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AB-1197 Oil spill contingency plans: spill management teams. (2017-2018)

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Date Published: 10/09/2017 09:00 PM

Assembly Bill No. 1197

CHAPTER 584

An act to amend Sections 8670.3 and 8670.29 of, and to add Section 8670.32 to, the Government Code, relating to oil spills.

[Approved by Governor October 08, 2017. Filed with Secretary of State October 08, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1197, Limón. Oil spill contingency plans: spill management teams.

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act generally requires the administrator for oil spill response, acting at the direction of the Governor, to implement activities relating to oil spill response, including drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. The act requires owners or operators of specified facilities and owners or operators of certain vessels to prepare and implement an oil spill contingency plan, containing specified provisions, that has been submitted to, and approved by, the administrator. Existing law provides for the rating of oil spill response organizations (OSROs) by the administrator pursuant to specified provisions and requires an oil spill contingency plan to identify at least one rated OSRO for each rating level established pursuant to those provisions.

This bill would no longer require an oil spill contingency plan to identify at least one rated OSRO for each rating level and would instead require the plan to identify at least one OSRO rated pursuant to those provisions, and would authorize an owner or operator to rely on its own response equipment and personnel, if they have been rated by the administrator, as specified.

This bill would authorize a spill management team (SMT), as defined, to apply to the administrator for a certification of that SMT's response capabilities. The bill would require the administrator to establish criteria for certifying an SMT based on the SMT's capacity to respond to spills and manage spills effectively, review applications for SMT certification, and certify SMTs, as specified. The bill would authorize the administrator to charge a reasonable administrative fee to process an application for, or renewal of, a certification. The bill would require the administrator to adopt regulations to implement these provisions as appropriate. The bill would require an oil spill contingency plan to identify at least one certified SMT, certified by the administrator pursuant to the provisions described above, and would authorize an owner or operator to rely on its own spill management team that has been certified by the administrator, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8670.3 of the Government Code is amended to read:

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.

(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) "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.

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

(o) "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.

(p) "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.

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

(r) (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.

(s) (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.

(t) "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.

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

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

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

(x) "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.

(y) "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.

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

(aa) "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.

(ab) "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.

(ac) "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.

(ad) "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.

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

(af) "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.

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

(ah) "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.

(ai) "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.

(aj) "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.

SEC. 2. Section 8670.29 of the Government Code is amended to read:

8670.29. (a) In accordance with the rules, regulations, and policies established by the administrator pursuant to Section 8670.28, an owner or operator of a facility, small marine fueling facility, or mobile transfer unit, or an owner or operator of a tank vessel, nontank vessel, or vessel carrying oil as secondary cargo, while operating in the waters of the state or where a spill could impact waters of the state, shall have an oil spill contingency plan that has been submitted to, and approved by, the administrator pursuant to Section 8670.31. An oil spill contingency plan shall ensure the undertaking of prompt and adequate response and removal action in case of a spill, shall be consistent with the California oil spill contingency plan, and shall not conflict with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

(b) An oil spill contingency plan shall, at a minimum, meet all of the following requirements:

(1) Be a written document, reviewed for feasibility and executability, and signed by the owner or operator, or his or her designee.

(2) Provide for the use of a recognized incident command system to be used during a spill.

(3) Provide procedures for reporting spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, exercise, threatened spill, or spill.

(4) Describe the communication plans to be used during a spill, if different from those used by a recognized incident command system.

(5) Describe the strategies for the protection of environmentally sensitive areas.

(6) (A) Identify at least one rated OSRO, rated pursuant to Section 8670.30. Each identified rated OSRO shall be directly responsible by contract, agreement, or other approved means to provide oil spill response activities pursuant to the oil spill contingency plan. A rated OSRO may provide spill response activities individually, or in combination with another rated OSRO, for a particular owner or operator.

(B) For purposes of this paragraph, "other approved means" includes the owner or operator relying on its own response equipment and personnel if the response equipment and personnel have been rated by the administrator consistent with the requirements of Section 8670.30.

(7) Identify a qualified individual.

(8) (A) Identify at least one certified spill management team, certified pursuant to Section 8670.32, that is capable of managing a spill of the reasonable worst case spill volume identified in the plan. An owner or operator may demonstrate incident management capabilities with one or more spill management teams. Each identified certified spill management team shall be directly responsible by contract, agreement, or other approved means to provide spill response activities pursuant to the oil spill contingency plan.

(B) For purposes of this paragraph, "other approved means" includes the owner or operator relying on its own spill management team if that spill management team has been certified by the administrator consistent with the requirements of Section 8670.32.

(9) Provide the name, address, and telephone and facsimile numbers for an agent for service of process, located within the state and designated to receive legal documents on behalf of the owner or operator.

(10) Provide for training, drills, and exercises on elements of the plan at least annually, with all elements of the plan subject to a drill or exercise at least once every three years.

(c) An oil spill contingency plan for a vessel shall also include, but is not limited to, all of the following requirements:

(1) The plan shall be submitted to the administrator at least seven days prior to the vessel entering waters of the state.

(2) The plan shall provide evidence of compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(3) If the oil spill contingency plan is for a tank vessel, the plan shall include both of the following:

(A) The plan shall specify oil and petroleum cargo capacity.

(B) The plan shall specify the types of oil and petroleum cargo carried.

(4) If the oil spill contingency plan is for a nontank vessel, the plan shall include both of the following:

(A) The plan shall specify the type and total amount of fuel carried.

(B) The plan shall specify the capacity of the largest fuel tank.

(d) An oil spill contingency plan for a facility shall also include, but is not limited to, all of the following provisions, as appropriate:

(1) Provisions for site security and control.

(2) Provisions for emergency medical treatment and first aid.

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

(4) Provisions detailing site layout and locations of environmentally sensitive areas requiring special protection.

(5) Provisions for vessels that are in the operational control of the facility for loading and unloading.

(e) Unless preempted by federal law or regulations, an oil spill contingency plan for a railroad also shall include, but is not limited to, all of the following:

(1) A list of the types of train cars that may make up the consist.

(2) A list of the types of oil and petroleum products that may be transported.

(3) A map of track routes and facilities.

(4) A list, description, and map of any prestaged spill response equipment and personnel for deployment of the equipment.

(f) The oil spill contingency plan shall be available to response personnel and to relevant state and federal agencies for inspection and review.

(g) The oil spill contingency plan shall be reviewed periodically and updated as necessary. All updates shall be submitted to the administrator pursuant to this article.

(h) In addition to the regulations adopted pursuant to Section 8670.28, the administrator shall adopt regulations and guidelines to implement this section. The regulations and guidelines shall provide for the best achievable protection of waters and natural resources of the state. The administrator may establish additional oil spill contingency plan requirements, including, but not limited to, requirements based on the different geographic regions of the state. All regulations and guidelines shall be developed in consultation with the Oil Spill Technical Advisory Committee.

(i) Notwithstanding subdivision (a) and paragraph (6) of subdivision (b), a vessel or facility operating where a spill could impact state waters that are not tidally influenced shall identify a rated OSRO in the contingency plan no later than January 1, 2016.

SEC. 3. Section 8670.32 is added to the Government Code, to read:

8670.32. (a) A spill management team (SMT) may apply to the administrator for a certification of that SMT's response capabilities. The administrator shall establish criteria for certifying SMTs based on an SMT's capacity to respond to spills and manage spills effectively pursuant to this section.

(b) Upon receiving a completed application for certification, the administrator shall review the application and certify the SMT based on the SMT's satisfactory compliance with criteria established by the administrator.

(c) The administrator shall not issue a certification until the applicant SMT's performance has been observed during an actual spill or exercise in California. The administrator may call an exercise to test the resources and response capabilities of the SMT, prior to approval of the application.

(d) A certification issued pursuant to this section shall be valid for three years unless suspended or revoked. The administrator shall review the certification of each certified SMT at least once every three years. The administrator shall not renew a certification unless the SMT meets criteria established by the administrator.

(e) (1) After being certified the administrator shall periodically require a certified SMT to demonstrate that the SMT can meet the applicable provisions of an oil spill contingency plan in which the SMT is listed. These demonstrations may be achieved through inspections, announced and unannounced exercises, or by any other means. SMT exercises, to the extent practical, should be combined with other relevant exercises.

(2) The administrator may modify, suspend, or revoke an SMT's certification if the SMT does not satisfactorily complete an exercise or does not have a satisfactory performance at a spill.

(3) The administrator may determine that satisfactory performance at a spill during the three-year certification period may be substituted in lieu of an exercise.

(f) Each certified SMT shall provide reasonable notice to the administrator of each exercise in which the SMT intends to participate, and the administrator may attend the exercise.

(g) The costs incurred by an SMT to comply with this section and the regulations adopted pursuant to this section, including exercises called by the administrator, shall be the responsibility of the SMT. All local, state, and federal agency costs incurred in conjunction with participation in an exercise shall be borne by each respective agency.

(h) (1) A certification issued pursuant to this section pertains only to the SMT that applied for and receives that certification, and the certification is not transferable, assignable, or assumable. A certification does not constitute a possessory interest in real or personal property.

(2) If there is a change in ownership or control of the SMT, the certification of that SMT is null and void and the SMT shall file a new application for a certification pursuant to this section.

(3) For purposes of this subdivision, a "change in ownership or control" includes, but is not limited to, a change in corporate status, or a transfer of ownership that changes the majority control of voting within the entity.

(i) The administrator may charge a reasonable fee to process an application for, or renewal of, a certification.

(j) The administrator shall adopt regulations to implement this section as appropriate. At a minimum, the regulations shall address all of the following:

(1) Criteria for certification of SMTs, including, but not limited to, all of the following:

(A) The geographic regions of the state where the SMT intends to provide spill management services.

(B) The number of people and equipment that the SMT would provide to support managing the response to a spill.

(C) Timeframes for having personnel on scene.

(2) Criteria for successful completion of SMT objectives at an exercise.

(3) Training.

(4) The process for applying for a certification, and for suspension, revocation, appeal, or other modification of a certification.