall review the preparedness of local governments to determine whether a program of grants for completing oil spill contingency plan elements is desirable and should be continued. If the administrator determines that local government preparedness should be improved, the administrator shall request the Legislature to appropriate funds from the Oil Spill Prevention and Administration Fund for the purposes of this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.36. Review of contingency plans; notice to state agencies; comments

(a) The administrator shall, within five working days after receipt of a contingency plan prepared pursuant to Section 8670.28 or 8670.35, send a notice that the plan is available for review to the state agencies that comprise the membership of the State Interagency Oil Spill Committee and the Oil Spill Technical Advisory Committee. The administrator shall send a copy of the plan within two working days after receiving a request from either committee. The State Lands Commission and the California Coastal Commission shall review the plans for facilities or local governments within the coastal zone. The San Francisco Bay Conservation and Development Commission shall review the plans for marine facilities or local governments within the area described in Sections 66610 and 29101 of the Public Resources Code. Any state agency or committee that comments shall submit its comments to the administrator within 60 days of receipt of the plan. The administrator shall consider all comments in approving or disapproving the plan.

(b) The State Interagency Oil Spill Committee may be reimbursed from the Oil Spill Prevention and Administration Fund for reasonable costs incurred in reviewing contingency plans and participating in public hearings on marine and vessel facility contingency plans.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

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Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37. Improvement of plans or responses; studies

(a) The administrator, with the assistance of the State Lands Commission and the California Coastal Commission, shall carry out studies with regard to improvements to contingency planning and oil spill response equipment and operations.

(b) To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, and other appropriate state and international entities, and duplication with the efforts of other entities shall be minimized.

(c) The administrator, the State Lands Commission, and the California Coastal Commission may be reimbursed for all costs incurred in carrying out the studies under this section from the Oil Spill Prevention and Administration Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.5. Animal rescue and rehabilitation stations

(a) The administrator shall establish rescue and rehabilitation stations for sea birds, sea otters, and other marine mammals. These facilities shall be established and maintained in a state of preparedness to provide the best achievable treatment for marine mammals and birds affected by an oil spill in marine waters.

(b) The administrator shall consult with the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the California Coastal Commission in the design, planning, construction, and operation of the rehabilitation stations. All proposals for the rehabilitation stations shall be presented before a public hearing prior to the construction and operation of any rehabilitation station, and, upon completion of the coastal protection element of the state oil spill contingency plan, shall be consistent with the coastal protection element.

(c) (1) Five hundred thousand dollars (\$500,000) of federal escrow funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act, as amended (43 U.S.C. Sec. 1337(g)), shall, upon approval in the 1991-92 Budget Act, be appropriated or allocated for appropriation, as the case may be, from the Federal Trust Fund, each year for three years for the purposes described in subdivision (a).

(2) Additional funding shall be provided for the purposes described in subdivision (a) through the budget act process upon the request by the administrator.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 5.5. FINANCIAL RESPONSIBILITY

Section

8670.37.51. Certificate of financial responsibility.

8670.37.52. Effect of certificate.

8670.37.53. Qualifications for certificate of financial responsibility.

8670.37.54. Evidence of financial responsibility.

8670.37.55. Multiple vessels or facilities; coverage by certificate.

8670.37.56. Suspension of certificate.

8670.37.57. Term of certificate.

Additions or changes indicated by underline; deletions by asterisks * * *

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Article 5.5 was added by

§ 8670.37.51. Certificate of financial responsibility

(a) No vessel may be used to transport oil if the owner has not obtained a certificate of financial responsibility for the oil contained in the vessel.

(b) No operator of a marine terminal shall operate the terminal unless the operator has obtained a certificate of financial responsibility issued by the administrator for the oil contained in both vessels.

(c) No operator of a marine terminal is or is intended to be used for the operation of the marine terminal shall be issued by the administrator for the oil contained in both vessels.

(d) No person may operate a marine terminal unless the person has first obtained a certificate of financial responsibility.

(e) No vessel may be used to transport oil more than 72 hours prior to the transport, the

(1) A copy of a certificate of financial responsibility shall be submitted during transport.

(2) A copy of a written statement of financial responsibility shall be submitted to the vessel.

(f) This section shall become operative on January 1, 1991. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.52. Effect of certificate

The certificate of financial responsibility holding the certificate is the primary evidence for determining liability for oil spill damages. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.53. Qualifications for certificate

In order to receive a certificate of financial responsibility, the applicant must demonstrate the financial ability to pay for oil spill damages which may arise during the term of the certificate.

(a) For a certificate for a vessel, the administrator shall increase to one billion dollars (\$1,000,000,000) the standard of financial responsibility for oil that can be carried by the vessel. The administrator shall not set a standard for oil that can be carried by the vessel if the vessel is used to transport oil into marine waters.

Additions or changes

Article 5.5 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.37.51. Certificate of financial responsibility

Operative Jan. 1, 1992

(a) No vessel may be used to transport oil across marine waters of the state unless the operator has obtained a certificate of financial responsibility issued by the administrator for the vessel or for the owner of all of the oil contained in and to be transferred to or from the vessel.

(b) No operator of a marine terminal within the state may transfer oil to or from a vessel unless the operator of the marine terminal has received a copy of a certificate of financial responsibility issued by the administrator for the operator of the vessel or for all of the oil contained in and to be transferred to or from the vessel.

(c) No operator of a marine terminal within the state may transfer oil to or from any vessel which is or is intended to be used for transporting oil as cargo to or from a second vessel unless the operator of the marine terminal has first received a copy of a certificate of financial responsibility issued by the administrator for the person responsible for both the first and second vessels or all of the oil contained in both vessels, as well as all the oil to be transferred to or from both vessels.

(d) No person may operate a marine facility unless the owner or operator of the marine facility has first obtained a certificate of financial responsibility from the administrator for the marine facility.

(e) No vessel may be used to transport oil across marine waters of the state unless, at least 24 hours prior to the transport, the administrator has received both of the following:

(1) A copy of a certificate applicable to the vessel or to all of the oil in the vessel at all times during transport.

(2) A copy of a written statement by the holder of the applicable certificate authorizing its application to the vessel.

(f) This section shall become operative on January 1, 1992.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990, operative Jan. 1, 1992.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.52. Effect of certificate

The certificate of financial responsibility shall be conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, marine facility, or oil for purposes of determining liability pursuant to this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.53. Qualifications for certificate of financial responsibility

In order to receive a certificate of financial responsibility, an applicant shall demonstrate to the satisfaction of the administrator all of the following:

(a) For a certificate for a vessel or for all of the oil contained within a vessel, the applicant shall demonstrate the financial ability to pay at least five hundred million dollars (\$500,000,000) for any damages which may arise during the term of the certificate. The level of required financial responsibility shall increase to seven hundred fifty million dollars (\$750,000,000) on July 1, 1995, and to one billion dollars (\$1,000,000,000) on January 1, 2000. The administrator may establish a lower standard of financial responsibility for small barges. The standard shall be based on the quantity of oil that can be carried by the barge and the risk of spill from the barge into marine waters. The administrator shall not set a standard that is less than the expected costs from a reasonable worst case oil spill into marine waters.

Additions or changes indicated by underline; deletions by asterisks * * *

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(b) To receive a certificate for a marine facility, the applicant shall demonstrate the financial ability to pay for any damages which might arise during a reasonable worst case oil spill into marine waters that results from the operations of the marine facility. The administrator shall consider such criteria as the amount of oil that could be spilled into marine waters from the facility, the cost of cleaning up spilled oil, the frequency of operations at the facility, and the damages that could result from a spill.

The administrator may issue a certificate for a marine facility upon a lesser showing of financial resources for a period of not longer than three years if the administrator finds all of the following:

- (1) The marine facility was operating on January 1, 1991.
- (2) Continued operation is necessary to finance abandonment of the marine facility.
- (3) The financial resources the operator is able to demonstrate are reasonably sufficient to cover the damages from foreseeable spills from the facility.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.54. Evidence of financial responsibility

(a) For the purposes of this chapter, financial responsibility may be demonstrated by evidence of insurance, surety bond, letter of credit, qualifications as a self-insurer, or any combination thereof or other evidence of financial responsibility.

(b) In adopting requirements under this article, the administrator may specify policy or other contractual terms, conditions, or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility, in order to effectuate the purposes of this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.55. Multiple vessels or facilities; coverage by certificate

(a) An owner or operator of more than one vessel or marine facility shall only be required to obtain one certificate of financial responsibility for all of the vessels and marine facilities owned or operated.

(b) If a person holds a certificate for more than one vessel or marine facility and a spill or spills occurs from one or more of those vessels or marine facilities for which the owner or operator may be liable for damages in an amount exceeding 5 percent of the financial resources reflected by the certificate, as determined by the administrator, the certificate shall immediately be considered inapplicable to any vessel or marine facility not associated with the spill. In that event, the owner or operator shall demonstrate to the satisfaction of the administrator the amount of financial ability required pursuant to this article, as well as the financial ability to pay all damages which arise or have arisen from the spill or spills which have occurred.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.56. Suspension of certificate

If the administrator determines that, because of a spill outside of the state or some other action or potential liability, the holder of a certificate may not have the financial resources to pay damages for

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

the spill or liability and have res: the administrator may suspend: (Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.57. Term of certificate

No certificate of financial responsibility may issue certificates for shall (Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 6. THE OIL

Section

- 8670.38. Fund created.
- 8670.39. Administration of fund.
- 8670.40. Fees; purposes.

Article 6 was added by Stats.1990, c. 1248 (S

§ 8670.38. Fund created

(a) The Oil Spill Prevention and Response Fund is available money in the fund is available for the purposes of this chapter, Article 6 (commencing with Section 8750).

(b) For the purposes of this article, the Fund.

(Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.39. Administration of fund

(a) The administrator shall administer the fund.

(b) The administrator may determine the amount of money necessary to carry out and administer the fund. (Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.40. Fees; purposes

(a) The administrator shall collect fees sufficient to carry out the purposes of this article.

Additions or changes

the spill or liability and have resources remaining available to meet the requirements of this chapter, the administrator may suspend the certificate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.37.57. Term of certificate

No certificate of financial responsibility shall have a term greater than two years. The administrator may issue certificates for shorter periods where appropriate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 6. THE OIL SPILL PREVENTION AND ADMINISTRATION FUND

Section

8670.38. Fund created.

8670.39. Administration of fund.

8670.40. Fees; purposes.

Article 6 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.38. Fund created

(a) The Oil Spill Prevention and Administration Fund is hereby created in the State Treasury. The money in the fund is available for appropriation by the Legislature and may only be used for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(b) For the purposes of this article, "fund" refers to the Oil Spill Prevention and Administration Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.39. Administration of fund

(a) The administrator shall administer the fund in accordance with this article.

(b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.40. Fees; purposes

(a) The administrator shall collect annually a fee in an amount determined by the administrator to be sufficient to carry out the purposes set forth in subdivision (e), and a reasonable reserve for

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contingencies. The amount of the annual assessment shall not exceed four cents (\$0.04) per barrel of oil.

(b) Every marine terminal operator shall pay the oil spill prevention and administration fee for each barrel of oil delivered through the operator's marine terminal. In addition, every operator of a pipeline shall pay the oil spill prevention and administration fee for each barrel of oil transported into the state by means of pipeline operating across, under, or through the marine waters of this state. The fee for a pipeline shall not be based on the number of times an individual pipeline enters and exits marine waters nor shall the fee be collected when oil is transported within a facility, such as between a tank facility and refinery or electric generating plant. The administrator shall develop regulations governing the fees to be assessed on pipelines.

The amount of the fee to be paid by an operator shall be established by the administrator commensurate with the risks and potential sizes of spills from the operator's marine facility.

(c) The moneys collected pursuant to subdivision (a) shall be deposited into the fund.

(d) The State Board of Equalization shall collect the fee and adopt regulations for implementing the fee collection program.

(e) The fee described in this section shall be collected solely for all of the following purposes:

(1) To implement oil spill prevention programs through rules, regulations, leasing policies, guidelines, and inspections and to implement research into prevention and control technology.

(2) To carry out studies which may lead to improved oil spill prevention and response.

(3) To finance environmental and economic studies relating to the effects of oil spills.

(4) To reimburse the member agencies of the State Interagency Oil Spill Committee for costs arising from implementation of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) To implement, install, and maintain emergency programs, equipment, and facilities to respond to, contain, and clean up oil spills and to ensure that those operations will be carried out as intended.

(f) The moneys deposited in the fund shall not be used for responding to an oil spill.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

ARTICLE 7. OIL SPILL RESPONSE TRUST FUND

Section

8670.46. Fund created.

8670.47. Administration of fund.

8670.47.5. Deposits into fund.

8670.48. Fees; purposes; legislative intent to have sufficient funds.

8670.48.5. Increase of fees; grounds.

8670.49. Expenditure of fund money; conditions.

8670.50. Purpose of expenditures.

8670.51. Payment of unenforced judgments; subrogation of claims; claims against fund.

8670.51.1. Designation of responsible party; notice; payment of claims; federal payments.

8670.52. Emergency loans.

8670.53. Recovery of expenditures from fund.

Article 7 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.46. Fund created

(a) The Oil Spill Response Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340, the money in the fund is continuously appropriated to the administrator for expenditure, without regard to fiscal years, for the purposes of this article.

(b) For the purposes of this article, "fund" refers to the Oil Spill Response Trust Fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248 (S.B.2040), and Statutory Notes under § 8574.1.

§ 8670.47. Administration of fund

(a) The administrator shall administer the fund.

(b) The administrator may develop regulations as may be necessary to carry out and enforce the purposes of the fund.

(c) The administrator is responsible for the fund to carry out the purposes of the fund. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248 (S.B.2040), and Statutory Notes under § 8574.1.

§ 8670.47.5. Deposits into fund

The following moneys shall be deposited into the fund:

(a) The fee required pursuant to Section 8670.48.

(b) Any federal funds received by the state from an oil spill in marine waters.

(c) Any funds borrowed pursuant to Section 8670.52.

(d) Any interest earned on the fund.

(e) Any cost recoveries from the fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.1990, c. 1248 (S.B.2040), and Statutory Notes under § 8574.1.

§ 8670.48. Fees; purposes; legislative intent

(a) Every marine terminal operator shall pay a fee of twenty-five cents (\$0.25) for each barrel of oil transported by means of vessel from a point of origin to a point of destination.

(b) Every operator of a pipeline shall pay a fee of twenty-five cents (\$0.25) for each barrel of oil transported.

(c) (1) Every operator of a refinery shall pay a fee of twenty-five cents (\$0.25) for each barrel of oil transported.

(2) The fee shall not be imposed on crude oil produced by an independent producer. The State Board of Equalization shall not assess the fee on a company that company was reorganized under the requirements of this section.

(3) For purposes of this chapter, a company that produces crude oil within this state and possesses or owns no retail gas station is not an independent producer.

(d) Every marine terminal operator shall pay a fee of twenty-five cents (\$0.25) for each barrel of oil transported by marine vessel or barge to a destination.

Additions or changes

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.47. Administration of fund

- (a) The administrator shall administer the fund in accordance with this article.
 - (b) The administrator may develop and adopt any rules, regulations, and guidelines determined to be necessary to carry out and enforce this article.
 - (c) The administrator is responsible for ensuring that there are adequate moneys available in the fund to carry out the purposes of this chapter.
- (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.47.5. Deposits into fund

The following moneys shall be deposited into the fund:

- (a) The fee required pursuant to Section 8670.48.
 - (b) Any federal funds received to pay for response, containment, abatement, and rehabilitation costs from an oil spill in marine waters.
 - (c) Any funds borrowed pursuant to Article 7.5 (commencing with Section 8670.53.1).
 - (d) Any interest earned on the moneys in the fund.
 - (e) Any cost recoveries from responsible parties pursuant to Section 8670.53.
- (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.48. Fees; purposes; legislative intent to have sufficient funds

- (a) Every marine terminal operator shall pay an oil spill response fee in the amount of twenty-five cents (\$0.25) for each barrel of petroleum products received at a marine terminal within this state by means of vessel from a point of origin outside this state.
- (b) Every operator of a pipeline shall also pay an oil spill response fee in the amount of twenty-five cents (\$0.25) for each barrel of petroleum products transported into the state by means of pipeline.
- (c) (1) Every operator of a refinery shall pay an oil spill response fee in the amount of twenty-five cents (\$0.25) for each barrel of crude oil received at a refinery within this state.
- (2) The fee shall not be imposed by a refiner or person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The State Board of Equalization shall not identify a company as exempt from the fee requirements of this section if that company was reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.
- (3) For purposes of this chapter, "independent crude oil producer" means any person or entity producing crude oil within this state who performs no refining of crude oil into product, and who possesses or owns no retail gasoline marketing facilities.
- (d) Every marine terminal operator shall pay an oil spill response fee in the amount of twenty-five cents (\$0.25) for each barrel of crude oil that is transported from within this state by means of marine vessel or barge to a destination outside this state.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.48

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(e) Every operator of a pipeline shall pay an oil spill response fee in the amount of twenty-five cents (\$0.25) for each barrel of crude oil transported out of the state.

(f) The fees required pursuant to this section shall be collected during any period that the fund contains less than the designated amount, as defined in subdivision (e), or during which the state has borrowed money pursuant to Article 7.5 (commencing with Section 8670.53.1).

(g) For purposes of this chapter, "designated amount" means an amount equal to one hundred million dollars (\$100,000,000), adjusted for inflation after January 1, 1991, according to an index which the administrator may reasonably choose, subject to the following:

(1) Fifty million dollars (\$50,000,000) shall be retained in the fund as cash, adjusted for inflation.

(2) Fifty million dollars (\$50,000,000) shall be immediately accessible in the fund in the form of financial security obtained by the Treasurer as authorized by subdivision (o).

(h) During any period in which the total amount in the fund exceeds the designated amount, and the moneys in the fund are not needed to pay for costs resulting from the spill of oil into marine waters or to retire any debt that the state assumed pursuant to Section 8670.53.15, the administrator shall provide refunds to each operator in proportion to the amount each operator paid into the fund.

(i) The State Board of Equalization shall collect the fee and adopt regulations implementing the fee collection program. All fees collected pursuant to this section shall be deposited in the Oil Spill Response Trust Fund.

(j) The fee described in this section shall be collected solely for any of the following purposes:

(1) To provide funds to cover promptly the costs of response, containment, and cleanup of oil spills into marine waters, including damage assessment costs, and wildlife rehabilitation as provided in Section 8670.61.5.

(2) To provide emergency loans and to cover response and cleanup costs and other damages suffered by the state or other persons or entities from oil spills into marine waters which cannot otherwise be compensated by responsible parties or the federal government.

(3) To pay claims for damages pursuant to Section 8670.51.

(4) To pay claims for damages, except for damages described in paragraph (7) of subdivision (g) of Section 8670.56.5, pursuant to Section 8670.51.1.

(5) To pay for the arrangement of fifty million dollars (\$50,000,000) of financial security as authorized by subdivision (o).

(6) To pay indemnity and related costs and expenses as authorized by Section 8670.56.6.

(k) The interest that the state earns on the funds deposited into the Oil Spill Response Trust Fund shall be deposited in the fund and shall be used to maintain the fund at the designated amount. If the fund exceeds the designated amount, the interest not needed to bring the fund to the designated amount shall be deposited into the Oil Spill Prevention and Administration Fund.

(l) The Legislature finds and declares that effective response to oil spills requires that the state have available sufficient funds in a response fund. The Legislature further finds and declares that maintenance of that fund is of utmost importance to the state and that the moneys in the fund shall be used solely for the purposes specified in subdivision (j).

(m) For the purposes of this section, "marine waters" includes the waterways used for waterborne commercial vessel traffic to the Port of Stockton and the Port of Sacramento.

(n) It is the intent of the Legislature, in enacting this section, that the fee shall not be imposed by a refiner or person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer.

(o) The Treasurer shall purchase fifty million dollars (\$50,000,000) of financial security which may be drawn upon immediately by the administrator upon making the determinations as required by Section 8670.49. The financial security shall be in a form as described in subdivision (a) of Section 8670.53.3.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Section 24 of Stats.1990, c. 1248, provides:

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

sion determines, pursuant to subdivision (c) of the Public Resources Code as proposed mental Protection Act, that federal or the required level of protection and determ

§ 8670.48.5. Increase of fees; gr

(a) The administrator may raise (\$1) per barrel, provided that the fee (\$0.25) not more frequently than once upon making the following finding:

(1) A calamitous event, or se

(2) The Governor has requested the fee is insufficient for the Treasury demands on the fund for authorized response, containment, and clean emergency loans, and damage cla

(3) Failure to raise the fee in expenditures.

(b) At least 30 days prior to the inform the Legislature of his or her by statute.

(c) No single, incremental increase the director before the expiration. The administrator may establish a

(d) It is the intent of the Legislature those set forth in this chapter.

(Added by Stats.1990, c. 1248 (S.B.

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, Historical and Statutory Notes under C § 8574.1.

§ 8670.49. Expenditure of fund

(a) Except to pay for the arrangement subdivision (j) and subdivision (o) Oil Spill Response Trust Fund on determinations have been made:

(1) Except as authorized by Section party is unable or unwilling to pay resulting from the spilling of oil effort to have the party responsible oil that may be required by law, for or bird life in the affected water attempting to access the response

(2) Federal oil spill funds are n

(b) Upon making the determination ly make whatever payments are n including any wildlife rehabilitati 8670.51 and 8670.51.1.

(Added by Stats.1990, c. 1248 (S.B.

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, Historical and Statutory Notes under C § 8574.1.

Additions or changes

sion determines, pursuant to subdivision (d) of Section 6232 of the Public Resources Code as proposed by 'The Environmental Protection Act,' that federal or state law provides the required level of protection and determines not to collect

the fee required pursuant to Section 6232 of the Public Resources Code as proposed by 'The Environmental Protection Act,' the fee imposed pursuant to Section 8670.48 shall become operative."

§ 8670.48.5. Increase of fees; grounds

(a) The administrator may raise the fees specified in Section 8670.48 to a maximum of one dollar (\$1) per barrel, provided that the fee may only be raised by maximum increments of twenty-five cents (\$0.25) not more frequently than once every three months. The administrator shall raise the fee only upon making the following findings:

(1) A calamitous event, or series of events, has severely depleted or exhausted the fund.

(2) The Governor has requested the Treasurer to borrow the funds and the Treasurer finds that the fee is insufficient for the Treasurer to borrow enough money to meet the reasonably anticipated demands on the fund for authorized expenditures, including providing funds for the costs of response, containment, and cleanup of oil spills, damage assessment costs, wildlife rehabilitation, emergency loans, and damage claims.

(3) Failure to raise the fee in the amount proposed will result in unmet, or unpaid, authorized expenditures.

(b) At least 30 days prior to the day the increased fee shall be effective, the administrator shall inform the Legislature of his or her intent to raise the fee. The Legislature may reject the increase by statute.

(c) No single, incremental increase shall be effective for more than one year, unless renewed by the director before the expiration of the year upon making the findings required in subdivision (a). The administrator may establish an expiration date of less than one year.

(d) It is the intent of the Legislature that the fund shall not be used for any purpose other than those set forth in this chapter.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.49. Expenditure of fund money; conditions

(a) Except to pay for the arrangement of the financial security as authorized by paragraph (5) of subdivision (j) and subdivision (o) of Section 8670.48, the administrator may expend money from the Oil Spill Response Trust Fund only after oil has been spilled into marine waters and the following determinations have been made:

(1) Except as authorized by Section 8670.51.1, a responsible party does not exist or the responsible party is unable or unwilling to provide adequate and timely cleanup and to pay for the damages resulting from the spilling of oil into marine waters. The administrator shall make a reasonable effort to have the party responsible remove or agree to pay for any actions resulting from the spill of oil that may be required by law, provided that the efforts are not detrimental to fish, plant, animal, or bird life in the affected waters. The reasonable effort of the administrator shall include attempting to access the responsible parties' insurance or other proof of financial responsibility.

(2) Federal oil spill funds are not available or will not be available in an adequate period of time.

(b) Upon making the determinations specified in subdivision (a), the administrator shall immediately make whatever payments are necessary for responding to, containing, or cleaning up the oil spill, including any wildlife rehabilitation required by law and payment of claims pursuant to Sections 8670.51 and 8670.51.1.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.50

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§ 8670.50. Purpose of expenditures

(a) Moneys from the fund may only be used to cover the costs incurred by the state and local governments and agencies for all of the following:

(1) Respond promptly to, contain, and clean up the discharge, provided those efforts are pursuant to the state and local oil spill contingency plans established under this chapter, the marine response element of the state oil spill contingency plan established under Article 3.5 (commencing with Section 8574.1) of Chapter 7, or those efforts are undertaken at the direction of the administrator.

(2) Meet the requirements of Section 8670.61.5, relating to wildlife rehabilitation.

(b) In the event of an oil spill, the administrator shall make whatever expenditures are necessary and appropriate from the fund to cover the costs described in subdivision (a).

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.51. Payment of unenforced judgments; subrogation of claims; claims against fund

(a) When a person has obtained a final judgment for damages resulting from an oil spill in marine waters, but is unable, within one year after the date of its entry, to enforce the judgment pursuant to Title 9 (commencing with Section 680.010) of the Code of Civil Procedure, or is unable to obtain satisfaction of the judgment from the federal government within 90 additional days, the administrator shall pay an amount not to exceed those amounts which cannot be recovered from a responsible party and the fund shall be subrogated to all rights, claims, and causes of action that the claimant has under this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7, Section 8670.61.5, and Division 7.8 (commencing with Section 8760) of the Public Resources Code.

(b) Any person may apply to the fund for compensation for damages and losses suffered as a result of an oil spill in marine waters under any of the following conditions:

- (1) The responsible party or parties cannot be ascertained.
- (2) A responsible party is not liable for noneconomic damages caused by another.
- (3) Subdivision (i) of Section 8670.56.6 is applicable to the claim.

(c) The administrator shall not approve any claim in an amount which exceeds the amount to which the person would otherwise be entitled pursuant to Section 8670.56.5, and shall pay claims from the fund which are approved pursuant to this section.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.51.1. Designation of responsible party; notice; payment of claims; federal payments

(a) (1) Upon learning of an oil spill, the administrator shall immediately designate the responsible party, who, if that designation is not challenged, shall immediately, widely advertise the manner in which it shall accept and pay claims.

(2) If the designation of the administrator is challenged, the administrator shall immediately, widely advertise the manner in which he or she shall accept, process, and pay claims. If the administrator's designation is later upheld, all costs incurred by the administrator, including interest and appropriate penalties, shall be assessed against the responsible party.

(3) If the administrator is unable to designate a responsible party, the administrator shall immediately, widely advertise the manner in which the administrator shall accept, process, and pay claims. In the absence of a designated responsible party the claimant shall submit his or her claim to the federal fund. If there is no response within 60 days, the claimant may submit his or her claim to the fund.

Additions or changes indicated by underline; deletions by asterisks * * *

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(b) Claims under the amount of fund. The claimant shall not be fund. It is the intent of the Legislature and the administrator shall continue professionally as possible. Claim party to the fund before payment.

(c) Claims in excess of the amount designated responsible party for days, the claimant shall submit response is not forthcoming from submit the claim to the fund. If shall be submitted directly to the

(d) (1) If the federal fund comes an offer, the claimant may, nevertheless evidence developed during the federal claim. The administrator shall

(2) Any federal payment shall

(3) The claimant shall assign of claims from the fund shall recall law to the fund.

(e) The administrator may levy of Civil Procedure.

(f) Entities that pay into the claims less than one million dollars standing for claims between on The entities shall have standing

(g) An advisory committee shall be created and the administrator payments are made from the fund

(h) Claims for reimbursement

(i) Dissatisfied claimants may regarding a claim.

(j) The administrator shall decide shall be submitted, processed, handled

(k) Punitive damages shall not

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.52. Emergency loans

In the event of an oil spill in marine waters, in any one day, may make an emergency security individual or entity may suffer loans. However, loans under sufficient amounts are available and entities in responding to an and guidelines determined to be other items the administrator

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

(b) Claims under the amount of fifty thousand dollars (\$50,000) may be submitted directly to the fund. The claimant shall not be required to make a demand on the responsible party or any federal fund. It is the intent of the Legislature that these claims be processed as expeditiously as possible, and the administrator shall contract with professional adjusters to handle the claims as fairly and professionally as possible. Claimants shall assign or subrogate all rights against the responsible party to the fund before payment and release.

(c) Claims in excess of the amount of fifty thousand dollars (\$50,000) shall first be presented to the designated responsible party for payment. If a satisfactory response is not forthcoming within 60 days, the claimant shall submit his or her claim to the appropriate federal fund. If a satisfactory response is not forthcoming from the appropriate federal fund within 60 days, the claimant may submit the claim to the fund. If the administrator does not designate a responsible party, the claim shall be submitted directly to the appropriate federal fund.

(d) (1) If the federal fund completely rejects a claim, makes a partial offer, or the claimant rejects an offer, the claimant may, nevertheless, apply for reimbursement from the fund, provided that all evidence developed during the federal fund process shall be admissible during the processing of the claim. The administrator shall specifically consider any federal offer.

(2) Any federal payment shall be offset against any payment from the fund.

(3) The claimant shall assign or subrogate all rights under federal law to the fund. Any payment of claims from the fund shall require assignment or subrogation of the claimant's rights under state law to the fund.

(e) The administrator may levy fines against frivolous claims pursuant to Section 128.5 of the Code of Civil Procedure.

(f) Entities that pay into the fund shall have no standing to contest claims against the fund for claims less than one million dollars (\$1,000,000). The entities may petition the director to have standing for claims between one million dollars (\$1,000,000) and three million dollars (\$3,000,000). The entities shall have standing for claims in excess of three million dollars (\$3,000,000).

(g) An advisory committee comprised of entities that pay into the fund and other interested parties shall be created and the administrator shall consult with the committee on the manner in which payments are made from the fund.

(h) Claims for reimbursement from the fund within three years from the date the loss occurred.

(i) Dissatisfied claimants may sue the fund within six months of the administrator's final decision regarding a claim.

(j) The administrator shall develop and adopt regulations regarding the manner in which claims shall be submitted, processed, heard, and challenged.

(k) Punitive damages shall not be paid from the fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.52. Emergency loans

In the event of an oil spill where more than 10,000 gallons of oil have been discharged in the marine waters, in any one day from a single event, the administrator, after a noticed public hearing, may make an emergency secured loan to any private individual or entity who demonstrates that the individual or entity may suffer substantial financial hardship as a result of the oil spill without such loans. However, loans under this section may be made only if the administrator determines that sufficient amounts are available in the fund to cover costs incurred by state and local governments and entities in responding to and cleaning up the spill. The administrator shall adopt any regulations and guidelines determined to be necessary regarding repayment terms, interest, security, and any other items the administrator deems appropriate.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.52

GOVERNMENT CODE

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53. Recovery of expenditures from fund

The Attorney General, in consultation with the administrator, shall undertake actions to recover all costs to the funds from any responsible party for an oil spill into marine waters for which expenditures are made from the fund. The recovery of costs pursuant to this section shall not foreclose the Attorney General from any other actions allowed by law.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 7.5. BORROWING AUTHORITY

Section

- 8670.53.15. Costs exceeding fund amount or financial ability of responsible party; borrowed funds; liability of responsible party.
- 8670.53.2. Manner of expenditure and repayment of borrowed funds; liens created.
- 8670.53.3. Financial arrangements to obtain needed moneys; request from governor.
- 8670.53.4. Resolution to authorize financial arrangement.
- 8670.53.5. Liability of state for financial arrangements.
- 8670.53.7. Bonds; legal investment for specified purposes.
- 8670.53.8. Appropriations from fund.
- 8670.53.9. Legal opinions regarding arrangements.
- 8670.53.95. Approval of contracts; application of Public Contract Code.

Article 7.5 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.53.15. Costs exceeding fund amount or financial ability of responsible party; borrowed funds; liability of responsible party

(a) At any time an oil spill into marine waters has occurred, and the administrator determines that the costs of responding to the spill are likely to exceed (1) the designated amount in the Oil Spill Response Trust Fund, and (2) the responsible party's financial ability, or there is no responsible party, the administrator shall notify the Governor. Upon notification, the Governor shall request that the federal government pay the costs for response, containment, cleanup, wildlife rehabilitation, and payment of damages. If federal funds are not available within five days, the Governor shall make a written request to the Treasurer to borrow and deposit in the fund the amount by which the estimated response costs exceed the designated amount.

(b) The Governor, the Controller, the Treasurer, and the administrator shall immediately take whatever action is necessary and appropriate to ensure that the state has the ability to borrow the maximum additional amount necessary to carry out this chapter.

(c) The party responsible for the spill shall be liable to the state for all money borrowed under this section, whether or not all or a portion of the borrowed money has been repaid through the oil spill response fee or by federal funds.

(d) No funds available pursuant to this article may be expended for any activities which result in a net environmental enhancement. It is the intent of the Legislature that borrowed funds be expended solely for oil spill response, containment, cleanup, wildlife rehabilitation, and damages resulting from oil spills.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.2. Manner of expenditure

Money borrowed pursuant to this section shall constitute a first lien on the assets of the fund. So long as any borrowings are outstanding, the resolution of issues shall constitute a first lien and borrowings unless the treasurer constitute a junior lien, which shall be effective, binding, and enforceable without need of any physical delivery. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.3. Financial arrangements

(a) To provide funds to pay for moneys in the fund, the Treasurer needed to pay those cleanup costs the fund. The financial arrangements shall be as follows:

- (1) Establishment of a line of credit with one or more financial institutions, hereinafter referred to as "lenders," to have ready access to the fund.
- (2) Sale of bonds or notes of the state for cleanup purposes, to repay any previously issued bonds.

(3) Borrowing from the Poole Fund.

(4) Any other financial arrangement approved by the Governor.

(b) The Treasurer may enter into any of the foregoing arrangements at any time, or from time to time, on a basis to be advisable.

(c) The Governor shall deliver to the Treasurer the amount of funds needed each month for the fund, each month for service or other expenses in the fund. The Governor may submit multiple requests for funds for different oil spills. The Governor may draw on a standby arrangement for funds not exceeding the amount of the line of credit.

(d) The Treasurer shall ensure that the fund has sufficient funds by the time the Governor makes a written request for funds by the Treasurer. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.2. Manner of expenditure and repayment of borrowed funds; liens created

Money borrowed pursuant to this article shall be expended and repaid pursuant to Section 8670.48. So long as any borrowings are outstanding, fees and any other moneys in the fund, to the extent provided in the resolution of issuance, are pledged to the repayment of the borrowings. The pledge shall constitute a first lien and security interest, ratably with all other prior or subsequent borrowings unless the treasurer provides in a resolution of issuance, that any borrowing shall constitute a junior lien, which shall immediately attach on the fees deposited in the fund, and shall be effective, binding, and enforceable against the state and any other person asserting rights therein without need of any physical delivery, recordation, filing, or other action.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.3. Financial arrangements to obtain needed moneys; request from governor

(a) To provide funds to pay for costs of an oil spill, as set forth in Section 8670.48, in excess of moneys in the fund, the Treasurer shall make necessary financial arrangements to obtain the moneys needed to pay those cleanup costs, subject to reimbursement or repayment from future deposits into the fund. The financial arrangements may take the following forms, or any combination thereof:

(1) Establishment of a line of credit, letter of credit, or other standby arrangement with one or more financial institutions, hereafter referred to as a "standby arrangement," that will permit the Treasurer to have ready access to moneys for the purposes of this article.

(2) Sale of bonds or notes of the state, hereafter referred to as "bonds," to provide funds for oil cleanup purposes, to repay any prior drawings on a standby arrangement, or to refund or extend any previously issued bonds.

(3) Borrowing from the Pooled Money Investment Account.

(4) Any other financial arrangement the Treasurer determines to be appropriate and cost-effective.

(b) The Treasurer may enter into any financial arrangement authorized in subdivision (a) at any time, or from time to time, on a negotiated or competitive bid basis, as the Treasurer shall determine to be advisable.

(c) The Governor shall deliver a written request to the Treasurer to obtain moneys pursuant to this article to pay for oil spill cleanup costs. The written request shall, to the extent feasible, state: (1) the amount of funds needed each month over the period covered by the request, and (2) the estimated income to the fund each month from all sources which will be available to pay or retire any debt service or other expenses in connection with obligations issued pursuant to this article. The Governor may submit multiple requests to the Treasurer with respect to the same oil spill, or with respect to different oil spills. On receipt of a written request pursuant to this section, the Treasurer may draw on a standby arrangement, use any other financial arrangement, or issue bonds, to provide funds not exceeding the amounts requested.

(d) The Treasurer shall ensure that funds will be available within five working days of receipt of a written request for funds by the Governor.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Additions or changes indicated by underline; deletions by asterisks * * *

§ 8670.53.4

GOVERNMENT CODE

§ 8670.53.4. Resolution to authorize financial arrangement

(a) The entry into or issuance of any financial arrangement or bonds pursuant to this article shall be authorized by a resolution adopted by the Treasurer. Any financial arrangement or bonds (1) may be negotiable, (2) may be payable to order or to bearer, (3) may be in any denomination, (4) shall be payable not later than 20 years from the date of issuance, (5) may bear interest at a fixed or variable rate or rates to be determined as provided by the resolution and payable as provided therein, (6) may be payable on a fixed date or upon demand of the holder, (7) may be made subject to the prepayment or redemption at the option of the state or at the option of the holder, and (8) may contain such other terms as the Treasurer may determine to be necessary and appropriate.

(b) In connection with any financial arrangement or issuance of bonds pursuant to this article, the Treasurer may obtain or arrange for any insurance, letter of credit, or other credit enhancement or liquidity arrangements as the Treasurer determines to be appropriate and cost-effective, and may enter into any contracts or agreements for those arrangements not inconsistent with this article.

(c) Proceeds of the sale of any bonds or drawings on any standby arrangement or other financial arrangements shall be deposited in the fund.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.5. Liability of state for financial arrangements

Any financial arrangements made or issued pursuant to this article, and the repayment of any such obligations, shall be special obligations of the state secured solely by the moneys in the fund. No financial arrangement issued or made pursuant to this article shall be or become a lien, charge, or liability against the State of California or against its property or funds except to the extent of the pledges expressly made by this article. Every financial arrangement made pursuant to this article shall contain a recital stating that neither the payment of the principal thereof, nor any interest thereon, constitutes a debt, liability, or general obligation of the State of California other than as provided in this article, and neither the faith and credit nor the taxing power of the state are pledged to the repayment thereof.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.7. Bonds; legal investment for specified purposes

(a) All bonds issued pursuant to this article are legal investment for any of the following:

(1) Trust funds.

(2) Funds of insurers.

(3) Funds of savings and loan associations.

(4) Funds of banks.

(5) Funds of state agencies, cities, counties, cities and counties, or other public agencies or corporations.

(b) Bonds issued under this article are acceptable and may be used as security for the faithful performance of any public or private trust or obligation or for the performance of any act, including the use of notes by banks as security for deposits of funds of the state and its agencies, or of any city, county, city and county, or other public agency or corporation.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks * * *

GOVERNMENT CODE

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.8. Appropriations from

There is hereby appropriated for necessary to pay (1) principal, (2) in fees, or charges in connection with issued pursuant to this article, or (3) federal tax-exempt status of any administrator and the Controller premiums, and fees on obligations available for expenditure for other purposes. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.9. Legal opinions regarding

Whenever the Treasurer determines that it is necessary to obtain any standby arrangement after sale, a legal opinion as to the validity of the arrangement shall be obtained from attorneys other than the Attorney General. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.95. Approval of contracts

Section 10295 and Sections 10300 to 10305, inclusive, of the Government Code are amended to read: "The following agreements entered into by the state shall be authorized by this article:

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 8. C

Section

8670.54. Committee established to study and make recommendations for the funding of the state's public safety agencies.

Article 8 was added

§ 8670.54. Committee established

(a) The Oil Spill Technical Assistance Fund established to provide public information and technical assistance in the event of an oil spill.

Additions or changes

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.8. Appropriations from fund

There is hereby appropriated from the fund, without regard to fiscal year, any and all moneys necessary to pay (1) principal, (2) interest, (3) premium, if any, (4) commitment, standby or availability fees, or charges in connection with any standby arrangement, other financial arrangement, or bonds issued pursuant to this article, or (5) any rebate penalty, or other payment necessary to maintain the federal tax-exempt status of any bonds or financial arrangement. The Treasurer shall advise the administrator and the Controller of amounts annually necessary to pay the principal, interest, premiums, and fees on obligations issued pursuant to this article, and those amounts shall not be available for expenditure for other purposes.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.9. Legal opinions regarding arrangements

Whenever the Treasurer determines that it will increase the marketability or reduce the cost of obtaining any standby arrangement, other arrangement, or of issuing any bonds to obtain, prior to or after sale, a legal opinion as to the validity of the standby arrangement, other arrangement, or bonds from attorneys other than the Attorney General, the Treasurer may obtain such a legal opinion.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.53.95. Approval of contracts; application of Public Contract Code

Section 10295 and Sections 10336 to 10382, inclusive, of the Public Contract Code shall not apply to agreements entered into by the Treasurer in connection with obtaining the financial arrangements authorized by this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 8. OIL SPILL TECHNICAL ADVISORY COMMITTEE

Section

- 8670.54. Committee established; appointment of members.
- 8670.55. Recommendations from committee; studies.
- 8670.56. Funding.

Article 8 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.54. Committee established; appointment of members

(a) The Oil Spill Technical Advisory Committee, hereafter in this article the committee, is hereby established to provide public input and independent judgment of the actions of the administrator and

Additions or changes indicated by underline; deletions by asterisks * * *

the State Interagency Oil Spill Committee. The committee shall consist of nine members, of whom five shall be appointed by the Governor, two by the Speaker of the Assembly, and two by the Senate Rules Committee. The appointments shall be made in the following manner:

(1) The Speaker of the Assembly, and Senate Rules Committee shall each appoint members who shall be representatives of the public.

(2) The Governor shall appoint a member who has a demonstrable knowledge of marine transportation.

(3) The Speaker of the Assembly and the Senate Rules Committee shall each appoint a member who has demonstrable knowledge of environmental protection and the study of ecosystems.

(4) The Governor shall appoint a member who has served as a local government elected official or who has worked for a local government.

(5) The Governor shall appoint a member who has experience in oil spill response and prevention programs.

(6) The Governor shall appoint a member who has been employed in the petroleum industry.

(7) The Governor shall appoint a member who has worked in state government.

(b) The committee shall meet as often as required, but at least twice per year. Members shall be paid one hundred dollars (\$100) per day for each meeting and all necessary travel expenses at state per diem rates.

(c) The administrator and any personnel the administrator determines to be appropriate shall serve as staff to the committee.

(d) A chairman and vice chairman shall be elected by a majority vote of the committee.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.55. Recommendations from committee; studies

(a) The committee shall provide recommendations to the administrator, the State Lands Commission, the California Coastal Commission, and the State Interagency Oil Spill Committee, on any provision of this chapter including the promulgation of all rules, regulations, guidelines, and policies.

(b) The committee may, at its own discretion, study, comment on, or evaluate, any aspect of oil spill prevention and response in the state. To the greatest extent possible, these studies shall be coordinated with studies being done by the federal government, the administrator, the State Lands Commission, the State Water Resources Control Board, and other appropriate state and international entities. Duplication with the efforts of other entities shall be minimized.

(c) The committee may attend any drills called pursuant to Section 8601.10 or any oil spills, if practicable.

(d) The committee shall report annually to the Governor and the Legislature on their evaluation of oil spill response and preparedness programs within the state annually and may prepare and send any additional reports they determine to be appropriate to the Governor and the Legislature.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.56. Funding

The administrator may expend from the Oil Spill Prevention and Administration Fund any amounts necessary for the purposes of carrying out this article.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Additions or changes indicated by underline; deletions by asterisks *

Historic

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

Section

8670.56.5. Liability

8670.56.6. Immunity

Article 8

§ 8670.56.5. Liability

(a) Any responsibility without regard to caused by, the disaster or other a have been prevented

(b) A responsible following:

(1) Damages, or solely by any act of disaster or other a have been prevented

(2) Damages caused

(3) Damages caused agent or employee

(4) Natural seepage

(5) Discharge or

(6) Damages without federal permit.

The defenses provided comply with Section

(c) Upon motion court shall join to

(d) In determining consider the result other substances or substance which are producing the result for which the defense unavailability of substances within

(e) The court may necessary expert witness and attorneys' prosecuted the suit

(f) This section does by exploration, under law. However, damages loss or injury for principle of law. Section action brought under law.

(g) Damages for Addition

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

ARTICLE 8.5. DAMAGES

Section

8670.56.5. Liability of responsible party; actions; costs and attorneys' fees; recoverable damages.

8670.56.6. Immunity for actions taken in compliance with contingency plan; liability of responsible party; indemnification agreements.

Article 8.5 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.56.5. Liability of responsible party; actions; costs and attorneys' fees; recoverable damages

(a) Any responsible party, as defined in subdivision (n) of Section 8670.3, shall be absolutely liable without regard to fault for any damages incurred by any injured party which arise out of, or are caused by, the discharge or leaking of oil into or onto marine waters.

(b) A responsible person is not liable to an injured party under this section for any of the following:

(1) Damages, other than costs of removal incurred by the state or a local government, caused solely by any act of war, hostilities, civil war, or insurrection or by an unanticipated grave natural disaster or other act of God of an exceptional, inevitable, and irresistible character, which could not have been prevented or avoided by the exercise of due care or foresight.

(2) Damages caused solely by the negligence or intentional malfeasance of that injured party.

(3) Damages caused solely by the criminal act of a third party other than the defendant or an agent or employee of the defendant.

(4) Natural seepage not caused by a responsible party.

(5) Discharge or leaking of oil or natural gas from a private pleasure boat or vessel.

(6) Damages which arise out of, or are caused by, a discharge which is authorized by a state or federal permit.

The defenses provided in this subdivision shall not be available to a responsible person who fails to comply with Sections 8670.25, 8670.25.5, 8670.27, and 8670.62.

(c) Upon motion and sufficient showing by a party deemed to be responsible under this section, the court shall join to the action any other party who may be responsible under this section.

(d) In determining whether a party is a responsible party under this section, the court shall consider the results of any chemical or other scientific tests conducted to determine whether oil or other substances produced, discharged, or controlled by the defendant matches the oil or other substance which caused the damage to the injured party. The defendant shall have the burden of producing the results of tests of samples of the substance which caused the injury and of substances for which the defendant is responsible, unless it is not possible to conduct the tests because of unavailability of samples to test or because the substance is not one for which reliable tests have been developed. At the request of any party, any other party shall provide samples of oil or other substances within its possession or control for testing.

(e) The court may award reasonable costs of the suit, attorneys' fees, and the costs of any necessary expert witnesses to any prevailing plaintiff. The court may award reasonable costs of the suit and attorneys' fees to any prevailing defendant if the court finds that the plaintiff commenced or prosecuted the suit under this section in bad faith or solely for purposes of harassing the defendant.

(f) This section does not prohibit any person from bringing an action for damages caused by oil or by exploration, under any other provision or principle of law, including, but not limited to, common law. However, damages shall not be awarded pursuant to this section to an injured party for any loss or injury for which the party is or has been awarded damages under any other provision or principle of law. Subdivision (b) does not create any defense not otherwise available regarding any action brought under any other provision or principle of law, including, but not limited to, common law.

(g) Damages for which responsible parties are liable under this section include the following:

Additions or changes indicated by underline; deletions by asterisks * * *

ions other than those
enjoy the benefit

§ 8670.56.6. If

(a) (1) Except
including, but not
liable under this
expenses as a
assistance, or as
plan, or at the
spill or threaten

(2) The quality
is inconsistent
directions of the
implemented under

(3) Nothing is
against or any
for the tanker
responsible party
including damage
law.

(b) Nothing is
against or any
the tanker, term

(c) The respon

(1) Notwithst
strictly and join
8670.56.5 from
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of its oil spills,

(2) Remain s
other than a pe

(d) Nothing is
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(f) As used i
established for
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(g) Except for
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(i) In any sit
party is not lia
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with its terms,
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(j) (1) The ir
undertaken after
in place to ensu
marine waters
respond, contain
contracts, the a
who are willing
section, but, in
by this subdivi
shall apply to

Add

(1) All costs of response, containment, cleanup, removal, and treatment, including, but not limited to, monitoring and administration costs incurred pursuant to the state oil spill contingency plan or actions taken pursuant to directions by the administrator.

(2) Injury to, or economic losses resulting from destruction of or injury to, real or personal property, which shall be recoverable by any claimant who has an ownership or leasehold interest in property.

(3) Injury to, destruction of or loss of, natural resources, including, but not limited to, the reasonable costs of rehabilitating wildlife, habitat, and other resources and the reasonable costs of assessing that injury, destruction, or loss, in any action brought by the state, county, city, or district. Damages for the loss of natural resources may be determined by any reasonable method, including, but not limited to, determination according to the costs of restoring the lost resource.

(4) Loss of subsistence use of natural resources which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost.

(5) Loss of taxes, royalties, rents, or net profit shares caused by the injury, destruction, loss, or impairment of use of real property, personal property, or natural resources.

(6) Loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant who derives at least 25 percent of his or her earnings from the activities which utilize the property or natural resources, or, if those activities are seasonal in nature, 25 percent of his or her earnings during the applicable season.

(7) Loss of use and enjoyment of natural resources, public beaches, and other public resources or facilities, in any action brought by the state, a county, city, or district.

(h) Except as provided in Section 1431.2 of the Civil Code, liability under this section shall be joint and several. However, this section does not bar a cause of action that a responsible party has or would have, by reason of subrogation or otherwise, against any person.

(i) This section does not apply to claims for damages for personal injury or wrongful death, and does not limit the right of any person to bring an action for personal injury or wrongful death under any provision or principle of law.

(j) Any payments made by a responsible party to cover liabilities arising from a discharge of oil, whether under this division or any other provision of federal, state, or local law, shall not be charged against any royalties, rents, or net profits owed to the United States, the state, or any other public entity.

(k) Any action which a private or public individual or entity may have against a responsible party under this section may be brought directly by the individual or entity or by the state on behalf of the individual or entity. However, the state shall not pursue any action on behalf of a private individual or entity which requests the state not to pursue that action.

(l) For the purposes of this section, "vessels" means vessels as defined in Section 21 of the Harbors and Navigation Code.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

The Senate Daily Journal of Aug. 31, 1990 contains the following letter from Mike Kahl and David G. Boutté, PIRO Implementation, Inc., to Barry Keene, regarding S.B.2040 (Stats.1990, c. 1248):

"Dear Senator Keene: On August 31, 1990, just before the Senate passage of your SB 2040 it was noted that proposed amendment number 15 affecting Section 8670.56.6(b) contains an unintended change. Amendment number 15 would delete the words 'or the responsible person's agents, employees and subcontractors' (page 81 lines 15 and 16) from the August 30, 1990 draft of SB 2040. The purpose of this proposed amendment was to ensure that the responder immunity otherwise established by Section 8670.56.6 is not denied to spill cleanup responders simply by virtue of their having become 'agents, employees and sub-

contractors' of the spiller in their capacity as spill responders.

"Unfortunately, by simply deleting lines 15 and 16, amendment 15 would work to insulate from liability the spiller's other 'agents, employees and subcontractors', who are not themselves spill responders but who may have, in fact, contributed to the cause of the spill. This was not intended.

"To correct this, we agree that in the next legislative session, Section 8670.56.5(b) should be amended along the following lines:

"(1) Reinsert the words 'or the responsible person's agents, employees and subcontractors' in lines 16 and 17 of page 81, and,

"(2) Add the following language in Section 8670.56.5(b), line 16, page 81, after the words 'subcontractors' insert 'excluding persons immunized under subdivision (a) of Section 8670.56.6.'

"The purpose of this suggestion is to ensure that the responsible party and its employees, agents, and subcontractors

Additions or changes indicated by underline; deletions by asterisks * * *

tors other than those providing spill response services do not enjoy the benefit of this section's immunity provision."

§ 8670.56.6. Immunity for actions taken in compliance with contingency plan; liability of responsible party; indemnification agreements

(a) (1) Except as provided in subdivisions (b) and (d), and subject to subdivision (c), no person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, shall be liable under this chapter or the laws of the state to any person for costs, damages, or other claims or expenses as a result of actions taken or omitted in good faith in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(2) The qualified immunity under this section shall not apply to any oil spill response action which is inconsistent with the directions of the Coast Guard, the director, or, in the absence of overriding directions of the Coast Guard or the director, is inconsistent with applicable contingency plans implemented under this division.

(3) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any person or persons responsible for the spill, for the discharged oil, or for the tanker, barge, terminal, pipeline, or facility from which the oil was discharged. The responsible person or persons shall remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts, as otherwise provided by law.

(b) Nothing in this section shall, in any manner or respect, affect or impair any cause of action against or any liability of any party or parties responsible for the spill, for the discharged oil, or for the tanker, terminal, pipeline, or marine facility from which the oil was discharged.

(c) The responsible party or parties shall:

(1) Notwithstanding subdivision (b) or (h) of Section 8670.56.5, or any other provision of law, be strictly and jointly and severally liable for all damages arising pursuant to subdivision (g) of Section 8670.56.5 from the response efforts of its agents, employees, subcontractors, or an oil spill cooperative of which it is a member or with which it has a contract or other arrangement for cleanup of its oil spills, unless it would have a defense to the original spill.

(2) Remain strictly liable for any and all damages arising from the response efforts of a person other than a person specified in paragraph (1).

(d) Nothing in this section shall immunize a cooperative or any other person from liability for acts of gross negligence or willful misconduct in connection with the cleanup of a spill.

(e) This section shall not apply to any action for personal injury or wrongful death.

(f) As used in this section, a "cooperative" means an organization of private persons which is established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or threatened spills of oil.

(g) Except for the responsible party, membership in a cooperative shall not, in and of itself, be grounds for liability resulting from cleanup activities of the cooperative.

(h) For purposes of this section, there shall be a rebuttable presumption that an act or omission described in subdivision (a) was taken in good faith.

(i) In any situation in which immunity is granted pursuant to subdivision (a) and a responsible party is not liable, is not liable for noneconomic damages caused by another, or is partially or totally insolvent, the fund provided for in Article 7 (commencing with Section 8670.46) shall, in accordance with its terms, reimburse claims of any injured party for which a person who is granted immunity pursuant to this section would otherwise be liable.

(j) (1) The immunity granted by this section shall only apply to response efforts that are undertaken after the administrator certifies that contracts with qualified and responsible persons are in place to ensure an adequate and expeditious response to any foreseeable oil spill that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or lesser, immunity than that conferred by this section, but, in no event, a greater immunity. The administrator shall make the certification required by this subdivision on an annual basis. Upon certification, the immunity conferred by this section shall apply to all response efforts undertaken during the calendar year to which the certification

Additions or changes indicated by underline; deletions by asterisks * * *

applies. In the absence of the certification required by this subdivision, the immunity conferred by this section shall not attach to any response efforts undertaken by any person in marine waters.

(2) In addition to the authority to negotiate contracts described in (1) above, the administrator shall also be authorized to negotiate and enter into indemnification agreements with qualified and financially responsible persons to respond to oil spills that may occur in marine waters for which the responsible party (A) cannot be identified or (B) is unable or unwilling to respond, contain, and cleanup the oil spill in an adequate and timely manner.

(3) The administrator may indemnify response contractors for (A) all damages payable by means of settlement or judgment that arise from response efforts to which the immunity conferred by this section would otherwise apply, and (B) reasonably related legal costs and expenses incurred by the responder, provided that indemnification shall only apply to response efforts undertaken after the expiration of any immunity that may exist as the result of the contract negotiations authorized in this subdivision. In negotiating these contracts, the administrator shall, to the maximum extent practicable, procure the services of persons who are willing to respond to oil spills with no, or as little, right to indemnification as possible. All indemnification shall be paid by the administrator from the Oil Spill Response Trust Fund.

(k) (1) With regard to a person who is regularly engaged in the business of responding to oil spills, the immunity conferred by this section shall not apply to any response efforts by that person that occur later than 60 days after the first day the person's response efforts commence.

(2) Notwithstanding the limitation contained in paragraph (1), the administrator may, upon making all the following findings, extend the period of time, not to exceed 30 days, during which the immunity conferred by this section applies to response efforts:

(A) Due to inadequate or incomplete containment and stabilization, there exists a substantial probability that the size of the spill will significantly expand and (i) threaten previously uncontaminated marine or land resources, (ii) threaten already contaminated marine or land resources with substantial additional contamination, or (iii) otherwise endanger the public safety or welfare.

(B) The remaining work is of such a difficult or perilous nature that extension of the immunity is clearly in the public interest.

(C) No other qualified and financially responsible contractor is prepared and willing to complete the response effort in the absence of the immunity, or a lesser immunity, as negotiated by contract.

(3) The administrator shall provide five days' notice of his or her proposed decision to either extend, or not extend, the immunity conferred by this section. Interested parties shall be given an opportunity to present oral and written evidence at an informal hearing. In making his or her proposed decision, the administrator shall specifically seek and consider the advice of the relevant Coast Guard representative. The administrator's decision to not extend the immunity shall be announced at least 10 working days before the expiration of the immunity to provide persons an opportunity to terminate their response efforts as contemplated by paragraph (4).

(4) No person or their agents, subcontractors, or employees shall incur any liability under this chapter or any other provision of law solely as a result of that person's decision to terminate their response efforts because of the expiration of the immunity conferred by this section. A person's decision to terminate response efforts because of the expiration of the immunity conferred by this section shall not in any manner impair, curtail, limit, or otherwise affect the immunity conferred on the person with regard to the person's response efforts undertaken during the period of time the immunity applied to such response efforts.

(5) The immunity granted under this section shall attach, without the limitation contained in this subdivision, to the response efforts of persons who are not regularly engaged in the business of responding to oil spills. Persons who are not regularly engaged in the business of responding to oil spills includes, but is not limited to, (A) persons who are primarily dedicated to the preservation and rehabilitation of wildlife and (B) persons who derive their livelihood primarily from fishing.

(f) As used in this section, "response efforts" means rendering care, assistance, or advice in accordance with the National Contingency Plan, the state oil spill contingency plan, or at the direction of the administrator, onsite coordinator, or the Coast Guard in response to a spill or threatened spill of oil.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

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ARTICLE 9. ENFORCEMENT

- Section
8670.57. Injunctions.
8670.58. Civil actions.
8670.59. Venue.
8670.61. Cumulative remedies.
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8670.62. Cleanup and abatement orders; failure to comply; liability for costs; failure to identify responsible party.
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8670.67. Intentional or negligent acts; administrative civil penalties.
8670.67.5. Discharge of oil; civil liability.
8670.68. Complaint; service of complaint; hearings; appeal.
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8670.69. Private attorney general actions.
8670.69.4. Unauthorized activities; cease and desist orders.
8670.69.6. Review of order.

Article 9 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.57. Injunctions

(a) When the administrator determines that any person has engaged in, is engaged in, or threatens to engage in, any acts or practices which constitute a violation of any provision of this chapter, Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any rule, regulation, permit, or order issued, promulgated, or executed thereunder, and when requested by the administrator, the district attorney of the county in which those acts occur or occurred, or the Attorney General, may make application to the superior court for an order enjoining the acts or practices, or for an order directing compliance. Upon a showing by the administrator that the person has engaged in, is engaged in, or threatens to engage in any violation of the act, a permanent or preliminary injunction, restraining order, or other order may be granted.

(b) For the purposes of this section, "threaten" means a condition creating a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation
Severability of provisions of Stats.1990, c. 1248, see His-
torical and Statutory Notes under Government Code
§ 8574.1.

§ 8670.58. Civil actions

Every civil action commenced pursuant to this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code at the request of the administrator shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same event, transaction, or occurrence may be joined or consolidated.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

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procedures established by the United States Fish and Wildlife Service or any other reasonable methods as determined by the Director of Fish and Game.

(e) The Director of Fish and Game shall prepare regulations to implement this section. The regulations shall include deadlines for the submittal of plans. In establishing the deadlines, the director shall consider circumstances such as the size of the spill and the time needed to assess damage and mitigation. In all cases a plan shall be submitted within one year after the spill of oil. (Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

Historical and Statutory Notes

1990 Legislation

Severability of provisions of Stats.1990, c. 1248, see Historical and Statutory Notes under Government Code § 8574.1.

§ 8670.62. Cleanup and abatement orders; failure to comply; liability for costs; failure to identify responsible party

(a) Any person who discharges oil into marine waters, upon order of the administrator, shall do all of the following:

- (1) Clean up the oil.
- (2) Abate the effects of the discharge.
- (3) In the case of a threatened discharge, take other necessary remedial action.

(b) Upon failure of any person to comply with a cleanup or abatement order, the Attorney General or a district attorney, at the request of the administrator, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.

(c) Consistent with the state contingency plan, the administrator may expend available money to perform any response, containment, cleanup, wildlife rehabilitation, or remedial work required pursuant to subdivision (a) which, in the administrator's judgment, is required by the circumstances or the urgency of prompt action required to prevent pollution, nuisance, or injury to the environment of the state. The action may be taken in default of, or in addition to, remedial work by the responsible party or other persons, and regardless of whether injunctive relief is sought. The administrator may perform the work in cooperation with any other governmental agency, and may use rented tools or equipment, either with operators furnished or unoperated. Notwithstanding any other provisions of law, the administrator may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for equipment rental and the furnishing of labor and materials necessary to accomplish the work. The contracts shall be exempt from approval by the Department of General Services pursuant to the provisions of Section 10295 of the Public Contract Code.

(d) If the discharge is cleaned up, or attempted to be cleaned up, the effects thereof abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharged the oil, or threatened to cause or permit the discharge of the oil within the meaning of subdivision (a), shall be liable to that governmental agency for the reasonable costs actually incurred in cleaning up that waste, abating the effects thereof, or taking other remedial action. The amount of the costs shall be recoverable in a civil action by, and paid to, the applicable governmental agency and the administrator, to the extent the administrator contributed to the cleanup costs from the Oil Spill Response Trust Fund or other available funds.

(e) If, despite reasonable effort by the administrator to identify the party responsible for the discharge of oil or the condition of pollution or nuisance, the person is not identified at the time cleanup, abatement, or remedial work must be performed, the administrator shall not be required to issue an order under this section. The absence of a responsible party shall not in any way limit the powers of the administrator under this section.

(f) "Threaten," for purposes of this section, means a condition creating a substantial probability of harm, when the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damages to persons, property, or natural resources.

(Added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.)

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