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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 1. GENERAL [8000 - 8899.95] (Division 1 enacted by Stats. 1943, Ch. 134.)

CHAPTER 7.4. Oil Spill Response and Contingency Planning [8670.1 - 8670.73] (Chapter 7.4 added by Stats. 1990, Ch. 1248, Sec. 17.)

ARTICLE 1. General Provisions [8670.1 - 8670.5.5] (Article 1 added by Stats. 1990, Ch. 1248, Sec. 17.)

8670.1. 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, Ch. 1248, Sec. 17. Effective September 24, 1990.)

8670.2. The Legislature finds and declares as follows:

- (a) Each year, billions of gallons of crude oil and petroleum products are transported by vessel, railroad, truck, or pipeline over, across, under, and through the waters of this state. Renewable fuels, created from nonpetroleum renewable resources, are replacing large segments of traditional petroleum-based fuels. This trend is expected to continue as the concept of "oil" evolves from petroleum fuels to other types of fuels for regular use.
- (b) Recent accidents in southern California, Alaska, other parts of the nation, and Canada, have shown that transportation of oil and renewable fuels can be a significant threat to the environment of sensitive areas.
- (c) Existing prevention programs are not able to reduce sufficiently the risk of significant discharge of petroleum and renewable fuels into state waters.
- (d) Response and cleanup capabilities and technology are unable to remove consistently the majority of spilled oil when major oil spills occur in state waters.
- (e) California's lakes, rivers, other inland waters, coastal waters, estuaries, bays, and beaches are treasured environmental and economic resources that 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 rail tank cars, tank trucks, tank ships, 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 state waters is extremely expensive because of the need to clean up discharged oil, protect sensitive environmental areas, and restore ecosystem damage.
- (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 state waters.
- (k) Those who transport oil through or near the 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 and renewable fuel spills and it is in the interests of the state to coordinate with agencies of the federal government, including the Coast Guard and the United States Environmental Protection Agency, to the greatest degree possible.
- (m) California has approximately 1,100 miles of coast, including four marine sanctuaries that occupy 88,767 square miles. The weather, topography, and tidal currents in and around California's coastal ports and waterways make vessel navigation challenging.

The state's major ports are among the busiest in the world. Approximately 700 million barrels of oil are consumed annually by California, with over 500 million barrels being transported by vessel. The peculiarities of California's maritime coast require special precautionary measures regarding oil pollution.

(n) California has approximately 158,500 square miles of interior area where there are approximately 6,800 miles of pipeline used for oil distribution, 5,800 miles of class I railroad track, and 172,100 miles of maintained roads.

(Amended by Stats. 2021, Ch. 115, Sec. 11. (AB 148) Effective July 22, 2021.)

8670.3. 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) (1) "Best achievable protection" means the highest level of protection that can be achieved through both the use of the best achievable technology and those manpower levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The administrator's determination of which measures provide the best achievable protection shall be guided by the critical need to protect valuable natural resources and state waters, while also considering all of the following:

(A) The protection provided by the measure.

(B) The technological achievability of the measure.

(C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, 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 the natural resources of the state.

(c) (1) "Best achievable technology" means that technology that provides the greatest degree of protection, taking into consideration both of the following:

(A) Processes that are being developed, or could feasibly be developed anywhere in the world, given overall reasonable expenditures on research and development.

(B) Processes that are currently in use anywhere in the world.

(2) In determining what is the best achievable technology pursuant to this chapter, the administrator shall consider the effectiveness and engineering feasibility of the technology.

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

(e) "Dedicated response resources" means equipment and personnel committed solely to oil spill response, containment, and cleanup that are not used for any other activity that would adversely affect the ability of that equipment and personnel to provide oil spill response services in the timeframes for which the equipment and personnel are rated.

(f) "Environmentally sensitive area" means an area defined pursuant to the applicable area contingency plans or geographic response plans, as created and revised by the Coast Guard, the United States Environmental Protection Agency, and the administrator.

(g) (1) "Facility" means any of the following located in state waters or located where an oil spill may impact state waters:

(A) A building, structure, installation, or equipment used in oil exploration, oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, or oil transportation.

(B) A marine terminal.

(C) A pipeline that transports oil.

(D) A railroad that transports oil as cargo.

(E) A drill ship, semisubmersible drilling platform, jack-up type drilling rig, or any other floating or temporary drilling platform.

(F) A renewable fuel production facility.

(G) A renewable fuel receiving facility.

(2) "Facility" does not include any of the following:

(A) A vessel, except a vessel located and used for any purpose described in subparagraph (E) of paragraph (1).

(B) An owner or operator 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.

(C) Operations on a farm, nursery, logging site, or construction site that are either of the following:

(i) Do not exceed 20,000 gallons in a single storage tank.

(ii) Have a useable tank storage capacity not exceeding 75,000 gallons.

(D) A small craft refueling dock.

(h) "Local government" means a chartered or general law city, a chartered or general law county, or a city and county.

(i) (1) "Marine terminal" means any facility used for transferring oil to or from a tank ship or tank barge.

(2) "Marine terminal" includes, for purposes of this chapter, all piping not integrally connected to a tank facility, as defined in subdivision (n) of Section 25270.2 of the Health and Safety Code.

(j) "Marine waters" means those waters subject to tidal influence, and includes the waterways used for waterborne commercial vessel traffic to the Port of Sacramento and the Port of Stockton.

(k) "Mobile transfer unit" means a vehicle, truck, or trailer, including all connecting hoses and piping, used for the transferring of oil at a location where a discharge could impact waters of the state.

(l) "Nondedicated response resources" means those response resources identified by an Oil Spill Response Organization for oil spill response activities that are not dedicated response resources.

(m) "Nonfloating oil" means a Group V oil, as defined in Section 155.1020 of Title 33 of the Code of Federal Regulations, including any Group V oil that is diluted with a diluent for transport. The administrator may define additional types of oil as nonfloating oil upon a finding that those types of oil are more likely to sink rapidly due to their composition.

(n) "Nonpersistent oil" means a petroleum-based oil, such as gasoline or jet fuel, that evaporates relatively quickly and is an oil with hydrocarbon fractions, at least 50 percent of which, by volume, distills at a temperature of 645 degrees Fahrenheit, and at least 95 percent of which, by volume, distills at a temperature of 700 degrees Fahrenheit.

(o) "Nontank vessel" means a vessel of 300 gross tons or greater that carries oil, but does not carry that oil as cargo.

(p) "Oil" means either of the following:

(1) 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.

(2) Renewable fuel.

(q) "Oil spill cleanup agent" means a chemical, or any other substance, used for removing, dispersing, or otherwise cleaning up oil or any residual products of petroleum in, or on, any of the waters of the state.

(r) "Oil spill contingency plan" or "contingency plan" means the oil spill contingency plan required pursuant to Article 5 (commencing with Section 8670.28).

(s) (1) "Oil spill response organization" or "OSRO" means an individual, organization, association, cooperative, or other entity that provides, or intends to provide, equipment, personnel, supplies, or other services directly related to oil spill containment, cleanup, or removal activities.

(2) "OSRO" does not include an owner or operator with an oil spill contingency plan approved by the administrator or an entity that only provides spill management services, or who provides services or equipment that are only ancillary to containment, cleanup, or removal activities.

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

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

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

(C) Except as provided in subparagraph (D), in the case of a vessel or facility, where title or control was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to an entity of state or local government, a 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 that acquired ownership or control of a vessel or facility, when the entity of the state or local government has caused or contributed to a spill or discharge of oil into waters of the state.

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

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

(u) "Person" means an individual, trust, firm, joint stock company, or corporation, including, but not limited to, a government corporation, partnership, and association. "Person" also includes a 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.

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

(w) "Railroad" means a railroad, railway, rail car, rolling stock, or train.

(x) "Rated OSRO" means an OSRO that has received a satisfactory rating from the administrator pursuant to Section 8670.30.

(y) "Renewable fuel" means any liquid produced from nonpetroleum renewable resources that is used or useable as a fuel, or such liquid that may be blended with other types of fuels. Renewable fuel includes fuels that may contain up to 5 percent petroleum products.

(z) "Renewable fuel production facility" means a facility that produces renewable fuel for blending or shipment.

(aa) "Renewable fuel receiving facility" means a facility that is the first point of receipt of renewable fuel in the state that originated from outside the state, that receives renewable fuel delivered by railroad tank car, tank truck, pipeline, or vessel. A renewable fuel receiving facility may include, but is not limited to, a refinery, a marine terminal, a rail tank car to tank truck transfer facility, or other storage and distribution facility.

(ab) "Response efforts" means rendering care, assistance, or advice in accordance with the National Contingency Plan, the California oil spill contingency plan, or at the direction of the administrator, the United States Environmental Protection Agency, or the United States Coast Guard in response to a spill or a threatened spill into waters of the state.

(ac) "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 a person that charters by demise, a vessel or facility, or a person or entity accepting responsibility for the vessel or facility.

(ad) "Small craft" means a vessel, other than a tank ship or tank barge, that is less than 20 meters in length.

(ae) "Small craft refueling dock" means a waterside operation that dispenses only nonpersistent oil in bulk and small amounts of persistent lubrication oil in containers primarily to small craft and meets both of the following criteria:

(1) Has tank storage capacity not exceeding 20,000 gallons in any single storage tank or tank compartment.

(2) Has total usable tank storage capacity not exceeding 75,000 gallons.

(af) "Small marine fueling facility" means either of the following:

(1) A mobile transfer unit.

(2) A fixed facility that is not a marine terminal, that dispenses primarily nonpersistent oil, that may dispense small amounts of persistent oil, primarily to small craft, and that meets all of the following criteria:

(A) Has tank storage capacity greater than 20,000 gallons but not more than 40,000 gallons in any single storage tank or storage tank compartment.

(B) Has total usable tank storage capacity not exceeding 75,000 gallons.

(C) Had an annual throughput volume of over-the-water transfers of oil that did not exceed 3,000,000 gallons during the most recent preceding 12-month period.

(ag) "Spill," "discharge," or "oil spill" means a release of any amount of oil into waters of the state that is not authorized by a federal, state, or local government entity.

(ah) "Spill management team" means personnel and associated equipment that staff the organizational structure for managing some or all aspects of response, containment, and cleanup of a spill, utilizing an incident command or unified command structure.

(ai) "Tank barge" means a vessel that carries oil in commercial quantities as cargo but is not equipped with a means of self-propulsion.

(aj) "Tank ship" means a self-propelled vessel that is constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo.

(ak) "Tank vessel" means a tank ship or tank barge.

(al) "Vessel" means a watercraft or ship of any kind, including every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

(am) "Vessel carrying oil as secondary cargo" means a vessel that does not carry oil as a primary cargo, but does carry oil as cargo. The administrator may establish minimum oil volume amounts or other criteria by regulations.

(an) "Waters of the state" or "state waters" means any surface water, including saline waters, marine waters, and freshwaters, within the boundaries of the state but does not include groundwater.

(Amended by Stats. 2021, Ch. 115, Sec. 12. (AB 148) Effective July 22, 2021.)

8670.4. 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, Ch. 1248, Sec. 17. Effective September 24, 1990.)

8670.5. The Governor shall ensure that the state fully and adequately responds to all oil spills in waters of the state. The administrator, acting at the direction of the Governor, shall implement activities relating to oil spill response, including drills and preparedness and oil spill containment and cleanup. The administrator shall also represent the state in any coordinated response efforts with the federal government.

(Amended by Stats. 2014, Ch. 35, Sec. 7. (SB 861) Effective June 20, 2014.)

8670.5.5. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(Added by renumbering Section 8670.95 by Stats. 2016, Ch. 86, Sec. 157. (SB 1171) Effective January 1, 2017.)