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 18-3

Ayes: 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

DIGEST

Existing 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.

more expansive than just fishing? ie tourism?

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.

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.

- continued -

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.

<u>SIOSC</u> <u>And</u> <u>SIOSC</u> <u>Review</u> <u>Subcommittee</u>

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.

- continued -

9) Require the State Oil Spill Response Plan (SIOSC Plan) to be update. 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.

- continued -

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.

- continued -

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.

- continued -

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.

- continued -

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.

- continued -

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."

encourage shell companies to hide deep pockets of true owners?

- continued -

b) The owner, operator, or lessee of, or a person who charters 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.

- continued -

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.

- continued -

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.

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

ARTICLE 1. GENERAL PROVISIONS

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

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:

(a) 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.

(b) 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.

(c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum into marine waters.

(d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in marine waters.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(c) The California Earthquake Prediction Evaluation Council, an advisory committee established pursuant to Section 8590 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 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]

(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

connected to a tank facility as
Code.

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

(i) "Oil" means any kind of p
or residues therefrom, includin
aviation fuel, oil sludge, oil re
natural gas.

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

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

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

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

(C) Except as provided in sul
control of which was conveyed
similar means to an entity of st
interest in, operated, or otherwi
beforehand.

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

(2) "Owner" or "operator" d
ment of a vessel or marine facili
interest in the vessel or marine

(3) "Operator" does not inclu
facility itself if the person is no

(*l*) "Person" means any indivi
not limited to, a government co
city, county, city and county, di
federal government, or any dep

(m) "Pipeline" means any pip

(n) "Responsible party" or "p

(1) The owner or transporter

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

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

(p) "State Interagency Oil Spi
3.5 (commencing with Section 8

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

(r) "Tanker" means any self-p
of oil in bulk 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.199
torical and Statutory Notes under
§ 8574.1.

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 or 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.

(*l*) "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.

§ 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

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.)

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.199
torical and Statutory Notes under
§ 8574.1.

§ 8670.7. Prevention and resp
plan

(a) The administrator, subject
removal, abatement, response, co
spill in the marine waters of th
contingency plan and the state oi
federal on-scene coordinator, as

(b) The administrator shall im
Section 8574.1, to the fullest ext

(c) The administrator shall do

(1) The administrator shall be
in marine waters, as soon as pos

(2) The administrator shall en
whether employed by the respon
are onsite to respond to, contain,
notice of the discharge.

(d) Throughout the response a
the State Interagency Oil Spill Co
district having jurisdiction over
entities which are affected by th

(e) The administrator, with the
and the federal on-scene coordi

(f) The administrator shall hav
cleanup agents in connection wit
to Section 13169 of the Water
coordinator prior to exercising a

(g) The administrator shall ens
or other personnel are present an
the assessment of damages to n
which may help in determining a

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

Historical and Statutory N

1990 Legislation

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

§ 8670.8. Training programs

(a) The administrator shall car
containment, and cleanup operati
management of these programs
California Conservation Corps, ot
by other public entities, personne
and interested members of the p

(b) The administrator may offe
cleanup efforts under the state c
plans prepared and approved und

(c) Funding for activities under
Prevention and Administration F

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

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 8670.38.

(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

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 any 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.

(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.

(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

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:

(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.

§ 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 8670.28, 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.

§ 8670.20. Disabled tanker o
disabling vessel

(a) Any party responsible for
disability if the disabled tank
administrator and the Office o
Office of Emergency Services a
tanker or barge within 12 mil
negotiate an agreement with th
the state regarding disabled ta

(b) Whenever the Office of E
office shall immediately notify t
source regarding the presence
the administrator shall immedi

(c) For the purposes of this
occurs:

(1) Any accidental or intent
safety of the vessel.

(2) Loss of main propulsion
a reduction in the maneuvering
means that any system, com
specified or required function.

(3) An occurrence materiall
service, including, but not limi

(4) Any occurrence not mee
oil spill or an occurrence whic

(d) For the purposes of this
occur:

(1) The towing mechanism

(2) The tugboat towing the

(Added by Stats.1990, c. 1248

Historical and Statuto

1990 Legislation

Severability of provisions of Stats.
torical and Statutory Notes und
§ 8574.1.

§ 8670.21. Vessel traffic ser
noncomplying

(a) The administrator shall
31, 1991, for a vessel traffic
may include in the agreemen
for areas of the coast outsid
agreement shall be negotiate
the vessel traffic monitoring
satellite tracking, radar, or
collisions and groundings.

(b) If the administrator ca
by December 31, 1991, the a
for implementing vessel traf
Angeles/Long Beach, the h
Barbara Channel, and any o
monitoring and communicati
for the regions described in
Coast Guard, or recommend
shall be completed by Decem
shall be included in the plan
The plan shall be amended

§ 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 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.

(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.

(C) Small vessel congestion in shipping channels.

(D) Placement and effectiveness of navigational aids, channel design plans, and the traffic and routings from port construction and dredging projects.

(3) Procedures for routing vessels during emergencies that impact navigation.

(4) Bridge management requirements.

(5) Suggested mechanisms to ensure that the provisions of the plan are fully and regularly enforced.

(6) A recommendation as to whether establishing or expanding VTS systems within the harbors is desirable.

(7) A recommendation for funding VTS systems and other projects.

(e) Each harbor safety plan shall be submitted to the administrator by December 31, 1991. The administrator shall review these for consistency with the regulations and guidelines and shall approve the plans or give reasons for their disapproval.

(f) Upon approving the plans, the administrator shall, in consultation with the port authorities listed in subdivision (a), implement the plan. The administrator shall adopt regulations necessary to implement the plan. When federal authority or action is required to implement the plan or the recommendations, the administrator shall petition the appropriate agency or Congress, as necessary.

(g) On or before July 1 of each year, each harbor safety committee shall report its findings and recommendations to the administrator concerning the safety of its harbor and any recommendations for improving tanker and barge safety in the harbor by amending the provisions of the harbor safety plan, or through other means.

(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.

§ 8670.24. Pilotage areas; evaluation

(a) The administrator shall evaluate all pilotage areas in the state by January 1, 1992. This evaluation must include all of the following:

(1) The effectiveness of the state licensing program.

(2) The policies and procedures for investigating pilot incidents by either the Coast Guard or the State Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun.

(3) The feasibility and desirability of applying a surcharge in addition to other fees for pilotage for the purposes of providing expanded pilot training.

(b) The administrator will contact the various pilotage groups, the Coast Guard, and the maritime industry as part of his or her evaluation process.

(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 4. OIL SPILL RESPONSE

Article 4 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.25. Removal of oil discharged in or on marine waters

Any person who, without regard to intent or negligence, causes or permits any oil to be discharged in or on the marine waters of the state shall immediately contain, cleanup, and remove the oil in the 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 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

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

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

egislation

y of provisions of Stats.1990, c. 1248, see His- Statutory Notes under Government Code

§ 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 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.

(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. Blanket 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.

(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.)

Historical and Statutory N

1990 Legislation

Severability of provisions of Stats.1990, torical and Statutory Notes under G § 8574.1.

§ 8670.35. Business and area pl

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

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

(c) Each contingency plan ele training fire and police personne

(d) Each contingency plan elen government's local coastal progr the state oil spill contingency pla

(e) The administrator shall rev ant to this section. If, upon revi is inadequate, the administrator s and extent of the inadequacies, a agency shall submit a new or moc the findings and incorporating a

(f) The administrator shall rev program of grants for completi continued. If the administrator c the administrator shall request th Administration Fund for the pur

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

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.199 torical and Statutory Notes under § 8574.1.

§ 8670.36. Review of continge

(a) The administrator shall, wi pursuant to Section 8670.28 or 8 agencies that comprise the meml Technical Advisory Committee. days after receiving a request California Coastal Commission coastal zone. The San Francisc plans for marine facilities or loc of the Public Resources Code. comments to the administrator consider all comments in appro

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

(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.

§ 8670.35. 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.)

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

Article 5.5 was added b

§ 8670.37.51. Certificate of fina

(a) No vessel may be used to tr
has obtained a certificate of finan
the owner of all of the oil contain

(b) No operator of a marine ter
the operator of the marine termi
issued by the administrator for th
transferred to or from the vessel.

(c) No operator of a marine ter
is or is intended to be used for
operator of the marine terminal h
issued by the administrator for th
the oil contained in both vessels,

(d) No person may operate a ma
first obtained a certificate of fina

(e) No vessel may be used to t
hours prior to the transport, the

(1) A copy of a certificate app
during transport.

(2) A copy of a written state
application to the vessel.

(f) This section shall become o

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

Historical and Statutory N

1990 Legislation

Severability of provisions of Stats.1990
torical and Statutory Notes under
§ 8574.1.

§ 8670.37.52. Effect of certifica

The certificate of financial res
holding the certificate is the par
purposes of determining liability

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

Historical and Statutory N

1990 Legislation

Severability of provisions of Stats.1990
torical and Statutory Notes under
§ 8574.1.

§ 8670.37.53. Qualifications for

In order to receive a certificat
satisfaction of the administrator

(a) For a certificate for a vess
demonstrate the financial ability
damages which may arise duri
responsibility shall increase to se
to one billion dollars ($1,000,000,
standard of financial responsibilit
oil that can be carried by the ba
administrator shall not set a sta
case oil spill into marine waters.

80 Cal.Code—3
1991 P.P.

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.

(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

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.199
torical and Statutory Notes under
§ 8574.1.

§ 8670.37.57. Term of certifica

No certificate of financial resp
tor may issue certificates for sh
(Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.19
torical and Statutory Notes under
§ 8574.1.

ARTICLE 6. THE OI

Section
8670.38. Fund created.
8670.39. Administration of fun
8670.40. Fees; purposes.

Article 6 was added t

§ 8670.38. Fund created

(a) The Oil Spill Prevention an
money in the fund is available
purposes of this chapter, Article
(commencing with Section 8750)

(b) For the purposes of this s
Fund.

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

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.19
torical and Statutory Notes under
§ 8574.1.

§ 8670.39. Administration of f

(a) The administrator shall ac

(b) The administrator may de
be necessary to carry out and e
(Added by Stats.1990, c. 1248 (S

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.19
torical and Statutory Notes under
§ 8574.1.

§ 8670.40. Fees; purposes

(a) The administrator shall co
be sufficient to carry out the

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

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 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

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.199 torical and Statutory Notes under § 8574.1.

§ 8670.47. Administration of f

(a) The administrator shall ad

(b) The administrator may dev be necessary to carry out and e

(c) The administrator is respo fund to carry out the purposes

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

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.199 torical and Statutory Notes under § 8574.1.

§ 8670.47.5. Deposits into func

The following moneys shall be

(a) The fee required pursuant

(b) Any federal funds receive costs from an oil spill in marine

(c) Any funds borrowed pursu

(d) Any interest earned on the

(e) Any cost recoveries from r

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

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.199 torical and Statutory Notes under § 8574.1.

§ 8670.48. Fees; purposes; leg

(a) Every marine terminal oper cents ($0.25) for each barrel of p means of vessel from a point of

(b) Every operator of a pipelin cents ($0.25) for each barrel of p

(c) (1) Every operator of a refi cents ($0.2 for each barrel of c

(2) The fee shall not be impose crude oil produced by an indepe Board of Equalization shall not section if that company was reor the requirements of this section.

(3) For purposes of this chapt producing crude oil within this s possesses or owns no retail gaso

(d) Every marine terminal oper cents ($0.25) for each barrel of marine vessel or barge to a dest

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.

(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:

"The fee created pursuant to Section 8670.48 of the Government Code shall not become operative if the proposed initiative measure known as 'The Environmental Protection Act' [Prop. 128] is approved by the voters at the November 6, 1990, general election [Prop. 128 was rejected at the Nov. 6, 1990 election]. If the State Lands Commission 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 Environment 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.

§ 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 8750) 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.

(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.)

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.)

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.

§ 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.)

Historical and Statutory Not

1990 Legislation

Severability of provisions of Stats.1990, torical and Statutory Notes under Go § 8574.1.

§ 8670.53.8. Appropriations from

There is hereby appropriated fr necessary to pay (1) principal, (2) in fees, or charges in connection with issued pursuant to this article, or (federal tax-exempt status of any administrator and the Controller premiums, and fees on obligations available for expenditure for othe

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

Historical and Statutory N

1990 Legislation

Severability of provisions of Stats.1990, torical and Statutory Notes under G § 8574.1.

§ 8670.53.9. Legal opinions reg

Whenever the Treasurer deter obtaining any standby arrangeme after sale, a legal opinion as to th from attorneys other than the A

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

Historical and Statutory N

1990 Legislation

Severability of provisions of Stats.199 torical and Statutory Notes under § 8574.1.

§ 8670.53.95. Approval of cont

Section 10295 and Sections 103 agreements entered into by the authorized by this article.

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

Historical and Statutory

1990 Legislation

Severability of provisions of Stats.199 torical and Statutory Notes under § 8574.1.

ARTICLE 8. C

Article 8 was added

§ 8670.54. Committee establis

(a) The Oil Spill Technical A established to provide public in

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

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 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.)

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

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:

(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, a 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 subcontractors' 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 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 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.

(*l*) 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.)

Historical and Statutory Notes

1990 Legislation

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

Intent of S.B.2040 (Stats.1990, c. 1248), see Historical and Statutory Notes under § 8670.56.5.

ARTICLE 9. ENFORCEMENT

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 Historical 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.)

Historical and Statutory Notes

1990 Legislation

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

§ 8670.59. Venue

Any civil action brought pursuant to this chapter or Division 7.8 (commencing with Section 8750) of the Public Resources Code, shall be brought in the county in which the spill, discharge, or violation occurred, the county in which the principal place of business of the defendant is located, or the county in which the defendant is doing business in this 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.

§ 8670.61. Cumulative remedies

The civil and criminal penalties provided in this chapter and Division 7.8 (commencing with Section 8750) of the Public Resources Code shall be separate and in addition to, and do not supersede or limit, any and all other remedies, civil or criminal.

(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.

§ 8670.61.5. Wildlife rehabilitation; plans

(a) For purposes of this chapter, "wildlife rehabilitation" means those actions that are necessary to fully mitigate for the damage caused to wildlife, fisheries, wildlife habitat, and fisheries habitat, including beaches, from the spill of oil into marine waters.

(b) Responsible parties shall fully mitigate adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. Full mitigation shall be provided by successfully carrying out environmental restoration projects or funding the activities of the Department of Fish and Game in carrying out environmental restoration projects complying with the requirements of this subdivision. Responsible parties are also liable for the costs incurred by the Department of Fish and Game in carrying out this section.

(c) If any significant wildlife rehabilitation is necessary as a result of a spill of oil into marine waters, the responsible party shall prepare and submit a wildlife rehabilitation plan to the Department of Fish and Game. The plan shall describe the actions that will be implemented to fully meet the requirements of subdivision (b), describe contingency measures which will be carried out in the event that any of the plan actions are not fully successful, provide a reasonable implementation schedule, describe the monitoring and compliance program, and provide a financing plan. The Department of Fish and Game shall review and determine whether to approve the plan within 60 days of submittal. Before approving a plan, the Department of Fish and Game shall first find that the implementation of the plan will fully mitigate the adverse impacts to wildlife, fisheries, wildlife habitat, and fisheries habitat. If the habitat contains beaches that are or were used for recreational purposes, the Department of Parks and Recreation shall review the plan and provide comments to the Department of Fish and Game.

(d) The plan shall place first priority on avoiding and minimizing any adverse impacts. For impacts that do occur, the plan shall provide for full onsite restoration of the damaged resource to the extent feasible. To the extent that full onsite restoration is not feasible, the plan shall provide for offsite in-kind mitigation to the extent feasible. To the extent that adverse impacts still have not been fully mitigated, the plan shall provide for the enhancement of other similar resources to the extent necessary to meet the requirements of subdivision (b). In evaluating whether a wildlife rehabilitation plan is adequate, the Department of Fish and Game may use the habitat evaluation 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.)

Historical and Statutory Notes

1990 Legislation

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

§ 8670.63. Attorney general; enforcement authority

No provision of this chapter, or of Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any ruling of the administrator, shall be construed to limit, abridge, or supersede the power of the Attorney General, at the request of the administrator, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any violation of this act, seek necessary remedial action by any person who violates any of the provisions of this act, or seek civil and criminal penalties against any person who violates any of the provisions of this act.

(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.

§ 8670.64. Prohibited acts; penalties

(a) Any person who commits any of the following acts, shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in the state prison:

(1) Except as provided in Section 8670.27, knowingly fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Knowingly fails to notify the Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Knowingly engages in or causes the discharge or spill of oil into marine waters, or any person who reasonably should have known that he or she was engaging in or causing the discharge or spill of oil into marine waters, unless the discharge is authorized by the United States, the state, or another agency with appropriate jurisdiction.

(4) Knowingly fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) The court shall also impose upon a person convicted of violating subdivision (a), a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000) for each violation. For purposes of this subdivision, each day or partial day that a violation occurs is a separate violation.

(c) Any person who knowingly does any of the following acts shall, upon conviction, be punished by a fine of not less than two thousand five hundred dollars ($2,500) or more than two hundred fifty thousand dollars ($250,000), or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment. Each day or partial day that a violation occurs is a separate violation. If the conviction is for a second or subsequent violation of this subdivision, the person shall be punished by imprisonment in the state prison or in the county jail for not more than one year, or by a fine of not less than five thousand dollars ($5,000) or more than five hundred thousand dollars ($500,000), or by both the fine and imprisonment:

(1) Fails to notify the Office of Emergency Services in violation of Section 8670.25.

(2) Continues operations for which contingency plans are required without a contingency plan approved pursuant to Article 5 (commencing with Section 8670.28).

(3) Except as provided in Section 8670.27, knowingly fails to follow the material provisions 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.

§ 8670.65. Violations of chapter or regulations; penalties

Except as otherwise provided in Section 8670.64, any person who knowingly violates any provision of this chapter, or Division 7.8 (commencing with Section 8750) of the Public Resources Code, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this act is, upon conviction, guilty of a misdemeanor, punishable by a fine of not more than fifty thousand dollars ($50,000) or by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(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.

§ 8670.66. Intentional or negligent acts; civil penalties

(a) Any person who intentionally or negligently does any of the following acts shall be subject to a civil penalty of not less than twenty-five thousand dollars ($25,000) or more than five hundred thousand dollars ($500,000) for each violation. Each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the U.S. Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Discharges or spills oil into marine waters, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required in Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this act or any permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this act shall be liable for a civil penalty not to exceed two hundred fifty thousand dollars ($250,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section and for a civil penalty imposed pursuant to Section 8670.67 for the same act or failure to act.

(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.

§ 8670.67. Intentional or negligent acts; administrative civil penalties

(a) Any person who intentionally or negligently does any of the following acts shall be subject to an administrative civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation as imposed by the administrator pursuant to Section 8670.68. Each day or partial day that a violation occurs is a separate violation:

(1) Except as provided in Section 8670.27, fails to follow the applicable contingency plans or the direction or orders of the administrator in connection with an oil spill.

(2) Fails to notify the U.S. Coast Guard that a tanker is disabled within one hour of the disability and the tanker, while disabled, discharges oil which enters marine waters.

(3) Discharges or spills oil into marine waters, unless the discharge is authorized by the United States, the state, or other agency with appropriate jurisdiction.

(4) Fails to begin cleanup, abatement, or removal of spilled oil as required by Section 8670.25.

(b) Except as provided in subdivision (a), any person who intentionally or negligently violates any provision of this act or any permit, rule, regulation, standard, or requirement issued or promulgated pursuant to this act shall be liable for an administrative civil penalty as imposed by the administrator pursuant to Section 8670.68, not to exceed one hundred thousand dollars ($100,000) for each violation of a separate provision, or, for continuing violations, for each day that violation continues.

(c) No person shall be liable for a civil penalty imposed under this section or for a civil penalty imposed pursuant to Section 8670.66 for the same act or failure to act.

(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.

§ 8670.67.5. Discharge of oil; civil liability

(a) Any person who without regard to intent or negligence causes or permits oil to be discharged shall be strictly liable civilly in accordance with subdivision (b) or (c).

(b) A penalty may be administratively imposed by the administrator in accordance with Section 8670.68 in an amount not to exceed ten dollars ($10) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(c) Whenever the discharge of oil resulted from gross negligence or reckless conduct, the administrator shall, in accordance with Section 8670.68, impose a penalty in the amount of thirty dollars ($30) per gallon of discharged oil. The amount of the penalty shall be reduced for every gallon of discharged oil that is recovered and properly disposed of in accordance with applicable law.

(d) The administrator shall adopt regulations governing the method for determining the amount of oil that is cleaned up.

(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.

§ 8670.68. Complaint; service of complaint; hearings; appeal

(a) The administrator may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 8670.67 or 8670.67.5. The complaint shall allege the facts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served of the right to a hearing. Any person served with a complaint pursuant to this subdivision may, within 10 days after service of the complaint, request a hearing by filing with the administrator a notice of defense. A notice of defense is deemed to be filed within the 10-day period if it is postmarked within the 10-day period. If a hearing is requested by the respondent, it shall be conducted within 90 days after receipt of the notice of defense by the administrator. If no notice of defense is filed within 10 days after service of the complaint, the administrator shall issue an order setting liability in the amount proposed in the complaint unless the administrator and the party have entered into a settlement agreement, in which case the administrator shall issue an order setting liability in the amount specified in the settlement agreement. If the party has not filed a notice of defense or if the administrator and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

(b) Any hearing required under this section shall be conducted by an independent hearing officer according to the procedures specified in Sections 11507 to 11517, inclusive, except as otherwise specified in this section. In making a determination, the hearing officer shall take into consideration the nature, circumstances, extent and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health and safety of the environment, and the violator's ability to pay the proposed civil penalty. After conducting any hearing required under this section, the hearing officer shall, within 30 days after the case is submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

(c) Orders setting civil liability issued pursuant to this section shall become effective and final upon issuance, and payment shall be made within 30 days of issuance. Copies of the orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.

(d) Within 30 days after service of a copy of a decision issued by the hearing officer, any person so served may file with a court of appeal a petition for writ of mandate for review of the decision. Any person who fails to file the petition within the 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the hearing officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this act or the accrual of any penalties assessed pursuant to this act. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(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.

§ 8670.68.5. Payment to prosecuting agency or office

Twenty-five percent of any penalty collected under this article shall be paid to the agency or office prosecuting the 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.

§ 8670.69. Private attorney general actions

Actions on behalf of the state or any other public entity to enforce Section 8670.61.5 through injunctive relief, declaratory relief, and all costs of the action, may be brought by any person in the public interest if both of the following occur:

(a) The action is commenced more than 60 days after the person has given notice of the violation which is the subject of the action to the Attorney General and the district attorney and city attorney in whose jurisdiction the violation is alleged to occur and to the alleged violator.

(b) No action has been commenced against the violation, or if commenced, is not being diligently prosecuted by the Attorney General, or any district attorney, city attorney or other prosecutor.

(c) This section applies to any actions brought with respect to any violations which have occurred, continue to occur or threaten to occur.

(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.

§ 8670.69.4. Unauthorized activities; cease and desist orders

(a) When the administrator determines that any person has undertaken, or is threatening to undertake, any activity or procedure that (1) requires a permit, certificate, approval, or authorization under this chapter, without securing a permit, or (2) is inconsistent with any of the permits, certificates, rules, regulations, guidelines, or authorizations, previously issued or adopted by the administrator, or (3) threatens to cause or substantially increases the risk of unauthorized discharge of oil into the marine waters of the state, the administrator may issue an order requiring that person to cease and desist.

(b) Any cease and desist order issued by the administrator may be subject to such terms and conditions as the administrator may determine are necessary to ensure compliance with this division.

(c) Any cease and desist order issued by the administrator shall become null and void 90 days after issuance.

(d) A cease and desist order issued by the administrator shall be effective upon the issuance thereof, and copies shall be served immediately by certified mail upon the person or governmental agency being charged with the actual or threatened violation.

(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.

§ 8670.69.6. Review of order

Within 30 days after service of a copy of a cease and desist order issued by the administrator under Section 8670.69.4, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof pursuant to Section 1094.5 of the Code of Civil Procedure. Failure to file such an action shall not preclude a party from challenging the reasonableness and validity of an order of the administrator in any judicial proceeding brought to enforce the order or for other civil remedies.

(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 10. ENVIRONMENTAL ENHANCEMENT FUND

Section

Article 10 was added by Stats.1990, c. 1248 (S.B.2040), § 17, eff. Sept. 24, 1990.

§ 8670.70. Fund created; use of money in fund

The Environmental Enhancement Fund is hereby created in the State Treasury. All penalties collected under Article 9 (commencing with Section 8670.57) shall be deposited into the Environmental Enhancement Fund, except as specified in Section 8670.64. The money in the fund shall only be used for environmental enhancement projects. The moneys shall not be used for the cleanup of an oil spill or the restoration required after an oil spill. The money is available for appropriation by the Legislature to the administrator for the purposes stated 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.

§ 8670.71. Projects funded

The administrator shall fund only those projects approved by the Environmental Enhancement Committee. All projects funded under this article shall be within or immediately adjacent to marine waters.

(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.

§ 8670.72. Environmental Enhancement Committee

The Environmental Enhancement Committee is hereby created. The committee shall consist of the following members:

(a) The administrator.

(b) A public member, to be appointed by the administrator, who shall be an officer or elected leader of a statewide nonprofit organization whose primary purpose is the protection and/or enhancement of natural resources.

(c) The executive officer of the State Coastal Conservancy, or his or her designee.

(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.

CHAPTER 7.5. NATURAL DISASTER ASSISTANCE ACT

Derivation Table

Showing where the subject matter of sections added by Stats.1974, c. 290, p. 555, § 1 was covered by repealed sections:

New Sections	Repealed Sections
8680	54150 [1]
	54150 [2]
8680.2	54151 [2]
	54152 [1]
8680.4	54152 [2]
	54154 [1]
8682	54153 [2]
	54155 [1]
8682.2	54154 [2]
8682.6	54157.1 [3]
8683	54155 [2]
	54156 [1]
	54156 [2]
8685	54157 [1]
	54157 [2]

New Sections	Repealed Sections
8685.2	54157 [1]
	54157 [2]
8685.4	54157 [1]
	54157 [2]
8685.6	54157 [1]
	54157 [2]
8685.7	54158 [1]
	54163
8685.8	54164
8686.2	54158 [2]
	54159 [1]
8686.4	54159 [2]
8686.8	54160 [1]
	54160 [2]
	54161 [2]
8687	54161 [1]
	54162

[1] Stats.1956, 1st Ex.Sess., c. 9, p. 294, § 1 version.
[2] Stats.1959, c. 1511, p. 3800, § 2 version.
[3] Stats.1969, c. 52, p. 167, § 8 version.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS

FINANCING ARRANGEMENT FOR THE "KEYSTONE CANYON"

BP AMERICA

"BANK" <----- Tax Benefits ----- **IRS**

Corporate Guarantee

$70M

BP OIL SHIPPING -------$9M/yr for 24 yr---------> **SHIPCO 2296** ----------$70M---------> **"SHIP BUILDER"**

BP OIL SHIPPING <--------------Ship---------------- **SHIPCO 2296** <----------Ship--------- **"SHIP BUILDER"**

"Basic Charter Hire"
(bare boat)

Shipbuilding Contract

OPERATING ARRANGEMENT FOR THE "KEYSTONE CANYON"

BP AMERICA

KEYSTONE SHIPPING CO. <----------$X/yr----------- **BP OIL SHIPPING** ----$9M/yr for 24 yr----> **SHIPCO 2296**

KEYSTONE SHIPPING CO. <-----------Ship---------- **BP OIL SHIPPING** <----------Ship------------ **SHIPCO 2296**

(operator) (charterer) (owner)

"Supplemental Charter Hire"

"Basic Charter Hire"

VESSEL CHARTERER	VESSEL NAME	VESSEL OPERATOR	VESSEL OWNER	C-PLAN HOLDER	AGENT	INITIAL RESPONSE	SECONDARY RESPONSE
BP Oil Shipping Co., USA	Prince William Sound	Keystone Shipping	Shipco 667	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping*
BP Oil Shipping Co., USA	OMI Columbia	OMI Corp.	OMI Challenger Transport Co.	OMI Challenger Transport Co.	Ocean Mgt., Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Alaska	Maritime Overseas Corp.	Intercontinental Bulktank Corp.	Intercontinental Bulktank Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Boston	Maritime Overseas Corp.	Cambridge Tankers, Inc.	Cambridge Tankers, Inc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Chicago	Maritime Overseas Corp.	First Shipmor Assoc.	First Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Juneau	Maritime Overseas Corp	Juneau Tanker Corp.	Juneau Tanker Corp.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas New York	Maritime Overseas Corp.	Third Shipmor Assoc.	Third Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Overseas Ohio	Maritime Overseas Corp.	Second Shipmor Assoc.	Second Shipmor Assoc.	Maritime Overseas Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Keystone Canyon	Keystone Shipping Co.	Shipco 2296, Inc.	Keystone Shipping	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	Thompson Pass	Interocean Mgt. Corp.	Shipco 2298, Inc.	Interocean Mgt. Corp.	Interocean Mgt. Corp.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	Tonsina	Keystone Shipping Co.	Shipco 668, Inc.	Keystone Shipping Co.	BP Oil Shipping Co., USA	Alyeska	BP joint w/ Keystone Shipping
BP Oil Shipping Co., USA	BT Alaska	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA
BP Oil Shipping Co., USA	BT San Diego (no longer calling)	Marine Transport Line, Inc.	Bankers Trust Company	Marine Transport Line, Inc.	Marine Transport Line, Inc.	Alyeska	BP Oil Shipping Co., USA

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.

8670.56.6. (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.

~~(4) The qualified immunity under this section shall only apply to response activity during the first 60 days after the spill for 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. No immunity shall attach to response activity after expiration of the first 60 days for the parties described herein.~~

~~(5) The qualified immunity under this section shall attach, without the limitation described in paragraph (4), to those responding parties that do not "regularly engage" in the oil spill response business and to persons and entities who are primarily dedicated to the preservation and rehabilitation of wildlife. There shall be no limitation on the duration of the immunity.~~

(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, ~~or the responsible party's agents, employees, and subcontractors,~~ 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) The immunity granted pursuant to subdivision (a) shall apply to a cooperative only if that cooperative has contracted with the administrator to respond to oil spills

in accordance with the state oil spill contingency plan and this chapter. The administrator shall enter into contract with any cooperative that is qualified and that offers to contract, on mutually acceptable terms, in accordance with the state oil spill contingency plan and this chapter.~~

(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 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.

(l) 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.

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET

MSRC Fax Number: (202) 371-0401

Date: 2/12/92

To: GINNY FAYE
907-465-4979

Company / Organization:

URGENT _____ *NORMAL* _____

From: JUDITH KEARSE Office #: 202-408 5797

Remarks: "AS STATED EARLIER,
MASSACHUSETTS LEGISLATION
ATTACHED."

Pages to follow 5 *+ Cover*

Please call (202) 408-5700 if there is a problem with the transmission

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-one

AN ACT PROVIDING FEDERAL RESPONDER IMMUNITY FOR MARINE OIL RELEASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2 of chapter 21E of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 1, the word "section" and inserting in place thereof the word:- chapter.

SECTION 2. Said section 2 of said chapter 21E, as so appearing, is hereby amended by inserting after the definition of "Imminent hazard" the following definition:-

"Offshore oil facility", any oil facility of any kind located in, on, or under any submerged land within the jurisdiction of the commonwealth including, without limitation, the territorial sea; provided, however, that it shall not include a vessel.

SECTION 3. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Oil" the following three definitions:-

"Oil facility", any structure, group of structures, equipment, or device, including a public vessel but not including any other type of vessel, that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This definition shall include, without limitation, any motor vehicle, rolling stock, or pipeline used for one or more of the purposes set forth in the preceding sentence.

"Oil Pollution Act", the Oil Pollution Act of 1990, P.L. 101-380.

"Onshore oil facility", any oil facility of any kind located in, on, or under any land within the jurisdiction of the commonwealth other than submerged land. This definition shall include, without limitation, motor vehicles and rolling stock.

SECTION 4. The definition of "Owner" or "Operator" in said section 2 of said chapter 21E, as so appearing, is hereby amended by striking out the first [illegible] "Owner" or "Operator", (1) in the case of a vessel, any person owning, operating or chartering by demise such vessel, (2) in the case of a site, any person owning or operating such site, (3) in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site, vessel, onshore oil facility, offshore oil facility, deepwater port, or pipeline, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment, except that, in the case of an onshore oil facility or offshore oil facility, this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owned an onshore oil facility or offshore oil facility and that, as the owner, transferred possession and right to operate the onshore oil facility or offshore oil facility to another person by lease, assignment, or permit, immediately prior to such abandonment, (4) in the case of an onshore oil facility, other than a pipeline, any person owning or operating the onshore oil facility, except that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or body, that owns an onshore oil facility and that, as the owner, transfers possession and right to operate the onshore oil facility to another person by lease, assignment, or permit, (5) in the case of an offshore oil facility, other than a pipeline or a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the lessee or permittee of the area in which the offshore oil facility is located or the holder of a right of use and easement granted under an applicable law of the commonwealth or the U.S. Outer Continental Shelf Lands Act, for the area in which the offshore oil facility is located if such holder is a different person from the lessee or permittee; provided, however, that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owns an offshore oil facility and that, as the owner, transfers possession and right to operate the offshore oil facility to another person by lease, assignment, or permit, (6) in the case of a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the licensee, and (7) in the case of a pipeline, any person owning or operating the pipeline.

SECTION 5. The definition of "Person" in said section 2 of said chapter 21E, as so appearing, is hereby amended by inserting after the word "authority", in line 38, the words:- any interstate body, foreign nation,.

SECTION 5A. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by striking out the definition of "Priority disposal site" and inserting in place thereof the following definition:-

"Priority disposal site", a disposal site which constitutes a substantial hazard to public health, safety, welfare, or the environment, including but not limited to a disposal site which is located within five hundred feet of a building being used as a school and which causes an increased risk of exposure to children from contamination in air, soil or water.

SECTION 6. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Priority disposal site" the following definition:-

"Public vessel", a vessel of any kind that is owned, or a bareboat that is chartered and operated, by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

SECTION 7. Section 3 of said chapter 21E, as so appearing, is hereby amended by inserting after the word "laws", in line 2, the words:- including the Oil Pollution Act.

SECTION 8. Section 4 of said chapter 21E, as so appearing, is hereby amended by adding the following paragraph:-

Any person, except a person who is liable pursuant to clause (1) of paragraph (a) of section five, who provides care, assistance or advice in response to a release or threat of release of oil into or on to the tidal waters of the United States including without limitation the territorial sea, or to any tidal shorelines adjoining any waters of the United States, or to the zone established by Presidential Proclamation numbered 5030 dated March tenth, nineteen hundred and eighty-three, including without limitation, the ocean waters of the areas referred to as "eastern special areas" in Article 3 (1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June first, nineteen hundred and ninety, and said care, assistance or advice is consistent with applicable state law, or the National Contingency Plan or as otherwise directed by the federal on-scene coordinator predesignated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct a federal response for oil removal under Subpart D of the National Contingency Plan, or by the state official with responsibility for oil spill response shall not be liable, notwithstanding any other provision of law, including section five, for removal costs or damages which result from actions taken or omitted to be taken in the course of providing such care, assistance, or advice, except with respect to personal injury or wrongful death, or if such person is grossly negligent or engages in willful misconduct. For the purposes of this paragraph, the term damages shall mean any damages, costs, expenses or economic loss of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil. As used in the preceding sentence, the term discharge shall mean any emission, other than natural seepage, intentional or unintentional, and including but not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil, oil refuse, oil mixed with wastes, other than dredge spoil, or petroleum, but not including hazardous substances which are specifically listed under 42 USC 9601 (14) (A) through (F) and which are subject to the provisions of that Act. Nothing in this section shall affect the liability of a person as described in clause (1) of paragraph (a) of section five, for oil spill response under any other provision of the General Laws.

SECTION 9. Paragraph (a) of section 8 of said chapter 21E, as so appearing, is hereby amended by striking out, in line 24, the word "and",- and by inserting after the word "release", in line 25, the words:- , and (iv) to any person for any liability that another person is relieved of pursuant to the fourth paragraph of section four.

SECTION 10. Paragraph (b) of said section 8 of said chapter 21E, as so appearing, is hereby amended by striking out, in line 29, the word "and (iii)" and inserting in place thereof the words:- , (iii) and (iv).

House of Representatives, December 18, 199[illegible].

Passed to be enacted, Joan M. Menard, Acting Speaker.

In Senate, December 19, 199[illegible].

Passed to be enacted, William M. Bulger, President.

30 December, 1991.

Approved.

4:34 PM

William F. Weld

Governor.

ACT NO. 5765

BILL NO. 19-0181

NINETEENTH LEGISLATURE OF THE VIRGIN ISLANDS

OF THE UNITED STATES

Regular Session

1991

enact the Virgin Islands limitation on liability act for persons responding to oil spills

---0---

BE IT ENACTED by the Legislature of the Virgin Islands:

SECTION 1. Title 12, Virgin Islands Code, is amended by adding thereto a new Chapter to read as follows:

"Chapter 18. Limitation on liability of third parties responding to and rendering assistance in oil spills and petroleum discharge cleanup

Section 751. Short Title

This Act may be cited as the "Virgin Islands Act Regarding Liability for Persons Responding to Oil Spills".

Section 752. Findings and Declarations

The Legislature of the Virgin Islands [illegible] and declares:

That on March 24, 1989, an ocean-going oil ta[illegible] Exxon Valdez, struck a reef and spilled approximatel[illegible] tons (216,000 barrels) of oil into Prince William [illegible] Alaska, thereby extensively fouling the shoreline of P[illegible] William Sound, and heralding the largest oil spill a[illegible] cleanup activity in the history of the United States;

That tho[illegible]nds of paid and volunteer individuals and community orga[illegible]tio[illegible] immediately undertook to clean up the oil [illegible] foul shoreline of Prince William Sound, but that [illegible] was adversely affected, and the Alaska fishery indust[illegible] the related economy of the Sound was damaged and may [illegible] years to recover;

That other oil spills of a lesser magnitude have occurred following the Exxon Valdez spill, all of which have to an extent adversely affected the shorelines or waterways of the United States and its Territories;

That in part as a response to the need to plan for and undertake a comprehensive response to catastrophic oil spills in United States waters, the Congress of the United States proposed, and the President signed into law on August 18, 1990, The Oil Pollution Act of 1990, (P.L. 101-380); a measure which on final passage garnered the unanimous votes of the House of Representatives (360-0) and the Senate (99-0);

That the Oil Pollution Act of 1990 consolidated, on the Federal level, the laws pertaining to oil spill liability, prevention, preparedness and cleanup and affects vessels, oilrigs, oil terminals and businesses which transport, handle or store crude oil and petroleum products;

That a principal feature of the Act is a Good Samaritan provision, or a limited responder immunity provision, which seeks to encourage persons, groups and organizations to respond to catastrophic oil spills in the cleanup effort by granting such persons limited immunity from liability for oil removal costs or damages arising from their response activities or missions;

That the immunity granted by the Act is limited in scope in that it does not absolve responders for their acts or omissions which result in personal injury or wrongful death, or is caused by gross negligence or willful misconduct;

That several states have adopted the federal responder limited immunity standard, including California, Connecticut, Delaware, Florida, Georgia, ~~Hawaii,~~ Louisiana, Maine, Mississippi, New Hamphsire, North Carolina, Texas, Virginia and Washington. The legislation is also before several Governors and state legislatures for their consideration;

That the Virgin Islands of the United States is a jurisdiction in which a catastrophic oil spill, unless responded to immediately, may have a devastating effect on the environment, wildlife and the economy of the Territory. Further, that the Virgin Islands' geographic location in the Atlantic Ocean and Caribbean Sea makes it particularly vulnerable to oil spills from local as well as external sources;

That on March 6, 1991, the vessel, Vista Bella, sank in the Atlantic Ocean with its cargo of oil and petroleum products estimated at a half million gallons. That several days later, oil escaping from the vessel entered Virgin Islands territorial waters and fouled the coastlines of St. John, St. Thomas and St. Croix, as well as the coastlines of Vieques, Culebra, and southeast Puerto Rico, and the coastlines of other Caribbean island nations;

That the Government of the Virgin Islands, the United States Coast Guard and other volunteer and responder organizations undertook to and cleaned up the oil spill from the beaches and coastline of the Virgin Islands. That the responders participated in the clean up activities without consideration of their potential liability for clean up costs, or for damages to person or property;

That it is the sense of the Legislature that persons and responder organizations should be encouraged to assist in oil spill containment and cleanup activities in the Virgin Islands in the event of catastrophic oil spills which have the potential for adversely affecting the environment, ecology and economy of the Territory;

That in order to encourage further the beneficial activities of oil spill responder groups and organizations, it is hereby declared to be the public policy of the Government of the Virgin Islands, that a limitation on the potential liability of such responders should be imposed by the adoption of the federal oil spill responder immunity standard as set forth in The Oil Pollution Act of 1990, at section 4201(a).

Section 753. Definitions

For the purposes of this Act the term:

(1) "damages" means damages of any kind for which liability may exist under the laws of the Virgin Islands resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) "discharge" means , any emission (other than natural seepage), intentional or unintentional, and includes, but it is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "Federal On-Scene Coordinator" means the federal official predesignated by the U.S. Environmental Protection Agency or

the U.S. Coast Guard to coordinate and direct federal responses under subpart D, or the official designated by the lead agency to coordinate and direct removal under subpart E, of the National Contingency Plan;

(4) "National Contingency Plan" means the National Contingency Plan prepared and published under section 311(d) of The Federal Water Pollution Control Act (33 U.S.C. 1321(d), as amended by The Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat, 484 (1990);

(5) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil;

(6) "person" means an individual, corporation, partnership, association, state, territory, municipality, commission or political subdivision of a state or any interstate body.

(7) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of discharge of oil, the costs to prevent, minimize or mitigate oil pollution from such an incident;

(8) "responsible party" means a responsible party as defined under Section 1001 of The Oil Pollution Act of 1990, Pub. L. No. 101-380, Stat. 484 (100);

Section 754. Exemption from liability

(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator or by the Territorial official with responsibility for oil spill response.

(b) Subparagraph (a) does not apply:

(1) to a responsible party;

(2) with respect to personal injury or wrongful death; or

(3) If the person is grossly negligent or engages in willful misconduct.

(c) A responsible party is liable for any removal costs and damages that another person is relieved of under subparagraph (a).

(d) Nothing in this Section affects the liability of a responsible party for oil spill response under federal or territorial law."

- Thus passed by the Legislature of the Virgin Islands on November 26, 1991.

Witness our Hands and the Seal of the Legislature of the Virgin Islands this 26th Day of November, A.D., 1991.

VIRDIN C. BROWN
President

ALMANDO "ROCKY" LIBURD
Legislative Secretary

The above bill is hereby approved.

Witness my hand and the Seal of the Government of the Virgin Islands of the United States at Charlotte Amalie, St. Thomas, this 9th day December, A.D., 1991.

Alexander A. Farrelly
Governor

MARINE SPILL RESPONSE CORPORATION

1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET

MSRC Fax Number: (202) 371-0401

Date: 2/12/92

To: GINNY FAYE c/o SENATOR SAM COTTEN
907-465-4979

Company / Organization: ______

URGENT ______ **NORMAL** ______

From: JUDITH KEARSE **Office #:** 202-408-5797

Remarks: "MASSACHUSETTS LEGISLATION WILL FOLLOW LATER TODAY."

Pages to follow ______ **+ Cover**

Please call (202) 408-5700 if there is a problem with the transmission

RUSH

MARINE SPILL RESPONSE CORPORATION
1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET
MSRC Fax Number: (202) 371-0401

Date: 1-31-92

To: GENNY FAYE
(907) 463-5661

Company / Organization:

URGENT ✓ *NORMAL*

From: DAVID LAKIN **Office #:** 202-408-5700

Remarks: PLEASE DELIVER TO ~~SENATOR~~ ~~SAM COTTEN'S~~ OFFICE.

Pages to follow 15 *+ Cover*

Please call (202) 408-5700 if there is a problem with the transmission

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil
and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Thank you for the opportunity to be part of the process that will determine Alaska's law concerning a limited immunity for oil spill responders. I'd like to commend the Citizen's Oversight Council and the state for taking the initiative to thoroughly study such a complex matter.

The written specific comments that have been provided separately are linked to the material available to us: The Summary of Research Projects. While several of the summaries conclusions that MSRC does not agree with, two of the summaries are of principal concern because we feel they may be indicative of a general condition, and that is that the full effect of OPA-90's many inter-linked provisions may not be clearly stated in the Research Summaries. This is important because we believe that the question of a limited responder immunity for Alaska should be addressed in a framework of full understanding of OPA-90.

The two research projects I will comment on are: (1) Response Action Contractor Provisions in the Oil Pollution Act of 1990 and (2) other state's response action contractor provisions. The first summary is incomplete in that there is no mention of an ab... ly critical element: the assumption of any responder liability (given that certain conditions are met) by the responsible party. The second summary is also incomplete as it lists eight states that have enacted such a statute. The fact is 19 coastal states have enacted legislation as protective as OPA-90 over the last 18 months. The majority of the six remaining jurisdictions have old "Good Samaritan" legislation that is not in conformance with OPA-90. Furthermore, three national state legislative associations (NCSL, CSG and ALEC) support the federal standard. The point here is that MSRC believes those facts are a powerful testimony of the soundness of OPA-90's provisions as public policy -- yet the full story of how other coastal legislatures have acted is not fully exposed in the research report.

Several statements/conclusions reached in the Research Report Summaries are inaccurate principally because they do not fully recognize the new responsibilities and relationships established for removal (§4201) and planning (§4202) of OPA-90. Understood in context of all of the provisions of OPA-90, it is clear that the purpose of the immunity is to promote the public welfare by insuring that responders -- no matter who they are or how they are paid, etc.-- will not be inhibited from acting boldly and decisively when confronted with the emergency conditions and potential liability surrounding marine oil spills. I say respectfully, that these provisions do not unreasonably protect responders from negligence. Rather as a matter of sound public policy, OPA-90 distributes risk between responders and the spiller, making the spiller assume liability for good faith errors made by a responder so long as the responder's acts are consistent with the National Contingency Plan, or the acts are at the direction of the federal (or in the case of state law, the Alaska) on-scene coordinator and the acts do not rise to the level of gross negligence or willful misconduct. There is no responder immunity provided in cases of personal injury or wrongful death.

We believe that these provisions go to the heart of the matter of responder performance. They insure that responders act with due care because they are not protected if their acts rise to gross negligence or willful misconduct. Additional protection is provided to insure that responders will not negligently perform, since only acts consistent with the National Contingency Plan or directed by government officials receive immunity. Since the responsible party is liable for any removal costs and damages that another person is relieved of; and since the provisions of OPA-90 raise limits of liability and make available a $1 billion per incident trust fund as a source of monies for injured parties; there is now a strong incentive for spillers to act immediately with a bold response and not attempt to deflect liability to those whose purpose is to remove oil from Alaskan waters.

In the specific comments provided you will see that we feel that other research projects do not fully explain the important new relationships and responsibilities established in other sections of OPA-90. In the time I have left I would like to mention just two of these because they demonstrate the importance of considering all aspects of OPA-90 before making your recommendations on Alaskan law.

Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages a bolder response rather than a potential delay, while lawyers of responders attempt to determine who may be liable for a spill. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is a part of the plan approval process, while state and federal coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to $25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

P3

Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent.

Rebuttal: <u>This speculative scenario cannot take place</u>. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A $1 billion per incident trust fund has been established when a spiller's liability limits are reached. Moreover, a response plan must be submitted to the U.S Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure that what is submitted can be executed.

MSRC believes the Citizen's Oversight Council needs to fully consider the federal liability regime that exists three miles off its coast today as it makes recommendations that might adopt differing standards. MSRC further believes that Alaska should enact the same limited responder immunity provision as OPA-90. We look forward to receiving your final full report and to seeing many of you at the legislative hearings in Juneau on February 11 and 12.

Marine Spill Response Corporation
Comments to

The Citizens' Oversight Council on Oil and Other Hazardous Substances
1/31/92

OIL SPILL RESPONSE CONTRACTOR LIABILITY REPORT

Research Project: Response Action Contractor Activity in Alaska

Pg. 2 Statement: "The report concludes that the independent operators are the class of responders most suitable for liability limits."

Rebuttal: It is not clear why independent operators are "most suitable"? For that purpose, OPA-90 does not differentiate between responders -- all responders are covered.

Pg. 2 Statement: "The report asks whether it is appropriate for a response organization created by those with a duty to respond, (i.e., oil terminal and tanker owners) to be afforded that same degree of immunity."

Rebuttal: We believe that different degrees of immunity for different categories of responders would be counter productive. Such action misses the fundamental reason for providing the limited immunity for responders: To promote the most bold and aggressive response for the protection of the environment. OPA-90 requires that a responsible party cite private spill response resources in their contingency plans to respond to a worst case discharge in adverse weather conditions. Industry and other business interests have responded by upgrading existing spill response organizations. All responders (co-ops, for-profit and not-for profit contractors, fisherman, volunteers) work for the spiller during a spill. One type of responder should not be afforded certain privileges that others are denied. The spiller is still responsible for all removal costs and damages regardless of the actions of a fisherman, their own response organization, etc. unless of course the conditions for immunity are not present.

Pg. 2 Statement: "The report states that granting such immunity causes confusion for the governmental regulators over who, in fact, controls the field response and provides no assurance that a response will be sustained."

Rebuttal: This statement is not factually correct. Granting such limited immunity encourages bolder response rather than a potential delay while lawyers of responders attempt to determine who may be liable for a spill and the risks to be assessed by responders under the current conditions and for every action during a response and cleanup. Under OPA-90, the spiller executes the response in accordance with a previously approved plan; the state is part of the approval process, state and federal coordinators control the responder through the spiller. Response and cleanup is sustained until the U.S. Coast Guard, after consultation with the state, determines a site is clean. Federal and/or state on-scene coordinators are directors of the response if they so choose, and response plans now must state how and with what private resources the spiller will respond. If a responsible party refuses to cooperate with directed removal actions there are new, serious penalties available to force compliance; i.e., the responsible party's liability cap is removed and becomes unlimited. Also, failure to comply with a removal order can result in civil penalties of up to $25,000 per day or three times the costs incurred by the federal Oil Spill Liability Trust Fund.

Research Project: Risk of litigation and liability exposure for response action contractors:

Pg. 2 Statement: "Research indicated that there were no cases in the U.S. where response action contractors were sued or held liable for damages from an oil spill by virtue of their response activities."

Rebuttal: While true, the statement refers to pre-Valdez conditions. Valdez created an entirely new arena for litigation due to the adoption of OPA-90. Liability on removal costs and damages now associated with a spill the size of the Valdez can be in the billions of dollars. It should be noted that the Report Summary stated that the Alaska Department of Environmental Conservation was aware that responders are concerned about this potential liability. New categories of damages are created; i.e., natural resource damage, loss of subsistence use of natural resources, real or personal property damage, net loss of tax and other revenues, loss of profits or earning capability and costs of additional public services provided during or after removal actions. It is the chilling affect of potential liability of this magnitude that responders seek protection from.

Research Project: Contractual relationships among response action contractors, contingency plan holders, and the state:

Pg. 3 Statement: "The result is that private parties may be unable to recover damages for harmscaused by response action contractors if there is no other financially solvent responsible party."

Rebuttal: This statement is not factually correct. Private and public parties are fully protected because there is always a source of funds! If a response action contractor responds to a spill or threat of a spill, all damages and removal costs associated with that spill are the responsibility of the spiller under OPA-90. A responsible party also is liable for any removal costs and damages that another person (a responder) is relieved of. Responders are fully liable in cases of personal injury or wrongful death. To insure a source of funds, the spiller must provide the U.S. Coast Guard with a Certificate of Financial Responsibility before transporting petroleum/petroleum products in U.S. waters and in the case of a spill where the responsible party cannot be determined or his liability ceiling is reached, the U.S. Coast Guard has a $1 billion per incident fund available from a tax on the transporters oil that pays removal costs and damages associated with the spill. There is universal agreement that OPA-90 reasonably protects injured parties by insuring the availability of funds first from the responsible party, then from the Oil Spill Liability Trust Fund.

Pg. 3 Statement: "Response action contractors and contingency plan holders also allocate liability for damages between each other through private contractual relationships."

Rebuttal: The research project well documents the complexity of these relationships. It is a lawyer's playground and because it is difficult for responders to understand the risks associated with sole and joint actions, and disagreements can only be resolved by litigation responders will not act with the boldness and decisiveness needed to quickly and effectively remove the oil out of the marine environment. On the other hand OPA-90's provisions encourage response by having all acts for which a responder is liable transferred back to the responsible party. This provides a twofold benefit: (1) There is no incentive for a responsible party to attempt to lay liability on responders because such liability will be assumed by him and (2) responders freed from the chilling affect of a simple negligence standard, can act boldly to promote the most effective response.

Pg. 3 Statement: "This means that the state has no way to force a response action contractor to comply with its contractual obligations. The report concludes that the state should take some action to ensure state control over response action contractors to avoid the risk that the response action contractor designated in a contingency plan could fail to perform."

Rebuttal: The state (and the federal government) have a variety of controls over response action contractors. OPA-90 requires that a response action contractor ". . . act in accordance with the National Contingency Plan or at the direction of the Federal On-Scene Coordinator . . ." to be immune from removal costs or damages associated with rendering care, assistance or advice, etc. This is a strong incentive for responders to act with due care. The state is a party to drafting the requirements for response plans in the Local Area Planning Process and thus a party to the process of defining the response capabilities responsible parties must cite in response plans. OPA-90 requires the Coast Guard to conduct periodic inspections of response equipment. OPA-90 requires proof of responder capability by holding unannounced drills. Also see penalty provisions previously mentioned for failure of a responsible party to comply with a removal order.

Pg. 3 Statement: "The report also concludes that because the legal standard for negligence includes full consideration of the emergency atmosphere in which response action contractors operate, response action contractors are protected from the consequences of crisis decision making and do not face an undue burden by being held to a standard of reasonable care under the circumstances."

Rebuttal: This issue of an emergency atmosphere will be determined as a matter of fact in court. Responders explicitly fear this potential litigation in that it provides an opportunity for the spiller to attempt to shift liability to the responder. This fear would have a chilling affect on response. The risks associated with good faith errors of the responder should fall on the spiller and not the responder reacting in an emergency situation. OPA-90 shifts the risk (for simple negligent acts) to the spiller, where it belongs.

Pg. 4 Statement: "On the other hand, the only way to ensure that injured parties will be compensated is to require that response action contractors exercise due care or face liability."

Rebuttal: The statement is factually incorrect. A punitive atmosphere for those responding under un-controlled circumstances; i.e., rain, wind, uncertain information defeats the purpose of initiating and sustaining a bold response. OPA-90 makes the responsible party liable for all removal costs and damages unless the responder acts with gross negligence, willful misconduct or in cases of personal injury or wrongful death. Moreover, only "approved" performance; i.e., within the National Contingency Plan or Federal On-Scene Coordinator/state officials receive immunity. If a responder acts outside these parameters then he is liable for damages. A state provision using fear of liability for responders will be directly counter to the main purpose of the federal standard. It will provide an opportunity for the responsible party to shift liability to responders. Moreover, OPA-90 provides the means to insure that injured parties will be promptly compensated. In a worst case scenario where the spiller is not identified, or the responsible party reaches his liability limit the Oil Spill Liability Trust Fund will pay removal costs and damages up to $1 billion per incident.

Research Project: The relationship between a response action contractor and a contingency plan holder under the Oil Pollution Act of 1990:

Pg. 7 Statement: "The federal government will require a contingency plan holder to demonstrate that it has a contract with a response action contractor, but it is as yet unclear what the precise requirements will be."

Rebuttal: This is correct, but the new OPA-90 planning standard for response plans is a very high one (See Section 4202 National Response System). Response plans must demonstrate, in detail, how a vessel owner/operator using private resources alone, would cleanup a worst case discharge (loss of all cargo) in adverse weather conditions to the maximum extent practicable. Initial indications are that federal rules will require a substantial response capability to meet Congressional intent.

Pg. 7 Statement: "Currently, the Oil Pollution Act does not grant the federal government any direct authority over response action contractor activities; the government's only leverage is to give directives to the contingency plan holder who, in turn, presumably would direct the response action contractor to implement the federal order."

Rebuttal: This is factually incorrect and misleading. The Coast Guard approves (with state input into the process) response plans that are consistent with the National Contingency Plan and Area Contingency Plans for all vessels/facilities and those response plans describe the actions to be followed for a worst case spill. The capabilities of responders must be consistent with the response plan and the area plan. OPA-90 requires the U.S. Coast Guard to conduct unannounced drills, and an inventory inspection of response assets (OPA-90 §4202) as part of the means to insure that the performance of responders will be as stated in response plans. In addition, if a response is not taking place to the satisfaction of the U.S. Coast Guard, the federal government can take over full control at any time.

Pg. 8 Statement: "The report raises concern over the following potential scenario: A tanker vessel is owned by a poorly capitalized or shell corporation. The vessel owner's contingency plan shows a contract with a response action contractor. In that contract, the response action contractor reserves the ability to refuse to perform if the spiller is insolvent.

Rebuttal: This speculative scenario cannot take place. Under OPA-90 a shipper must provide a Certificate of Financial Responsibility (COFR) to the U.S. Coast Guard up to his limits of liability before being permitted to transport oil in U.S. waters. A $1 billion per incident Oil Spill Liability Trust Fund has been established for occasions when a spillers liability limits are reached. Moreover, a response plan must be submitted to the U.S. Coast Guard that identifies responders and their capabilities. This plan is subject to unannounced drills and inspections insure that what is submitted can be executed.

Research Project: Insurance coverage availability:

Pg. 8 Statement: "Costs are based upon the following factors: (1) revenues and/or payroll size; (2) historical loss experience; (3) contractual indemnities and their value; (4) statutory immunities; and (5) the general state of the insurance market."

Rebuttal: Item (2) will reflect all pre-Valdez experience. OPA-90 substantially increased liability limits and importantly, the categories of items for which damages can be paid. This item represents a new and very large potential exposure for responders. Therefore, insurance costs considering this formula are likely to be understated.

Research Project: Response action contractor provision in the Oil Pollution Act of 1990:

Pg. 9 Statement: "The conference committee explained that it wanted to avoid possible deterrence of prompt spill response because of liability fears."

Rebuttal: A major purpose of the liability standard of OPA-90 is to provide the fastest and most complete cleanup of the environment. One way it accomplishes this is by returning liability where it belongs . . . to the spiller. Moreover, there was considerable debate and further discussion on the issue inside the executive branch. For the provision to remain in the bill and for the bill to be unanimously passed by both houses of Congress, it had to receive the concurrence of the U.S. Coast Guard, Environmental Protection Agency, Department of Justice and Office of Management and Budget.

MSRC
Marine Spill Response Corporation

John D. Costello
President

July 26, 1991

Mr. John A. Sandor
Commissioner
Department of Environmental Conservation
P.O. Box O
Juneau, AK 99811-1800

Dear Commissioner Sandor:

Thank you for your letter of July 2, 1991. As you know and reference in your correspondence, I wrote to your predecessor in March of 1990 requesting a meeting with appropriate state officials to discuss what role, if any, our organization might have in Alaska. We welcome the opportunity to begin this direct dialog and I have asked our Vice President for Readiness and External Affairs, Mr. G. Stephen Duca, to make the necessary arrangements.

Your letter indicated that the impediment for MSRC establishing a presence in Alaska was the nature of the state's responder liability statutes. This is really only one of our concerns. Several events have occurred in the intervening time since our letter to you that directly bear on answering the question of what role is an appropriate one for MSRC in Alaska. Since our last correspondence we have been incorporated as MSRC with a charter and by-laws that specifies our response and cleanup activities. It states in part, that we are to establish programs to render a best effort response to contain and cleanup catastrophic oil spills in coastal zone or tidal waters of the U. S., in particular open sea spills estimated to be in excess of 25,000 barrels and protected water spills estimated to be in excess of 40,000 barrels. We are specifically precluded from responding to spills of less than 1200 barrels unless certain conditions are met. This limitation was inserted into our by-laws for several reasons, one of which was to insure that we do not compete with the existing oil spill response and cleanup infrastructure. The existing infrastructure is generally recognized as having the capability to respond to the vast majority of the nations spills; i.e., small spills under 1200 barrels. In addition, you may recall that PIRO (now MSRC) was created to specifically fill a national response/cleanup capability void at the high end of the spill spectrum; i.e., the catastrophic spill.

In the aftermath of the Valdez spill and due in large part to the leadership of the Legislature and other state officials, Alyeska spill response capabilities have significantly increased in size and scope. My understanding is that current Alyeska capability is probably equal or greater to the size of a planned MSRC regional response center. A similar response and cleanup improvement process is underway in Cook Inlet and, presumably, will result in a capability there to meet the requirements of OPA-90; i.e., the capability to respond to a "worst case discharge". It is our understanding that between the resources of Prince William Sound and Cook Inlet well over 95% of the persistent oil transported in Alaska's marine environment will be covered. In the light of this considerable capability the question must be asked "Is there really any role or indeed need for MSRC in Alaska?".

As a responder, we have carefully followed the development of Alaska's comprehensive oil spill legislation. We fully support state legislation that enhances oil spill response and clean up capability, however you should know that here are certain portions of your existing statutes that we feel could be improved. For example, requiring a capability to remove 300,000 barrels of oil in 72 hours is an unrealistic planning standard given today's technology and the average weather conditions responders must face in your state. Although the statute attempts to provide for technical relief from this standard, we believe that a very false expectation of capability has been created. Moreover, such a standard invites litigation -- a chief element in discouraging prompt responder action.

We are of course, vitally concerned with state responder immunity legislation. We were happy to see that HB 196 recognized this as a critical element in promoting an effective oil spill response system. We note however, that it falls significantly short of the national standard of immunity provided for responders in OPA-90. Some of the major concerns we have with this law include:

o **Fifteen Day Liability Limit.** This arbitrary limit is unrealistic given the nature of oil spill response operations. The statute does not provide a liability-free opportunity to exit the scene. These provisions are a major disincentive for responders to get involved in remedial actions in the first place. Moreover, there is less likelihood for prompt responder action in cases where there is only the threat of a spill.

o **"Backdoor" Liability.** Joint and several liability is a real disincentive for any person involved in response activities who by contract arranged for disposal or treatment of hazardous substances possessed by such person, or who accepts hazardous substances for transport to a vessel from which a release occurs.

o **Limits on Immunity when Conflicting Orders are Received from Officials.** This provision places the responder in a quandary if conflicting orders are received from the state and federal governments.

o **Response Action Contract Requirements and Substantial Deviation from Oil Spill Contingency Plans.** Written contracts cannot contain all the actions that should be taken during a response, yet these are the only ones that would carry immunity (except for volunteers). This will discourage expedient actions while written agreement issues are sorted out. Moreover, these provisions will energize the impulse to litigate so that every factual element of response action may be scrutinized to determine if "substantial deviation" from a plan actually took place.

o **Damages to Property not Caused by Oil.** Given that oil spills generate emergency operations, sometimes under adverse operating conditions, good faith accidents are sure to result. Thus, this limitation on responder immunity will have a chilling affect on response actions. As with OPA-90, the spiller -- not the responder -- should remain liable for these damages.

These are some of the issues we feel need improvement in the current statute. We believe, and parenthetically so do the legislatures of 17 other states that have enacted the federal standard over the past 18 months, that the provisions of Section 4202 of OPA-90 are sound public policy. It balances the issues of how to provide incentives for bold and decisive action with assuring that appropriate damages are allocated to the appropriate parties. The gross negligence willful misconduct standard of responder conduct is appropriate for emergency operations. Responder actions that cause personal injury and wrong death are not specially protected. Only acts that are consistent with the NCP or the directions of appropriate federal and state officials are protected. Enacting a statute that provides an immunity at least as protective as the federal standard would eliminate a major disincentive for responders in Alaska. Since the responder immunity law is subject to review including a report to the Legislature, MSRC would welcome the opportunity to work closely with you. Our role in Alaska notwithstanding, we want to ensure that your responder immunity legislation provides reasonable protection for responders. By doing so it will simultaneously facilitate a swift and effective response to help mitigate harm to your environment.

The foregoing provides you the major issues we see in Alaska in advance of our meeting so that you can have some insight into our perspective. We look forward to working up an agenda and meeting with you in the very near future.

Sincerely,

John D. Costello
President

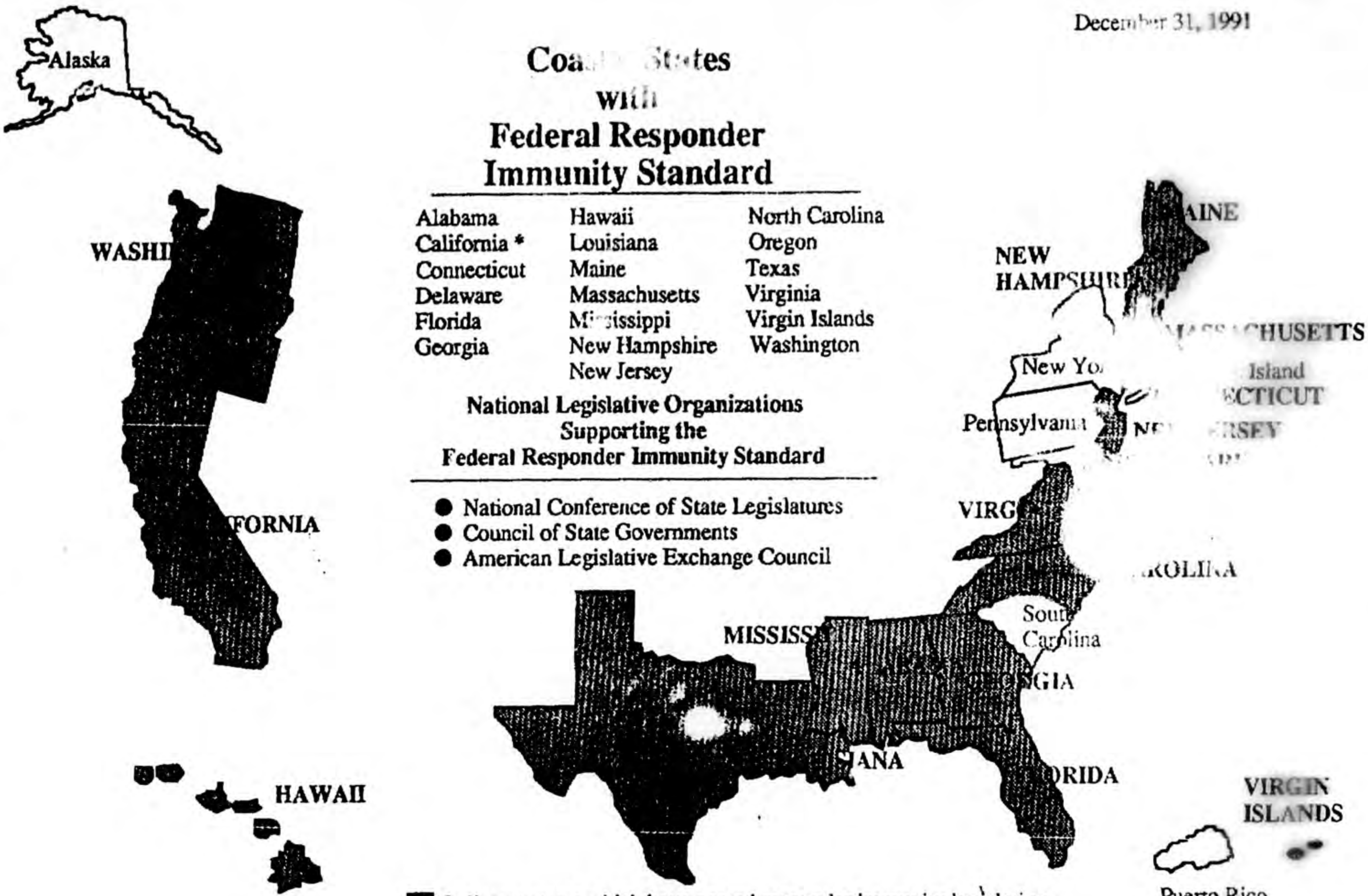
December 31, 1991

Coa[illegible] St[illegible]tes with Federal Responder Immunity Standard

Alabama	Hawaii	North Carolina
California *	Louisiana	Oregon
Connecticut	Maine	Texas
Delaware	Massachusetts	Virginia
Florida	Mississippi	Virgin Islands
Georgia	New Hampshire	Washington
	New Jersey	

National Legislative Organizations Supporting the Federal Responder Immunity Standard

- National Conference of State Legislatures
- Council of State Governments
- American Legislative Exchange Council



■ Indicates states which have passed responder immunity legislation.

* Federal standard was adopted but only for a maximum of 90 days

MARINE SPILL RESPONSE CORPORATION

1350 I STREET, N.W.
SUITE 300
WASHINGTON, D.C. 20005

FACSIMILE COVER SHEET

MSRC Fax Number: (202) 371-0401

Date: 2/12/92

To: GINNY FAYE
907-465-4979

Company / Organization:

URGENT ________ *NORMAL* ________

From: JUDITH KEARSE *Office #:* 202-408-5797

Remarks: "AS STATED EARLIER,
MASSACHUSETTS LEGISLATION
ATTACHED."

Pages to follow 5 *+ Cover*

Please call (202) 408-5700 if there is a problem with the transmission

Chapter 476

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-one

AN ACT PROVIDING FEDERAL RESPONDER IMMUNITY FOR MARINE OIL RELEASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 2 of chapter 21E of the General Laws, as appearing in the 1990 Official Edition, is hereby amended by striking out, in line 1, the word "section" and inserting in place thereof the word:- chapter.

SECTION 2. Said section 2 of said chapter 21E, as so appearing, is hereby amended by inserting after the definition of "Imminent hazard" the following definition:-

"Offshore oil facility", any oil facility of any kind located in, on, or under any submerged land within the jurisdiction of the commonwealth including, without limitation, the territorial sea; provided, however, that it shall not include a vessel.

SECTION 3. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Oil" the following three definitions:-

"Oil facility", any structure, group of structures, equipment, or device, including a public vessel but not including any other type of vessel, that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This definition shall include, without limitation, any motor vehicle, rolling stock, or pipeline used for one or more of the purposes set forth in the preceding sentence.

"Oil Pollution Act", the Oil Pollution Act of 1990, P.L. 101-380.

"Onshore oil facility", any oil facility of any kind located in, on, or under any land within the jurisdiction of the commonwealth other than submerged land. This definition shall include, without limitation, motor vehicles and rolling stock.

SECTION 4. The definition of "Owner" or "Operator" in said section 2 of said chapter 21E, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- "Owner" or "Operator", (1) in the case of a vessel, any person owning, operating or chartering by demise such vessel, (2) in the case of a site, any person owning or operating such site, (3) in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site, vessel, onshore oil facility, offshore oil facility, deepwater port, or pipeline, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment, except that, in the case of an onshore oil facility or offshore oil facility, this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owned an onshore oil facility or offshore oil facility and that, as the owner, transferred possession and right to operate the onshore oil facility or offshore oil facility to another person by lease, assignment, or permit, immediately prior to such abandonment, (4) in the case of an onshore oil facility, other than a pipeline, any person owning or operating the onshore oil facility, except that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or body, that owns an onshore oil facility and that, as the owner, transfers possession and right to operate the onshore oil facility to another person by lease, assignment, or permit, (5) in the case of an offshore oil facility, other than a pipeline or a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the lessee or permittee of the area in which the offshore oil facility is located or the holder of a right of use and easement granted under an applicable law of the commonwealth or the U.S. Outer Continental Shelf Lands Act, for the area in which the offshore oil facility is located if such holder is a different person from the lessee or permittee; provided, however, that this definition shall not include an agency or political subdivision of the federal government or the commonwealth, or any state or public corporation or authority, or any interstate body, that owns an offshore oil facility and that, as the owner, transfers possession and right to operate the offshore oil facility to another person by lease, assignment, or permit, (6) in the case of a deepwater port licensed under the U.S. Deepwater Port Act of 1974, the licensee, and (7) in the case of a pipeline, any person owning or operating the pipeline.

SECTION 5. The definition of "Person" in said section 2 of said chapter 21E, as so appearing, is hereby amended by inserting after the word "authority", in line 88, the words:- any interstate body, foreign nation,.

SECTION 5A. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by striking out the definition of "Priority disposal site" and inserting in place thereof the following definition:-

"Priority disposal site", a disposal site which constitutes a substantial hazard to public health, safety, welfare, or the environment, including but not limited to a disposal site which is located within five hundred feet of a building being used as a school and which causes an increased risk of exposure to children from contamination in air, soil or water.

SECTION 6. Said section 2 of said chapter 21E, as so appearing, is hereby further amended by inserting after the definition of "Priority disposal site" the following definition:-

"Public vessel", a vessel of any kind that is owned, or a bareboat that is chartered and operated, by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

SECTION 7. Section 3 of said chapter 21E, as so appearing, is hereby amended by inserting after the word "laws", in line 3, the words:- including the Oil Pollution Act.

SECTION 8. Section 4 of said chapter 21E, as so appearing, is hereby amended by adding the following paragraph:-

Any person, except a person who is liable pursuant to clause (1) of paragraph (a) of section five, who provides care, assistance or advice in response to a release or threat of release of oil into or on to the tidal waters of the United States including without limitation the territorial sea, or to any tidal shorelines adjoining any waters of the United States, or to the zone established by Presidential Proclamation numbered 5030 dated March tenth, nineteen hundred and eighty-three, including without limitation, the ocean waters of the areas referred to as "eastern special areas" in Article 3 (1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June first, nineteen hundred and ninety, and said care, assistance or advice is consistent with applicable state law, or the National Contingency Plan or as otherwise directed by the federal on-scene coordinator predesignated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct a federal response for oil removal under subpart D of the National Contingency Plan, or by the state official with responsibility for oil spill response shall not be liable, notwithstanding any other provision of law, including section five, for removal costs or damages which result from actions taken or omitted to be taken in the course of providing such care, assistance, or advice, except with respect to personal injury or wrongful death, or if such person is grossly negligent or engages in willful misconduct. For the purposes of this paragraph, the term damages shall mean any damages, costs, expenses or economic loss of any kind for which liability may exist under the laws of this state resulting from, arising out of or related to the discharge or threatened discharge of oil. As used in the preceding sentence, the term discharge shall mean any emission, other than natural seepage, intentional or unintentional, and including but not limited to spilling, leaking, pumping, pouring, emitting, emptying or dumping of oil, oil refuse, oil mixed with wastes, other than dredge spoil, or petroleum, but not including hazardous substances which are specifically listed under 42 USC 9601 (14) (A) through (F) and which are subject to the provisions of that Act. Nothing in this section shall affect the liability of a person as described in clause (1) of paragraph (a) of section five, for oil spill response under any other provision of the General Laws.

SECTION 9. Paragraph (a) of section 6 of said chapter 21E, as so appearing, is hereby amended by striking out, in line 24, the word "and",- and by inserting after the word "release", in line 26, the words:- , and (iv) to any person for any liability that another person is relieved of pursuant to the fourth paragraph of section four.

SECTION 10. Paragraph (b) of said section 6 of said chapter 21E, as so appearing, is hereby amended by striking out, in line 39, the word "and (iii)" and inserting in place thereof the words:- , (iii) and (iv).

House of Representatives, December 18, 1991.

Passed to be enacted, Joan M. Menard Attest: Speaker.

In Senate, December 19, 1991.

Passed to be enacted, William M. Bulger , President.

S 1695

30 December, 1991.

Approved.
4:34 PM

Williamf. Weld

Governor.

Paul Richards

GPW	BJM | PMR | MKA | MHI	MES
MAN	RECEIVED	PES
RLH	JAN 3 1 1992	GPB
DAG	CORPORATE AFFAIRS	Return
CC	GOVERNMENT RELATIONS Alyeska Anchorage	FILE

SURVEY OF STATE LAWS

ON

GOOD SAMARITAN

OR

RESPONDER IMMUNITY PROVISIONS

FOR OIL SPILLS

Prepared by

LeBOEUF, LAMB, LEIBY & MacRAE
Suite 1200
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009-5728

(202) 986-8000
Fax: (202) 986-8102

SURVEY OF STATE LAWS ON

GOOD SAMARITAN OR RESPONDER IMMUNITY PROVISIONS

FOR OIL SPILLS

The following is a survey of state statutes, for states with navigable waterways, of good samaritan or responder immunity provisions dealing with oil spill prevention and response. Only statutory law has been surveyed and not case law or common law. The survey also includes references to 1992 pending legislation when such legislation either amends or adds to specific responder immunity provisions in current state law.

This survey is intended to be a reference guide only and is not to be construed as legal advice in any manner The survey is subject to revision and changes as new laws are enacted. For a determination of specific liabilities and obligations of particular persons, vessels or facilities under the various state laws, the reader should consult the pertinent statutes or seek the appropriate advice of counsel. Any questions regarding this survey should be directed to Laurie A. Frost of the Maritime Department of LeBoeuf, Lamb, Leiby & MacRae.

January 1992

ALABAMA

Citation: Ala. Code § 22-22-1 et seq. (19891 Ala. Laws Ch. 470).

Good Samaritan Law: The statute provides that a person is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator or by any state official with responsibility for oil spill response. The immunity does not apply to (i) a responsible party; (ii) with respect to personal injury or wrongful death; or (iii) acts of gross negligence or willful misconduct.

ALASKA

Citation: Alaska Stat. § 09.65.091; § 46.03.825; § 46.04.080; § 46.08.110; § 46.08.160 (1987, Supp. 1990 & 1991 AK Laws Ch. 92).

Good Samaritan Law: There are three provisions which limit the liability of persons responding to an actual or threatened release of oil:

(1) A person providing equipment or services on the request of a police agency, fire department, rescue or emergency squad, or other state governmental agency during a state of emergency declared by an authorized representative of the state or local government is not liable for the death of or injury to any person or damage to any property caused by that person's actions, unless the person acted intentionally, recklessly, or with gross negligence. § 09.65.091. In addition, the actual or imminent occurrence of a catastrophic oil spill which is a discharge in excess of 100,000 barrels or any other discharge which the governor determines presents a grave and substantial threat to the economy or environment of the state, constitutes a disaster emergency. § 46.04.080(a).

(2) Volunteers who register with the division of emergency services in the Department of Military and Veterans' Affairs and agree to be trained by the division in techniques for containment and cleanup, and to be available on short notice to assist the division in containment and cleanup, are not liable for costs and damages as a result of actions taken in response to a release or threatened release, unless the actions taken constitute gross negligence or intentional misconduct. § 46.08.110 and § 46.08.160. Volunteers are entitled to per diem and expenses as determined by the division for training and for days spent in service to the state in containment and cleanup actions. Id., § 46.08.110(c).

(3) A person who is a response action contractor with respect to the release or threatened release of oil whose act or omission is not contrary to an order of the federal or state on-scene coordinator is not civilly liable for injuries, costs, damages, expenses, or other liability that results from the release or threatened release, or from the response action contractor's act or omission in response to the release or threatened release, unless the person bringing the claim proves by a preponderance of the evidence that (a) the response action contractor would have been liable for the initial release or threatened release; (b) the response action contractor acted with gross negligence or intentional misconduct; or (c) the response action contractor, without approval of the federal or state on-scene coordinator, substantially deviated from an oil spill contingency plan, and the plan was either prepared by that contractor for a responsible party or that contractor previously agreed to comply with the terms of that plan under a contract with parties responsible for the release. § 46.03.825(a).

The limitation on liability does not apply to an action for personal injury or death; to an action for personal property damage not caused by oil; or to an act or omission that occurs more than 15 days after the release. § 46.03.825(b).

If the limitation above does not apply, then the oil spill response action contractor is not civilly liable for injuries, costs, damages, expenses or other liability that results from the response action contractor's act or omission with respect to a release or threatened release of oil unless the act or omission is negligent, grossly negligent, or constitutes intentional misconduct. § 46.03.825(c).

ARKANSAS

Citation: Ark. Code Ann. § 8-7-101 (1991).

Good Samaritan Law: No individual partnership, corporation, association, or other entity is liable for civil damages as a result of acts taken, voluntarily and without compensation, in the course of rendering care, assistar ;, or advice with respect to an incident creating a danger to person, property, or the environment as a result of actual or threatened discharge of hazardous materials, or in preventing, cleaning up, disposing of, or attempting to prevent, cleanup, or dispose of any such discharge. The limitation of liability does not apply to acts of gross negligence, defined as reckless, willful, or wanton misconduct. "Hazardous materials" means all materials and substances which are designated or defined as hazardous by law or regulation of the state or the federal government.

CALIFORNIA

Citation: Cal. Harb. & Nav. Code § 151, §§ 293-294 ; Cal. Gov't Code §§ 8574.1 - 8574.23, § 8670.1 et seq. (1978, Supp. 1991 & 1991 CA. Laws Ch. 300).

Good Samaritan Law: There are two provisions which limit the liability of persons responding to an oil spill:

(1) Under the Harbor Code: Any person including an individual, firm, corporation, association or partnership, who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident or other casualty without objection by any person assisted shall not be held liable for any civil damages sought as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person has acted as an ordinary, reasonably prudent man would have acted under the same or similar circumstances. §§ 293 - 294.

(2) Under the Government Code: No person, including but not limited to, an oil spill cooperative, its agent, subcontractors, or employees, is liable under 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, on-site coordinator, or the Coast Guard in response to a spill or threatened spill of oil. § 8670.56.6(a)(1). The

qualified immunity does not apply to any oil spill response action which is inconsistent with the directions of the Coast Guard or is inconsistent with applicable contingency plans. § 8670.56.6(a)(2). Responsible persons remain liable for any and all damages arising from the discharge, including damages arising from improperly carried out response efforts. § 8670.56.6(a)(3).

The limited liability does not extend to a responsible party's agents, employees, and subcontractors remain liable for the discharged oil, unless these entities are immunized as provided by law. The limited liability also does not apply to a cooperative or other person for acts of gross negligence or willful misconduct in connection with the cleanup of a spill. § 8670.56.6(b); § 8670.56.6(d). "Cooperative" means an organization of private persons established for the primary purpose and activity of preventing or rendering care, assistance, or advice in response to a spill or after the administrator certifies that response contracts with qualified and responsible persons are in place to respond to an oil spill. § 8670.56.6(j). Only response efforts to which the certification applies obtain the qualified immunity of this section. Immunity for a person who is regularly engaged in the business of responding to oil spills is only effective for a period of 60 days after commencement of response efforts, but may be extended for a period of 30 days. § 8670.56.6(k).

CONNECTICUT

Citation: Conn. Gen. Stat. § 22a-452 (1990); 1991 Conn. Laws Act 289.

Good Samaritan Law: Connecticut has two provisions which limit the liability of persons responding to oil spills: One applies to oil as defined under the federal Oil Pollution Act of 1990; the other applies to oil mixed with hazardous substances and covered under the Comprehensive Environmental Response, Compensation and Liability Act, or to oil spilled into groundwater of the state.

(1) A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice to prevent, minimize or mitigate a discharge of oil to the surface waters of the state, provided the care, assistance or advice is consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator, or to the extent that the federal coordinator has not given direction, the commissioner of environmental protection. The immunity does not apply to (1) a responsible party; (2) with respect to personal injury or wrongful death; (3) if the person is grossly negligent or engages in willful misconduct; or (4) negligence in the operation of a motor vehicle. 1991 Conn. Laws Act 289.

(2) No person, firm or corporation which renders assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil or petroleum or assists in the prevention, cleanup or disposal of any such discharge shall be held liable for civil damages as a result of any act or omission in rendering such assistance or advice, except acts or omissions amounting to negligence, recklessness, intentional wrongdoing, breach of contract or wilful or wanton misconduct, unless compensated by an entity other than the Department of Environmental Protection for such assistance or advice for more than actual expenses. "Hazardous materials" means any material or substance designated as such by any state or federal law or regulation. The oil covered by this provision is oil mixed with hazardous substances

and regulated under CERCLA, or oil discharged into the groundwater or onto the lands of the state. § 22a-452(b), as amended by 1991 Conn. Laws Act 289. Immunity does not apply to responsible persons, or to persons under a duty to mitigate effects of such discharge or spill. § 22a-452(c).

Persons rendering assistance or advice are entitled to reimbursement for the reasonable costs expended for containment, removal or mitigation, if discharge or spill resulted from negligence of responsible party. § 22a-452(a).

DELAWARE

Citation: 10 Del. Code Ann. § 8135 (1991 Del. Laws Ch. 5).

Good Samaritan Law: The liability of any person rendering care, assistance, or advice to prevent, minimize or mitigate an oil or hazardous material discharge for any removal costs and damage caused by or related to such care, assistance or advice is limited to acts or omissions of such person which can be shown to have been the result of gross negligence, reckless, willful, wanton and/or intentional acts of misconduct. Limitation of liability does not apply to the actions of any person responsible for the initial discharge, or to any person for personal injuries or wrongful death as a result of the acts or omissions of such person.

FLORIDA

Citation: Fla. Stat. Ann. § 376.09 (1988 & Supp. 1991).

Good Samaritan Law: Persons who voluntarily or at the request of the state agency responsible for cleanups render assistance in containing or removing pollutants are not liable for any civil damages to third parties resulting from such assistance, except for acts or omissions resulting from gross negligence or willful misconduct. § 376.09(4).

A person authorized by the state or federal government to render assistance in containing or removing pollutants is not liable for costs, expenses and damages except for those proximately caused by gross negligence or willful misconduct. § 376.09(5).

Persons who render assistance may be eligible for reimbursement of the cost of containment or removal, provided prior approval for the reimbursement is granted by the Department of Natural Resources. § 376.09(6).

GEORGIA

Citation: Ga. Code Ann. § 12-5-500 et seq. (1991 Ga. Laws Act 534).

Good Samaritan Law: A person is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by any state official with responsibility for oil spill response. § 12-5-501(a). Limitation of liability does not apply to a responsible party; with respect to personal injury or wrongful death; if the person is grossly negligent or engages in willful misconduct; or to a response under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980. § 12-5-501(b).

HAWAII

Citation: Haw. Rev. Stat. § 267-8(b); § 128D-1 et seq. (Supp. 1990).

Good Samaritan Law: Not specifically related to oil spill response and cleanup. However, any person who in good faith without remuneration or expectation of remuneration renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage or other assistance, except for damages as may result from the person's gross negligence or wanton acts or omissions.

No person shall be liable under Chap. 128D for costs, damages or penalties as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with Chap. 128D or at the direction of the on-scene coordinator, with respect to an incident creating a danger to public health or welfare or the environment as a result of any release of a hazardous substance. This protection does not apply to liability for damages as the result of gross negligence or intentional misconduct. § 128D-6(e).

Pending Legislation: S. 2256: This legislation would provide immunity from liability for oil spill responders as long as the response is consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or appropriate state officials. The immunity does not extend to any actions of gross negligence or willful misconduct or with respect to personal injury or wrongful death.

IDAHO

Citation: Idaho Gen. Laws § 49-2210; § 39-7101 et seq. (1988, Supp. 1990 & 1991 Idaho Laws Ch. 242).

Good Samaritan Law: Idaho has two provisions which limit the liability of persons responding to oil spills:

(1) No person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened leakage, seepage, or other release of hazardous material, or in preventing, cleaning up, or disposing of or in attempting to prevent, clean up or dispose of any such leakage, seepage or other release, is subject to civil liabilities or penalties of any type. The immunities shall not apply to any person:

1. Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and would otherwise be liable therefor; or

2. Who received compensation, or is an employee of a person who receives compensation for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency, other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

3. Whose gross negligence or reckless, wanton or intentional misconduct caused damages.

(2) "Hazardous Substance Emergency Response Act." Any state emergency response team, local emergency response team, or other person who responds to a hazardous substance incident at the request of an incident commander shall not be subject to civil liability for assistance or advice. § 39-7113(2). The exemption from liability does not apply to (a) an act or omission that caused in whole or in part such hazardous substance incident or a person who may otherwise be liable therefor; or (b) any person who has acted in a grossly negligent, reckless, or intentional manner. A "hazardous substance" includes petroleum. § 39-7103(4)(b). The "incident commander" is the person in charge of all responders to a hazardous substance incident and who is identified in the Idaho hazardous materials emergency response plan. § 39-7103(5).

ILLINOIS

Citation: 61 Ill. Ann. Stat. § 700-11.1 (Supp. 1990).

Good Samaritan Law: No person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous materials, or in preventing, cleaning up, or disposing of or in attempting to prevent, cleanup or dispose of any such discharge, shall be subject to civil liability or civil penalties of any type growing out of such assistance or advice. The immunities do not apply to any person:

1. Whose act or omission caused in whole or in part such actual or threatened leakage, seepage or other release and would otherwise be liable therefor; or

2. Who received compensation, other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

3. Whose gross negligence or reckless, wanton or intentional misconduct caused damages.

INDIANA

Citation: Ind. Stat. Ann. § 34-4-12.2-2 (1986 & 1990 Supp.).

Good Samaritan Law: A person is not liable for any loss that results from an action taken or lack of an action by that person (i) during an emergency; and (ii) with intent to prevent or minimize harm from the emergency. The limitation of liability does not apply to a person (i) whose act or omission caused in whole or in part the emergency and who would otherwise be liable therefor; (ii) whose act or omission constituted gross negligence or willful or wanton misconduct; or (iii) who receives payment, or is an employee of a person who receives payment, for services rendered in connection with the emergency, from a person whose act or omission caused in whole or in part the emergency. Payment does not include reimbursement for expenses.

"Emergency" means an occurrence that involves a hazardous substance or compressed gas and that creates the possibility of harm to any person to property, or to the environment. "Hazardous substance" means a material or waste that has been determined to be hazardous or potentially hazardous to any individual, to property, or to the environment by the United States Environmental Protection Agency, the federal Nuclear Regulatory Commission, the United States Department of Transportation, the solid waste management board, or the United States Occupational Safety and Health Agency or any agent or designee of any of the above mentioned boards, agencies or commission; or any substance that may be potentially hazardous to any person to property or to the environment. "Loss" means injury to or death of a human being, or damage to property or to the environment. "Person" means an individual, a corporation, a partnership or unincorporated association, or a governmental entity that has qualifications or experience in (a) storing, transporting, or handling a hazardous substance or compressed gas; (b) fighting fires; (c) emergency rescue; or (d) first aid care; or is otherwise qualified to provide assistance appropriate to remedy or contribute to the remedy of the emergency.

IOWA

Citation: Iowa Code Ann. § 455B.393 (1990).

Good Samaritan Law: A person who provides assistance at the request of the department or by previous agreement with the department is not liable for damages as a result of that person's acts or omissions in rendering the assistance except, for acts or omissions which result from intentional wrongdoing or gross negligence, or if the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment. Limitation of liability also does not apply if the person providing assistance is also the person having control over the hazardous substance which created the hazardous condition. "Hazardous Condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance (defined to include oil and petroleum products) onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. "Person having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

KANSAS

Citation: Kan. State. Ann. § 65.3472 (1985 & 1990 Supp.).

Good Samaritan Law: Any person who renders assistance or advice concerning an emergency or accident involving threatened discharge of hazardous materials (defined to include oil and petroleum products) or the cleanup thereof is not liable for any civil damages for acts or omissions in mitigating or attempting to mitigate the actual or threatened discharge of hazardous materials.

The immunity provided does not apply to any person responsible for the discharge and who would otherwise be liable therefor or who receives compensation other than reimbursement for out-of-pocket expenses for its services in rendering such assistance or advice. Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from gross negligence or intentional misconduct.

KENTUCKY

Citation: Ken. Rev. Stat. Ann. §§ 411.460, 411.470 (1988 & Supp. 1990).

Good Samaritan Law: No person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge or disposal of hazardous materials (defined to include oil and petroleum products), or in cleaning up such discharge or disposal, is subject to any civil or criminal liabilities or penalties. This immunity does not apply to any person whose act or omission caused in whole or in part the actual or threatened discharge and who would otherwise be liable for the discharge. Also, this immunity does not apply to any person who provides assistance or advice for remuneration or with the expectation of remuneration, except that actual expenses directly incurred due to giving the assistance or advice may be recovered without losing the immunity. The limitation of liability does not extend to any person for damages resulting from such gross negligence, or reckless, wanton, or intentional misconduct.

LOUISIANA

Citation: La. Rev. Stat. Ann. § 30:2000 et. seq. (1989 & Supp. 1991; 1991 La. Laws Ch. 7).

Good Samaritan Law: There are two provisions which limit the liability of persons responding to an unauthorized discharge of oil:

(1) A person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of a hazardous condition is not liable for damages resulting from the assistance or advice. La. Rev. Stat. Ann. § 455B.399(1) (1988). Limitation of liability does not apply to a person who (i) receives compensation other than reimbursement for out-of-pocket expenses for services in rendering the assistance or advice; or, (ii) for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct. § 455B.399.

(2) No action or omission taken by any person, including any discharge cleanup organization, to abate, contain, remove, cleanup, or otherwise respond to pollution from a threatened or actual unauthorized discharge of oil or to otherwise render care, assistance, or advice, whether such action or omission is taken voluntarily, or consistent with the National Contingency Plan or state oil spill contingency plan, or consistent with a response plan required under this Chapter, or consistent with the request of an authorized federal or state official, or consistent with the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge. Except for the responsible person, no person, including any discharge cleanup organization, that voluntarily renders care, assistance, or advice in an oil discharge cleanup operation is liable for removal costs, damages, or civil penalties, resulting from acts or omissions committed in rendering such care, assistance, or advice. Limitation of liability does not apply to actions for personal injury or wrongful death or for acts or omissions of gross negligence or willful misconduct. § 30.2466 (1991 La. Laws Ch. 7).

MAINE

Citation: Me. Rev. Stat. Ann. tit. 38, § 552 Sub. 4 (1991 Me. Laws Ch. 380).

Good Samaritan Law: A responder to an oil discharge is not subject to any civil liabilities or penalties for actions taken or omitted during the course of rendering care, assistance or advice consistent with the National Contingency Plan, a federal contingency plan, the State contingency plan or at the direction of the federal on-scene coordinator or the Commissioner of Environmental Protection unless: (i) the responder is found guilty of gross negligence or willful misconduct, except that any responder guilty of gross negligence or willful misconduct is liable only to the extent that the actions taken or omitted by the responder increase the costs or damages resulting from the spill; or (ii) the claim is for bodily injury to or death of a person. "Responder" means any person who provides assistance or advice in mitigating the effects of a threatened or actual discharge of oil or in the cleanup and removal of any discharge of oil, except for the person responsible for the discharge in the first instance.

The responder immunity does not affect the liability of any other person liable for the damages arising from the discharge or from improperly executed response efforts. Id.

MARYLAND

Citation: Md. Env't Code Ann. § 4-419 (1987 & Supp. 1990).

Good Samaritan Law: Except for willful or intentional acts or omissions, a person is not liable for removal costs or damages as a result of acts or omissions taken in the course of rendering care, assistance, or advice in accordance with the statute, unless (1) the person is a person responsible for the discharge, or (2) it is shown by clear and convincing evidence that the damage to persons, property or the environment is significantly increased by the negligent acts or omissions of the person removing, mitigating, controlling, or rectifying an oil discharge. § 4-419(a). A person who gratuitously responds to a Department request for assistance in cleaning up an oil discharge, and who renders care, assistance or advice in accordance with the statutes, is only liable for damages caused by willful or intentional acts or omissions, or gross negligence. § 4-419(b). These provisions do not apply to any cause of action for personal injury or death resulting from an act or omission of a person responding to a discharge. § 4-419(c).

Pending Legislation: S. 199: This bill would limit the liability of persons responding to oil spills as long as the response is consistent with applicable Maryland law, the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or appropriate state officials. The person responding would not be liable for costs of containment, cleanup and removal of the discharge. The immunity does not extend to any actions of gross negligence or willful misconduct or with respect to personal injury or wrongful death. The immunity also does not extend to persons defined in § 4-401(G) as being responsible for the discharge, or to responsible parties under the Oil Pollution Act of 1990.

MASSACHUSETTS

Citation: Mass. Ann. Laws Ch. 21E § 4, § 16 (1988, Supp. 1990 & 1991 Mass. Laws Ch. 476).

Good Samaritan Law: The federal responder immunity standard was added to Chapter 21E § 4 to limit the liability of any person, except the responsible party as defined under the federal Oil Pollution Act of 1990, for removal costs or damages which result from action taken or omitted in the course of rendering care, assistance or advice consistent with applicable state law, the National Contingency Plan or as directed by the federal on-scene coordinator. Limitation of liability does not extend to acts of gross negligence or willful misconduct; to personal injury or wrongful death. Any liability for removal costs and damages would be borne by the responsible party.

In addition, any person who provides care, assistance or advice in response to a release or threat of release of oil into or onto the tidal waters of the United States shall not be liable for removal costs or damages which result from actions taken or omitted to be taken in the course of providing such care, assistance or advice, as long as such care, assistance or advice is consistent with the National Contingency Plan, applicable state law, or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response. 1991 Mass. Laws Ch. 476.

The statute also provides that response action contractors are not strictly liable to any person for injuries, costs, damages, expenses or other liability, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness or loss of or damage to real or personal property, or economic loss which results from a discharge, unless the response action contractor is otherwise a liable party. Ch. 21E, § 16.

MICHIGAN

Citation: Mich. Compiled Laws Ann. § 29.7 (1981 & Supp. 1990).

Good Samaritan Law: There are two provisions which limit the liability of oil spill responders:

(1) Any person including an individual, partnership, corporation or voluntary association, who provides assistance upon request of the state fire marshal following an accident or during an emergency which involves the handling, transportation, or storage of a hazardous material is not liable for damages as a result of an act or omission by the person arising out of and in the course of the person's good faith rendering of that assistance unless the person's act or omission was the result of gross negligence or wilful misconduct. Limitation of liability does not apply to a person rendering assistance for remuneration beyond reimbursement for out of pocket expenses in connection with the assistance.

(2) Any response activity contractor that renders assistance in any release is not liable for injuries, costs, damage or other liability, including, claims by third parties for death, personal injuries, illness, loss or damage to property or economic loss that result from the release. Qualified immunity does not extend to action by the response activity contractor that is negligent, grossly negligent, or constitutes intentional misconduct.

Pending Legislation: H. 4806: This bill would extend immunity to oil spill responders for response activity costs or damages incurred in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator. Qualified immunity does not apply to (i) the responsible party; (ii) an action with respect to personal injury or wrongful death; (iii) to acts of gross negligence or willful misconduct.

MINNESOTA

Citation: Minn. Stat. Ann. § 115E.06 (1991 Minn. Laws Ch. 305).

Good Samaritan Law: Any of the following persons rendering assistance in response to a discharge of a hazardous substance or oil is not liable for response costs that result from actions taken or omitted in the course of such assistance unless the person is grossly negligent or engages in willful misconduct:

(1) a member of a cooperative or community awareness and emergency response group in compliance with standards in rules adopted by the state pollution control agency;

(2) an employee or official of the political subdivision where the response takes place, or a political subdivision that has a mutual aid agreement with that subdivision;

(3) a member or political subdivision sponsor of a hazardous materials incident response team or special chemical assessment team designated by the commissioner of the department of public safety;

(4) a person carrying out the directions of the commissioner of the pollution control agency, the department of agriculture, the department of natural resources, or the department of public safety; or the United States Coast Guard or the federal on-scene coordinator consistent with the National Contingency Plan under the Oil Pollution Act of 1990; and

(5) a for-hire response contractor.

MISSISSIPPI

Citation: Miss. Code Ann. (1991 Miss. Laws Ch. 582).

Good Samaritan Law: A person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response. Limitation of liability does not apply to a responsible party; to personal injury or wrongful death; or, if the person is grossly negligent or engages in willful misconduct. "Person" means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

MISSOURI

Citation: Missouri Ann. Stat. § 260.545 (1990 & Supp. 1991).

Good Samaritan Law: Any person who provides assistance, including equipment or materials, at the request of the department of natural resources or a political subdivision or volunteer fire protection district or by previous agreement with the department or political subdivision or volunteer fire protection district in the event of a release of a hazardous substance shall not be held liable in any civil action for damages as a result of that person's acts or omissions in rendering such assistance. "Hazardous substance emergency" includes any release of petroleum including crude oil or any fraction thereof. Nothing in this section shall relieve any person from civil damages in the following circumstances:

(1) Where the release referred to is the result of the person's having control of a spilled hazardous substance;

(2) Where the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment; or

(3) For acts or omissions which result from intentional wrongdoing or gross negligence.

NEBRASKA

Citation: Neb. Rev. Stat. § 81-1568 (1987 & Supp. 1990).

Good Samaritan Law: Any volunteer or any person who provides assistance or advice in attempting to mitigate or in mitigating the effects of an actual or threatened discharge of hazardous materials or who attempts to prevent, dispose of or clean up any such discharge is not subject to any civil liability or penalty, except that the person whose act or omission, in whole or in part, caused such actual or threatened discharge is liable for any negligence of such volunteer or other person. "Hazardous materials" means all materials and substances which are defined as hazardous by Nebraska or federal law or by the regulations of any Nebraska or federal government agency.

NEW HAMPSHIRE

Citation: N.H. Rev. Stat. Ann. § 146-A:7 (1991 N.H. Laws Ch. 92).

Good Samaritan Law: No oil spill cleanup organization or other person acting to contain, remove, clean up, restore or take other remedial or corrective action or measures with regard to the spillage or discharge of oil, or threatened spillage or discharge of oil, is liable for removal costs, penalties, fines or damages of any kind, including but not limited to, natural resources damages or civil damages to government or private parties, unless it is determined that their acts or omissions amounted to gross negligence or willful misconduct, provided that:

(a) The oil spill cleanup organization or other person was rendering care, assistance or advice, consistent with the National Contingency Plan or as otherwise directed by the Federal On-Scene Coordinator; or

(b) The oil spill cleanup organization or other person was acting upon the request of the division of water supply and pollution control, or its designee, and pursuant to the division's response procedures. § 146-A:7.

NEW JERSEY

Citation: N.J. Stat. Ann. § 2A:62A-7; N.J. Stat. Ann. § 58.10-23.11(f); § 58.10-23.11g(1) (Supp. 1990) and 1991 N.J. Laws Ch. 260.

Good Samaritan Law: New Jersey now has four good samaritan laws:

(1) "No individual, partnership, corporation, association, or other entity shall be liable for civil damages as a result of acts taken or omitted in anticipation or in preparation for, or in the course of rendering care, assistance or advice with respect to an incident creating a danger to person, property, or the environment as a result of

[a]... hazardous discharge." This limit on liability does not apply to the action of the person responsible for the discharge. It is applicable only to third parties rendering assistance. This does not preclude liability for civil damages as the result of gross negligence or intentional misconduct. § 2A:62A-7.

(2) No action taken by any person to contain or remove a discharge shall be construed as an admission of liability for said discharge. No person who renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions of gross negligence or willful misconduct. § 58.10-23.11(f).

(3) The liability of any person performing hazardous discharge mitigation or cleanup services in accordance with procedures established by state or federal law for any injury to a person or property caused by or related to these services is limited to acts or omissions of the person shown to have been negligent. 58.10-23.11g1. Acts or omissions of a person performing cleanup services in accordance with generally accepted practice and state-of-the-art scientific knowledge, and utilizing the best technology available to the person at the time of services, creates a rebuttable presumption that the acts or omissions were not negligent. Id.

(4) A person is not liable for any cleanup and removal costs or damages of any kind that result from actions taken or not taken in the course of rendering care, assistance or advice with respect to the discharge or threatened discharge of petroleum into waters where the care, assistance or advice is consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or appropriate State officials. Limitation of liability does not extend to personal injury or wrongful death; to acts of gross negligence or willful misconduct; or to persons otherwise liable for cleanup and removal costs of the initial discharge. A person liable for the initial discharge is liable for any cleanup and removal costs that another person is relieved of under this section. 1991 N.J. Laws Ch. 260.

NEW YORK

Citation: N.Y. Nav. Law, § 176.7(b) (McKinney 1989 & Supp. 1990).

Good Samaritan Law: Any person who gratuitously renders assistance in containing or removing a discharge is not liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering assistance, except for acts or omissions of gross negligence or willful misconduct. § 176.7(b).

Pending Legislation: A. 5327/S. 3429: These bills provide that a person is not liable for clean up and removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by the commissioner or his designee. However, limitation of liability does not apply (i) to a responsible party, (ii) with respect to personal injury or wrongful death, or (iii) if the person is grossly negligent or engaged in willful misconduct. A responsible party shall be liable for any cleanup and removal costs and damages that another person is relieved of under paragraph (a) of this subdivision. This bill would amend § 176. This bill was left pending in Committee when the legislature adjourned and may be reconsidered in the 1992 session.

A. 6133: This bill provides that no person who gratuitously or as a result of proximity to the discharge and the immediacy of the situation renders assistance in containing or removing a discharge shall be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance except for acts or omissions of gross negligence or willful misconduct. This bill would amend § 176. This bill was left pending in Committee when the legislature adjourned and may be reconsidered in the 1992 session.

NORTH CAROLINA

Citation: N.C. Gen. Stat. § 143-215.93A. (1991 N.C. Laws Ch. 432).

Good Samaritan Law: A person is not liable under state or common law for removal costs or damages which result from, arising out of, or are related to the discharge or threatened discharge of oil, when such removal costs or damages result from acts or omissions in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President of the United States, the federal on-scene coordinator, the Governor, the Secretary, or any person designated to direct oil discharge removal activities. Limitation of liability does not apply to a responsible party, as defined under section 1001 of the Oil Pollution Act of 1990; with respect to personal injury or wrongful death; to a response under CERCLA/SARA; or when the person is grossly negligent or engages in willful misconduct. § 143-215.93A.

OHIO

Citation: Ohio Rev. Code § 2305.232 (Supp. 1990).

Good Samaritan Law: No person who gives aid or advice in an emergency situation relating to the release of hazardous material or to the cleanup of hazardous material that has been released, nor the employer of such a person, is liable in civil damages as a result of the aid or advice if (i) the aid or advice was given at the request of state officials or the owner or manufacturer of hazardous materials, or a hazardous material mutual aid group; (ii) the person acted without anticipating remuneration for himself or his employer; (iii) the person was specially qualified by training or experience to give aid or advice; (iv) neither the person or employer giving the aid or advice was responsible for the release; (v) the person giving the aid or advice did not engage in willful, wanton, or reckless misconduct or grossly negligent conduct in giving the aid or advice; (vi) the person giving the aid or advice notified the emergency response section of the environmental protection agency prior to giving the aid or advice. "Hazardous material" means any material designated as such under the "Hazardous Materials Transportation Act." "Mutual aid group" means any group formed at the federal, state, regional, or local level whose members agree to respond to incidents involving hazardous material whether or not they shipped, transported, manufactured, or were at all connected with the hazardous material involved in a particular incident.

OREGON

Citation: Or. Rev. Stat. § 468.780 (1991 Or. Laws Ch. 606).

Good Samaritan Law: A person is not liable for removal costs or damages that result from action taken or omitted in the course of rendering care, assistance or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by a state official responsible for oil spill response. Limitation of liability does not apply to a responsible party; with respect to personal injury or wrongful death; or if the person is grossly negligent or engages in willful misconduct. A responsible party would be liable for any removal costs or damages for which a person is relieved of under this section. Nothing in this section would affect the liability of a responsible party for oil spill response under ORS 468.780 to 468.833.

PENNSYLVANIA

Citation: General water pollution law. Pa. Stat. Ann. tit. 35 § 691.1 et seq. (Purdon 1977 & Supp. 1990).

Good Samaritan Law: No statutory provisions relating to "Good Samaritans."

Pending Legislation: H. 1667/S. 1064: This legislation would provide limited liability for oil spill responders for removal costs and damages which result from actions taken or omitted in rendering assistance that is consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or by the State official with responsibility for oil spill response. The limitation of liability does not extend to the responsible party or to acts of gross negligence or willful misconduct; or to personal injury or wrongful death.

RHODE ISLAND

Citation: R.I. Gen. Laws § 46.12.3-3; § 46-12.6-1; § 46-12.3-8 (Supp. 1990).

Good Samaritan Law: Rhode Island has three Good Samaritan provisions:

(1) Any nonprofit entity incorporated as such, which is authorized by the department or the federal government or by the person responsible for a discharge to render assistance in containing or removing petroleum or petroleum products from waters of the state is not liable for costs, expenses and/or damages, unless such costs, expenses and/or damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of the nonprofit entity. If the nonprofit entity is authorized to render assistance by the person responsible for the discharge, the person responsible is liable for the costs, expenses or damages resulting from the nonprofit entity's acts or omissions. § 46-12.3-3.

(2) Any nonprofit entity qualifying for tax exemptions from the IRS which is authorized by the department or the federal government or by the person responsible for a discharge to render assistance in containing or removing petroleum or petroleum

products from waters of the state is not liable for costs, expenses and/or damages, unless such costs, expenses and/or damages are a proximate result of acts or omissions caused by gross negligence or willful misconduct of the nonprofit entity. If the nonprofit entity is authorized to render assistance by the person responsible for the discharge, the person responsible is liable for the costs, expenses or damages resulting from the nonprofit entity's acts or omissions. § 46-12.6-1.

(3) Persons, other than those responsible for a discharge, who render care, assistance or advice with respect to the discharge of a pollutant into the waters of the state regarding the amelioration of environmental damage caused by the discharge, are not strictly liable for their acts or omissions. § 46-12.3-8.

Pending Legislation: S. 987: This bill provides that any person who renders care, assistance or advice in cleaning up, containing, removing or otherwise responding to a discharge or threat of discharge of petroleum from the waters of the state, consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the director of the department of the environment, shall not be liable for any costs (including removal costs), expenses and/or damages of any kind (including natural resource damages); provided, however, that this limitation shall not apply to such costs, expenses and/or damages that are a proximate result of that person's gross negligence or willful misconduct. Provided, also, that a person responsible for the initial discharge shall be liable for any costs, expenses and/or damages for which a responder is relieved of liability under this section. This bill would amend § 46-12.3-8. This bill was left pending in Committee at the end of the legislative session and may be reconsidered in the 1992 session.

SOUTH CAROLINA

Citation: S.C. Code Ann. § 48-43-560 (Law. Co-op. 1987 & Supp. 1989).

Good Samaritan Law: Any person who, voluntarily or at the request of the Department of Health and Environmental Control, renders assistance in containing or removing pollutants shall not be liable for any civil damages to third parties resulting solely from acts or omissions of such person in rendering such assistance, except for acts or omissions amounting to gross negligence or willful misconduct. § 48-43-560(4). This section does not affect the right of any person who renders assistance to reimbursement for the costs of the containment or removal. § 48-43-560(5).

Pending Legislation: Legislation is expected to be introduced to adopt the federal responder immunity standard in South Carolina.

SOUTH DAKOTA

Citation: S.D. Codified Laws Ann. § 33-15-18.1. (1986 & Supp. 1990).

Good Samaritan Laws: A person who provides assistance at the request of any emergency and disaster service agency in the event of an accident or other emergency situation involving the use, handling, transportation, transmission or storage of hazardous material is not liable in any civil action for damages as a result of his acts of commission or omission in rendering assistance. Nothing in this section grants immunity to a person causing damages as a result of his business activities or by his willful or wanton act of commission or omission in rendering assistance or which takes place without the request of an emergency and disaster service agency. "Hazardous material," means any material, including but not limited to, explosives, flammable liquids, flammable compressed gas, flammable solids, oxidizing materials, poisons, corrosive materials and radiological materials, the loss of control or mishandling of which could cause person injury or death to humans or damage to property or the environment.

TENNESSEE

Citation: Tenn. Code Ann. § 68-27-202 (1987).

Good Samaritan Law: Any person, defined as any individual, partnership, corporation, association, or other entity, who in good faith and without compensation renders emergency care, assistance or advice, upon the request of any police or fire department, rescue or emergency squad, or any governmental agency at the scene of an accident or disaster involving the use, handling, transportation, transmission or storage of hazardous materials is not liable for damages as a result of conduct in rendering such care, assistance or advice unless the damage was caused by gross negligence. Gross negligence shall also include rendering care, assistance or advice with respect to matters in which the person does not possess the technical knowledge or skills concerning such matters. "Compensation" shall not be construed to include the reimbursement of the actual expenses exclusive of salaries of any person rending such emergency care, assistance or advice; "hazardous materials" includes: a) materials designated as hazardous by any governmental agency; or b) materials where the fire or explosion of or spillage, or other discharge or release creates a hazard to person, property or the environment.

This section does not confer any immunity from liability to any person for actions taken prior to or after the rendering of care, assistance or advice, and shall not affect any potential liability that any person may have arising from the manufacture, generation, transportation, storage or handling of any hazardous material. Any person who is in the business, for a compensation of rendering care, assistance or advice in accidents or existing or impending disasters involving hazardous materials shall not be included under the immunity provisions. § 68-27-203.

TEXAS

Citation: Texas Code Ann. §§ 79.001 - 79.002 (1987 & Supp. 1991); § 40.104 (1991 Tex. Laws Page 3).

Good Samaritan Law: Texas has two Good Samaritan provisions:

(1) Except in the case of reckless conduct or intentional, wilful, or wanton misconduct, a person is immune from civil liability for an act or omission that occurs in giving assistance or advice with respect to an incident that has already occurred, is related to the storage or transportation of hazardous materials, and endangers

individuals, property, or the environment as the result of spillage or other release. § 79.002 (1987). "Hazardous material" is defined to include petroleum products. § 79.001 (1987). This section does not apply to any person giving advice or assistance for or in expectation of compensation from or on behalf of the recipient of assistance in excess of reimbursement for expenses incurred. § 79.002 (1987).

(2) No person or discharge cleanup organization that voluntarily, or pursuant to the National Contingency Plan or the state coastal discharge contingency plan, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or wilful misconduct. § 40.104 (1991 Tex. Laws Page 3).

VERMONT

Citation: Ver. Stat. Ann. § 1251 et. seq. (1984 & Supp. 1990).

Good Samaritan Law: There are no provisions currently exempting from liability "good samaritans" who assist in cleanups.

VIRGINIA

Citation: Va. Code Ann. § 62.1-44.34:18 (Supp. 1991).

Good Samaritan Law: A person who renders assistance in containment and cleanup of an oil discharge or a threat of discharge is only liable for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages that are caused by the acts or omissions of that person in rendering such assistance. § 62.1-44.34:18.D. This qualified immunity does not extend to persons discharging or causing or permitting a discharge or threat of discharge into state waters. Id.

WASHINGTON

Citation: Wash. Rev. Code § 90.48.383 (1991 Supp.); § 90.48.325 (1991 Wa. Laws Ch. 200).

Good Samaritan Law: Washington has two good samaritan provisions:

(1) A person is not liable for removal costs or damages that result from actions taken or omitted to be taken in the course of rendering care, assistance or advice consistent with the National Contingency Plan, or as otherwise directed by the federal on-scene coordinator or by the Department official with responsibility for oil spill response. § 304, added by 1991 Wash. Laws Ch. 200. The immunity does not apply to a

responsible party, with respect to personal injury or wrongful death, or if the person is grossly negligent or engages in willful misconduct. Id.

(2) A person who volunteers to assist in the cleanup of spilled oil, or a person who meets the standards established by the Department for contractors providing cleanup and containment services under approved contingency plans, or the state or any unit of local government are not liable for necessary expenses or property damage caused by an act or omission of that person during the oil spill cleanup unless the act or omission was performed in bad faith or with gross negligence. § 90.48.383(1).

WEST VIRGINIA

Citation: W. Va. Code § 15-5-11 (1991).

Good Samaritan Law: The State, any political subdivision, any agency of the State or political subdivision or, except in cases of willful misconduct, any duly qualified emergency service worker complying with or reasonably attempting to comply with this article or any order, rule, regulation or ordinance promulgated pursuant to this article, is not liable for the death of or injury to any person or for damage to any property as a result of such activity. This section shall not affect the right of any person to receive benefits or compensation to which he would otherwise be entitled under West Virginia law, any act of Congress or any other law.

As used in this section, "duly qualified emergency service worker" means any duly qualified full or part-time paid, volunteer or auxiliary employee of this State, or any other state, territory, possession or the District of Columbia, of the federal government, of any neighboring country or political subdivision thereof or of any agency or organization performing emergency services in this State subject to the order or control of or pursuant to the request of the State or any political subdivision thereof. A duly qualified emergency service worker performing his duty in this State pursuant to any lawful agreement, compact or arrangement for mutual aid and assistance to which the State or a political subdivision is a party shall possess the same powers, duties, immunities and privileges he would possess if performing the same duties in his own state, province or political subdivision thereof.

WISCONSIN

Citation: Wisconsin Stat. Ann. § 895.48 (1989 & Supp. 1990).

Good Samaritan Law: Any person is immune from civil liability for his or her good faith acts or omissions related to assistance or advice which the person provides relating to an emergency or a potential emergency regarding either i) mitigating or attempting to mitigate the effects of an actual or threatened discharge of a hazardous substance; ii) preventing or cleaning up or attempting to prevent or cleanup an actual or threatened discharge of a hazardous substance.

The immunity does not extend to any person:

1) whose act or omission causes in whole or in part the discharge and who would otherwise be liable for the act or omission;
2) whose act or omission constitutes gross negligence or involves reckless, wanton or intentional misconduct; or
3) who receives or expects to receive compensation, other than reimbursement for out-of-pocket expenses, for rendering the advice and assistance.

Any hazardous substance predictor or any person who provides the technology to enable hazardous substance predictions to be made is immune from civil liability for his or her good faith acts or omissions in making that prediction or providing that technology.

"Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes,but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department of natural resources. § 144.01 (4m).

Hess

[FIRST REPRINT]
ASSEMBLY, No. 4752

FILE COPY

Approved by Governor Florio on August 13, 1991

STATE OF NEW JERSEY

INTRODUCED APRIL 22, 1991

By Assemblymen DEVERIN, COLLINS and Villapiano

AN ACT concerning the liability of certain persons for discharges of petroleum into the waters and supplementing P.L.1976, c.141 (C.58:23.11 et seq.).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Notwithstanding the provisions of P.L.1976, c.141 (C.58:10-23.11g) or any other law, including common law, to the contrary, a person is not liable for any cleanup and removal costs or damages of any kind, direct or indirect no matter by whom sustained, which result from actions taken or not taken in the course of rendering care, assistance, or advice with respect to the discharge or threatened discharge of petroleum into [1]**[**surface or ground**]** <u>the State's surface</u>[1] waters where the care, assistance, or advice is consistent with the federal National Contingency Plan prepared pursuant to 33 U.S.C. §1321, or is otherwise directed by the federal on-scene coordinator or by the appropriate State official. The defense from liability granted pursuant to this section shall not apply (1) to a person otherwise liable for cleanup and removal costs of the initial discharge pursuant to subsection c. of section 8 of P.L. 1976, c.141 (C.58:10-23.11g), (2) with respect to personal injury or wrongful death, or (3) if the person is grossly negligent or engages in willful misconduct. A person liable for the initial discharge or threat of discharge pursuant to subsection c. of section 8 of P.L 1976, c.141 (C.58:10-23.11g) is liable for any [1]<u>cleanup and</u>[1] removal costs and damages that another person is relieved of under this section. Nothing in this section shall limit other defenses or immunities to liability that may exist in P.L. 1976, c.141.

[1]<u>For the purposes of this section "petroleum" does not include dredged spoil.</u>[1]

2. This act shall take effect immediately.

ENVIRONMENT

Provides limited immunity, from liability for cleanup and removal costs, to certain responders to petroleum discharges to water.

EXPLANATION--Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined <u>thus</u> is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1] Assembly AEE committee amendments adopted April 29, 1991.

This document has been electronically recreated. Line numbers have been omitted in translation. Although the text of each page is identical to that printed by the Legislature, the last line of text may not reach the right margin.

FILE COPY

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4752

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 29, 1991

The Assembly Energy and Environment Committee favorably reports Assembly Bill No. 4752 with committee amendments.

As amended, Assembly Bill No. 4752 provides limited immunity for oil spill responders. This immunity provision is similar to the one contained in the federal "Oil Pollution Act of 1990."

This bill provides immunity from any cleanup and removal costs, as well as from any other damages, for any person rendering care, assistance, or advice with respect to the discharge of petroleum into the State's surface waters. Immunity is only available where the actions taken were consistent with the federal Water Pollution Control Act's National Contingency Plan or are otherwise directed by a federal or State on-scene coordinator.

No immunity is provided if the person is otherwise liable for the discharge under the State's "Spill Compensation and Control Act," for personal injury or wrongful death damages, or where the discharge was the result of gross negligence or willful misconduct. The bill further provides that the initial discharger is liable for any of the damages for which the responder is relieved of under this bill.

The committee amended the bill to limit the immunity provisions to discharges to surface waters and would exempt dredged spoils from the definition of petroleum for the purposes of the immunity provision in the bill. These changes make the immunity provisions more closely related to the federal act.