

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2912**

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**Introduced by Assembly Members Wolk and Nava  
(Coauthors: Assembly Members Beall, DeSaulnier, Hancock,  
Huffman, Leno, Lieber, Mullin, Ruskin, Swanson, and Torrico)**

February 22, 2008

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An act to amend Section 12017 of the Fish and Game Code, and to amend Sections 8670.3, 8670.5, 8670.7, 8670.8.5, 8670.12, 8670.25, 8670.25.5, 8670.29, 8670.48, 8670.64, 8670.66, 8670.67, and 8670.70 of, and to add Sections 8670.67.3 and 8670.75 to, the Government Code, relating to oil spills, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2912, as amended, Wolk. Oil spill prevention and response: nonmarine waters.

(1) The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, among other things, governs the prevention of and response to oil spills into marine waters, as defined. Existing law defines various terms for purposes of the act. A "spill" or "discharge" is defined to mean any unauthorized release of at least one barrel (42 gallons) of oil into marine waters.

This bill would define a "spill" or "discharge" ~~instead to mean~~ *to also include any release of at least one barrel (42 gallons) of oil into marine waters or into waters*; of the state other than marine waters ~~without specifying a minimum amount of oil~~. The bill would make *other* related changes. The bill would define the term "waters of the state" for purposes of the act, and for purposes of spills or discharges of oil into

nonmarine waters of the state, the bill would limit the definition of the term “person” under the act to specified owners and operators.

(2) Under existing law, it is a crime to, among other things, knowingly engage in or cause the discharge or spill of at least one barrel (42 gallons) of oil into marine waters, and the intentional or negligent discharge or spill of that quantity of oil into marine waters is also subject to specified civil penalties, as prescribed. Existing law imposes civil and civil administrative penalties upon persons who fail to comply with specified plans, orders, or notification requirements with regard to discharges or spills.

This bill, on or after January 1, 2009, would make a discharge or spill of any amount of oil into marine or nonmarine waters of the state or noncompliance with the plans, orders, or notification requirements subject to those criminal, civil, and civil administrative penalties. The bill would therefore impose a state-mandated local program by creating a new crime. The bill would also require specified factors to be considered in determining the amount of criminal, civil, or civil administrative penalties to be imposed for a discharge or spill into waters of the state other than marine waters.

(3) Under existing law, penalties collected under the act are deposited into the Environmental Enhancement Fund, except as specified. The Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund is continuously appropriated to the Department of Fish and Game for specified purposes, including, but not limited to, pollution abatement, injury determination, and resource restoration.

This bill would require that the penalties collected or derived from discharges or spills into nonmarine waters of the state be deposited in the Fish and Wildlife Pollution Account in the Fish and Game Preservation Fund, and be available for expenditure upon appropriation by the Legislature.

(4) The act requires an owner or operator of specified marine facilities and an owner or operator 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.

This bill would require the administrator to report to the Legislature by July 1, 2009, with recommendations on specific actions that should be taken to prevent, prepare for, and respond to oil spills in waters of the state other than marine waters, including, *among other things*, the requirement of a contingency plan.

(5) The act imposes a uniform oil spill response fee on specified owners of petroleum products, operators of a pipeline, operators of a refinery, and marine terminal operators, and that fee is deposited into the Oil Spill Response Trust Fund. ~~The money moneys~~ in the fund ~~is~~ *are* continuously appropriated for specified purposes.

This bill would additionally permit that fee to be used for response and cleanup costs from oil spills into waters of the state other than marine waters, thereby making an appropriation.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares as follows:

2 (a) Each year, billions of gallons of crude oil and petroleum  
3 products are stored or transported by pipeline or other means across  
4 and adjacent to inland waters of the state. The risk of spills from  
5 these sources poses a significant threat to the environment, to state  
6 water supplies, and to public health and safety.

7 (b) Oil spills affecting the state's inland waters occur three times  
8 as frequently as marine spills and account for approximately  
9 three-fourths of all oil spills in California, yet the state responds  
10 to less than one-third of the oil spills affecting inland waters of the  
11 state.

12 (c) The Office of Oil Spill Prevention and Response within the  
13 Department of Fish and Game has a well-funded and formalized  
14 process for preventing and responding to marine oil spills, but such  
15 a process and dedicated funding source are lacking for oil spills  
16 affecting inland waters of the state.

17 (d) The Department of Fish and Game has no permanent funding  
18 source for responding to inland oil spills and relies on criminal  
19 fines and penalties *and limited cost recovery*, which are insufficient  
20 to encourage some operators to take substantive oil spill prevention  
21 measures, especially when compared to the considerably higher

1 fines and penalties that may be assessed for similar oil spills or  
2 discharges into marine waters.

3 (e) Because of current staffing and funding shortfalls, the state's  
4 failure to prevent and respond effectively to inland oil spills will  
5 likely continue to worsen without action by the Legislature.

6 SEC. 2. Section 12017 of the Fish and Game Code is amended  
7 to read:

8 12017. (a) Notwithstanding Section 13001, any recovery or  
9 settlement of ~~money~~ moneys received pursuant to the following  
10 sections shall be deposited in the Fish and Wildlife Pollution  
11 Account:

12 (1) Section 2014.

13 (2) Article 1 (commencing with Section 5650) of Chapter 2 of  
14 Part 1 of Division 6.

15 (3) Section 12015 or 12016.

16 (4) Chapter 4 (commencing with Section 151) of Division 1.5  
17 of the Harbors and Navigation Code.

18 (5) Section 13442 of the Water Code.

19 (6) Proceeds or recoveries from pollution and abatement actions.

20 (7) Section 8670.75 of the Government Code.

21 (b) Moneys in the account are continuously appropriated to the  
22 department, except as provided in Section 13230 of this code and  
23 Section 8670.75 of the Government Code.

24 (c) Funds in the account shall be expended for the following  
25 purposes:

26 (1) Abatement, cleanup, and removal of pollutants from the  
27 environment.

28 (2) Response coordination, planning, and program management.

29 (3) Resource injury determination.

30 (4) Resource damage assessment.

31 (5) Economic valuation of resources.

32 (6) Restoration or rehabilitation at sites damaged by pollution.

33 (d) Notwithstanding subdivision (c), funds in the account in  
34 excess of one million dollars (\$1,000,000) as of July 1 of each  
35 year may also be expended for the preservation of California plants,  
36 wildlife, and fisheries.

37 (e) Funds in the account may be expended for cleanup and  
38 abatement if a reasonable effort has been made to have the  
39 responsible party pay cleanup and abatement costs and funds are  
40 not available for disbursement from the emergency reserve account

1 of the Toxic Substances Control Account in the General Fund  
2 pursuant to Section 25354 of the Health and Safety Code.

3 (f) The department may use funds in the account to pay the costs  
4 of consultant contracts for resource injury determination or damage  
5 assessment during hazardous material or oil spill emergencies.  
6 These contracts are not subject to Part 2 (commencing with Section  
7 10100) of Division 2 of the Public Contract Code.

8 SEC. 3. Section 8670.3 of the Government Code is amended  
9 to read:

10 8670.3. Unless the context requires otherwise, the following  
11 definitions shall govern the construction of this chapter:

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

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

22 (A) The protection provided by the measure.

23 (B) The technological achievability of the measure.

24 (C) The cost of the measure.

25 (2) The administrator shall not use a cost-benefit or  
26 cost-effectiveness analysis or any particular method of analysis in  
27 determining which measures provide the best achievable protection.  
28 The administrator shall instead, when determining which measures  
29 provide best achievable protection, give reasonable consideration  
30 to the protection provided by the measures, the technological  
31 achievability of the measures, and the ~~cost~~ *costs* of the measures  
32 when establishing the requirements to provide the best achievable  
33 protection for coastal and marine resources.

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

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

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

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

4 (d) “Dedicated response resources” means equipment and  
5 personnel committed solely to oil spill response, containment, and  
6 cleanup that are not used for any other activity that would adversely  
7 affect the ability of that equipment and personnel to provide oil  
8 spill response services in the timeframes for which the equipment  
9 and personnel are rated.

10 (e) “Environmentally sensitive area” means an area defined  
11 pursuant to the applicable area contingency plans, as created and  
12 revised by the Coast Guard and the administrator.

13 (f) “Local government” means a chartered or general law city,  
14 a chartered or general law county, ~~a city, or a~~ *or a city and* county.

15 (g) (1) “Marine facility” means any facility of any kind, other  
16 than a tank ship or tank barge, that is or was used for the purposes  
17 of exploring for, drilling for, producing, storing, handling,  
18 transferring, processing, refining, or transporting oil and is located  
19 in marine waters, or is located where a discharge could impact  
20 marine waters unless the facility is either of the following:

21 (A) Subject to Chapter 6.67 (commencing with Section 25270)  
22 or Chapter 6.75 (commencing with Section 25299.10) of Division  
23 20 of the Health and Safety Code.

24 (B) Placed on a farm, nursery, logging site, or construction site  
25 and does not exceed 20,000 gallons in a single storage tank.

26 (2) For the purposes of this chapter, “marine facility” includes  
27 a drill ship, semisubmersible drilling platform, jack-up type drilling  
28 rig, or any other floating or temporary drilling platform.

29 (3) For the purposes of this chapter, “marine facility” does not  
30 include a small craft refueling dock.

31 (h) (1) “Marine terminal” means any marine facility used for  
32 transferring oil to or from a tank ship or tank barge.

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

36 (i) “Marine waters” means those waters subject to tidal  
37 influence, and includes the waterways used for waterborne  
38 commercial vessel traffic to the Port of Sacramento and the Port  
39 of Stockton.

1 (j) “Mobile transfer unit” means a small marine fueling facility  
2 that is a vehicle, truck, or trailer, including all connecting hoses  
3 and piping, used for the transferring of oil at a location where a  
4 discharge could impact marine waters.

5 (k) “Nondedicated response resources” means those response  
6 resources identified by an Oil Spill Response Organization for oil  
7 spill response activities that are not dedicated response resources.

8 (l) “Nonpersistent oil” means a petroleum-based oil, such as  
9 gasoline, diesel, or jet fuel, that evaporates relatively quickly and  
10 is an oil with hydrocarbon fractions, at least 50 percent of which,  
11 by volume, distills at a temperature of 645° Fahrenheit, and at least  
12 95 percent of which, by volume, distills at a temperature of 700°  
13 Fahrenheit.

14 (m) “Nontank vessel” means a vessel of 300 gross tons or greater  
15 that carries oil, but does not carry that oil as cargo.

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

21 (o) “Oil spill cleanup agent” means a chemical, or any other  
22 substance, used for removing, dispersing, or otherwise cleaning  
23 up oil or any residual products of petroleum in, or on, any of the  
24 waters of the state.

25 (p) “Oil spill contingency plan” or “contingency plan” means  
26 the oil spill contingency plan required pursuant to Article 5  
27 (commencing with Section 8670.28).

28 (q) (1) “Oil Spill Response Organization” or “OSRO” means  
29 an individual, organization, association, cooperative, or other entity  
30 that provides, or intends to provide, equipment, personnel, supplies,  
31 or other services directly related to oil spill containment, cleanup,  
32 or removal activities.

33 (2) A “rated OSRO” means an OSRO that has received a  
34 satisfactory rating from the administrator for a particular rating  
35 level established pursuant to Section 8670.30.

36 (3) “OSRO” does not include an owner or operator with an oil  
37 spill contingency plan approved by the administrator or an entity  
38 that only provides *oil* spill management services, or who provides  
39 services or equipment that are only ancillary to containment,  
40 cleanup, or removal activities.

- 1 (r) “Onshore facility” means any facility of any kind that is
- 2 located entirely on lands not covered by marine waters.
- 3 (s) (1) “Owner” or “operator” means any of the following:
- 4 (A) In the case of a vessel, any person who owns, has an
- 5 ownership interest in, operates, charters by demise, or leases the
- 6 vessel.
- 7 (B) In the case of a marine facility, any person who owns, has
- 8 an ownership interest in, or operates the marine facility.
- 9 (C) Except as provided in subparagraph (D), in the case of any
- 10 vessel or marine facility, where title or control was conveyed due
- 11 to bankruptcy, foreclosure, tax delinquency, abandonment, or
- 12 similar means to an entity of state or local government, a person
- 13 who owned, held an ownership interest in, operated, or otherwise
- 14 controlled activities concerning the vessel or marine facility
- 15 immediately beforehand.
- 16 (D) An entity of the state or local government that acquired
- 17 ownership or control of a vessel or marine facility, when the entity
- 18 of the state or local government has caused or contributed to a spill
- 19 or discharge of oil into marine waters.
- 20 (2) “Owner” or “operator” does not include a person who,
- 21 without participating in the management of a vessel or marine
- 22 facility, holds indicia of ownership primarily to protect the person’s
- 23 security interest in the vessel or marine facility.
- 24 (3) “Operator” does not include a person who owns the land
- 25 underlying a marine facility or the facility itself if the person is
- 26 not involved in the operations of the facility.
- 27 (t) (1) “Person” means an individual, trust, firm, joint stock
- 28 company, or corporation, including, but not limited to, a
- 29 government corporation, partnership, and association. “Person”
- 30 also includes a city, county, city and county, district, and the state
- 31 or any department or agency thereof, and the federal government,
- 32 or any department or agency thereof, to the extent permitted by
- 33 law.
- 34 (2) For the purposes of spills or discharges of oil or petroleum
- 35 products into waters of the state other than marine waters, “person”
- 36 means an owner or operator of any of the following:
- 37 (A) A pipeline under the jurisdiction of the Office of the State
- 38 Fire Marshal, as described in Chapter 5.5 (commencing with
- 39 Section 51010) of Division 1 of Title 5, or the United States

1 Department of Transportation, as described in Title 49  
2 (commencing with Section 2001) of the United States Code.

3 (B) Oil field production facilities, whether active, inactive, or  
4 abandoned, and the gathering lines, pipelines, and flow lines  
5 associated therewith, under the jurisdiction of the Division of Oil,  
6 Gas, and Geothermal Resources of the Department of Conservation.

7 (C) A railroad.

8 (D) A refinery.

9 (E) A vessel to be used, or designed to be used, for the  
10 commercial transport of oil or petroleum products.

11 (F) *A tank farm or similar storage facility.*

12 (u) “Pipeline” means any pipeline used at any time to transport  
13 oil.

14 (v) “Reasonable worst case spill” means, for the purposes of  
15 preparing contingency plans for a nontank vessel, the total volume  
16 of the largest fuel tank on the nontank vessel.

17 (w) “Responsible party” or “party responsible” means any of  
18 the following:

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

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

24 (x) “Small craft” means any vessel, other than a tank ship or  
25 tank barge, that is less than 20 meters in length.

26 (y) “Small craft refueling dock” means a waterside operation  
27 that dispenses only nonpersistent oil in bulk and small amounts of  
28 persistent lubrication oil in containers primarily to small craft and  
29 meets both of the following criteria:

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

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

34 (z) “Small marine fueling facility” means either of the following:

35 (1) A mobile transfer unit.

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

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

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

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

9 (aa) “Spill” or “discharge” means any release of *at least one*  
10 *barrel (42 gallons)* of oil into marine waters or into waters of the  
11 state other than marine waters, that is not authorized by any federal,  
12 state, or local ~~government~~ *governmental* entity.

13 (ab) “State Interagency Oil Spill Committee” means the  
14 committee established pursuant to Article 3.5 (commencing with  
15 Section 8574.1) of Chapter 7.

16 (ac) “California oil spill contingency plan” means the California  
17 oil spill contingency plan prepared pursuant to Article 3.5  
18 (commencing with Section 8574.1) of Chapter 7.

19 (ad) “Tank barge” means any vessel that carries oil in  
20 commercial quantities as cargo but is not equipped with a means  
21 of self-propulsion.

22 (ae) “Tank ship” means any self-propelled vessel that is  
23 constructed or adapted for the carriage of oil in bulk or in  
24 commercial quantities as cargo.

25 (af) “Tank vessel” means a tank ship or tank barge.

26 (ag) “Vessel” means any watercraft or ship of any kind,  
27 including every structure adapted to be navigated from place to  
28 place for the transportation of merchandise or persons.

29 (ah) “Vessel carrying oil as secondary cargo” means any vessel  
30 that does not carry oil as a primary cargo, but does carry oil in  
31 bulk as cargo or cargo residue.

32 (ai) “Waters of the state” means any water, surface or  
33 underground, including saline waters, within the boundaries of the  
34 state.

35 SEC. 4. Section 8670.5 of the Government Code is amended  
36 to read:

37 8670.5. The Governor shall ensure that the state fully and  
38 adequately responds to all oil spills in marine waters and in waters  
39 of the state other than marine waters. The administrator, acting at  
40 the direction of the Governor, shall implement activities relating

1 to oil spill response, including drills and preparedness and oil spill  
2 containment and cleanup. The administrator shall also represent  
3 the state in any coordinated response efforts with the federal  
4 government.

5 SEC. 5. Section 8670.7 of the Government Code is amended  
6 to read:

7 8670.7. (a) The administrator, subject to the Governor, has  
8 the primary authority to direct prevention, removal, abatement,  
9 response, containment, and cleanup efforts with regard to all  
10 aspects of any oil spill in the marine waters of the state, in  
11 accordance with any applicable marine facility or vessel  
12 contingency plan and the California oil spill contingency plan. The  
13 administrator shall cooperate with any federal on-scene coordinator,  
14 as specified in the National Contingency Plan.

15 (b) The administrator shall also have authority to direct removal,  
16 abatement, response, containment, and cleanup efforts with regard  
17 to oil spills in waters of the state other than marine waters.

18 (c) The administrator shall implement the California oil spill  
19 contingency plan, required pursuant to Section 8574.1, to the fullest  
20 extent possible.

21 (d) The administrator shall do both of the following:

22 (1) Be present at the location of any oil spill of more than  
23 100,000 gallons in marine waters and in waters of the state other  
24 than marine waters, as soon as possible after notice of the  
25 discharge.

26 (2) Ensure that persons trained in oil spill response and cleanup,  
27 whether employed by the responsible party, the state, or another  
28 private or public person or entity, are onsite to respond to, contain,  
29 and clean up any oil spill in marine waters or in waters of the state  
30 other than marine waters, as soon as possible after notice of the  
31 discharge.

32 (e) Throughout the response and cleanup process, the  
33 administrator shall apprise the members of the State Interagency  
34 Oil Spill Committee, the air quality management district or air  
35 pollution control district having jurisdiction over the area in which  
36 the oil spill occurred, and the local ~~government~~ *governmental*  
37 entities that are affected by the spill.

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

1 (g) The administrator shall have the state authority over the use  
 2 of all response methods, including, but not limited to, in situ  
 3 burning, dispersants, and any oil spill cleanup agents in connection  
 4 with an oil discharge. The administrator shall consult with the  
 5 ~~federal on-scene~~ *on-scene* coordinator prior to exercising authority  
 6 under this subdivision.

7 (h) (1) The administrator shall conduct workshops, consistent  
 8 with the intent of this chapter, with the participation of appropriate  
 9 local, state, and federal agencies, including the State Air Resources  
 10 Board, air pollution control districts, and air quality management  
 11 districts, and affected private organizations, on the subject of oil  
 12 spill response technologies, including in situ burning. The  
 13 workshops shall review the latest research and findings regarding  
 14 the efficacy and toxicity of oil spill cleanup agents and other  
 15 technologies, their potential public health and safety and  
 16 environmental impacts, and any other relevant factors concerning  
 17 their use in oil spill response. In conducting these workshops, the  
 18 administrator shall solicit the views of all participating parties  
 19 concerning the use of these technologies, with particular attention  
 20 to any special considerations that apply to coastal areas and marine  
 21 waters of the state.

22 (2) The administrator shall publish guidelines and conduct  
 23 periodic reviews of the policies, procedures, and parameters for  
 24 the use of in situ burning, which may be implemented in the event  
 25 of an oil spill.

26 (i) (1) The administrator shall ensure that, as part of the  
 27 response to any significant spill, biologists or other personnel are  
 28 present and provided any support and funding necessary and  
 29 appropriate for the assessment of damages to natural resources  
 30 and for the collection of data and other evidence that may help in  
 31 determining and recovering damages.

32 (2) (A) The administrator shall coordinate all actions required  
 33 by state or local agencies to assess injury to, and provide full  
 34 mitigation for injury to, or to restore, rehabilitate, or replace, natural  
 35 resources, including wildlife, fisheries, wildlife or fisheries habitat,  
 36 and beaches and other coastal areas, that are damaged by an oil  
 37 spill. For purposes of this subparagraph, “actions required by state  
 38 or local agencies” include, but are not limited to, actions required  
 39 by state trustees under Section 1006 of the Oil Pollution Act of

1 1990 (33 U.S.C. Sec. 2706) and actions required pursuant to  
2 Section 8670.61.5.

3 (B) The responsible party shall be liable for all coordination  
4 costs incurred by the administrator.

5 (3) This subdivision does not give the administrator authority  
6 to administer state or local laws or to limit the authority of another  
7 state or local agency to implement and enforce state or local laws  
8 under its jurisdiction, nor does this subdivision limit the authority  
9 or duties of the administrator under this chapter or limit the  
10 authority of an agency to enforce existing permits or permit  
11 conditions.

12 (j) (1) The administrator shall enter into a memorandum of  
13 understanding with the executive director of the State Water  
14 Resources Control Board, acting for the State Water Resources  
15 Control Board and the California regional water quality control  
16 boards, and with the approval of the State Water Resources Control  
17 Board, to address discharges, other than dispersants, that are  
18 incidental to, or directly associated with, the response, containment,  
19 and cleanup of an existing or threatened oil spill conducted  
20 pursuant to this chapter.

21 (2) The memorandum of understanding entered into pursuant  
22 to paragraph (1) shall address any permits, requirements, or  
23 authorizations that are required for the specified discharges. The  
24 memorandum of understanding shall be consistent with  
25 requirements that protect state water quality and beneficial uses  
26 and with any applicable provisions of the Porter-Cologne Water  
27 Quality Control Act (Division 7 (commencing with Section 13000)  
28 of the Water Code) or the federal Clean Water Act (33 U.S.C. Sec.  
29 1251 et seq.), and shall expedite efficient oil spill response.

30 SEC. 6. Section 8670.8.5 of the Government Code is amended  
31 to read:

32 8670.8.5. The administrator may use volunteer workers in  
33 response, containment, restoration, wildlife rehabilitation, and  
34 cleanup efforts for oil spills in marine waters or in waters of the  
35 state other than marine waters. The volunteers shall be deemed  
36 employees of the state for the purpose of workers' compensation  
37 under Article 2 (commencing with Section 3350) of Chapter 2 of  
38 Part 1 of Division 4 of the Labor Code. Any payments for workers'  
39 compensation pursuant to this section shall be made from the Oil  
40 Spill Response Trust Fund created pursuant to Section 8670.46.

1 SEC. 7. Section 8670.12 of the Government Code is amended  
2 to read:

3 8670.12. (a) The administrator shall conduct studies and  
4 evaluations necessary for improving oil spill response, containment,  
5 and cleanup and oil spill wildlife rehabilitation in marine ~~water~~  
6 ~~sand~~ *waters and* marine oil transportation systems, and in waters  
7 of the state other than marine waters. The administrator may  
8 expend moneys from the Oil Spill Prevention and Administration  
9 Fund created pursuant to Section 8670.38, enter into consultation  
10 agreements, and acquire necessary equipment and services for the  
11 purpose of carrying out these studies and evaluations.

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

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

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

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

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

38 (1) Equipment and technology needs.

39 (2) Coordination with private response personnel.

40 (3) Liability and insurance.

1 (4) Compensation.

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

5 SEC. 8. Section 8670.25 of the Government Code is amended  
6 to read:

7 8670.25. (a) A person who, without regard to intent or  
8 negligence, causes or permits any oil to be discharged in or on the  
9 marine *waters* or other waters of the state shall immediately  
10 contain, cleanup, and remove the oil in the most effective manner  
11 that minimizes environmental damage and in accordance with the  
12 applicable contingency plans, unless ordered otherwise by the  
13 Coast Guard, or in the case of waters of the state other than marine  
14 waters, by the United States Environmental Protection Agency,  
15 or the administrator.

16 (b) If there is a spill, an owner or operator shall comply with  
17 the applicable oil spill contingency plan approved by the  
18 administrator.

19 SEC. 9. Section 8670.25.5 of the Government Code is amended  
20 to read:

21 8670.25.5. (a) Without regard to intent or negligence, any  
22 party responsible for the discharge or threatened discharge of oil  
23 in marine waters or waters of the state other than marine waters  
24 shall report the discharge immediately to the Office of Emergency  
25 Services pursuant to Section 25507 of the Health and Safety Code.

26 (b) Immediately upon receiving notification pursuant to  
27 subdivision (a), the Office of Emergency Services shall notify the  
28 administrator, the State Lands Commission, the California Coastal  
29 Commission, the California regional water quality control board  
30 having jurisdiction over the location of the discharged oil, and take  
31 the actions required by subdivision (d) of Section 8589.7. If the  
32 spill has occurred within the jurisdiction of the San Francisco Bay  
33 Conservation and Development Commission, the Office of  
34 Emergency Services shall notify that commission. Each public  
35 agency specified in this subdivision shall adopt an internal protocol  
36 over communications regarding the discharge of oil and file the  
37 internal protocol with the Office of Emergency Services.

38 (c) The 24-hour emergency telephone number of the Office of  
39 Emergency Services shall be posted at every terminal, at the area

1 of control of every marine facility, and on the bridge of every tank  
2 ship in marine waters.

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

7 ~~(d)~~

8 *(e) Except as otherwise provided in this section and Section*  
9 *8589.7, a notification made pursuant to this section shall satisfy*  
10 *any immediate notification requirement contained in any permit*  
11 *issued by a permitting agency.*

12 SEC. 10. Section 8670.29 of the Government Code is amended  
13 to read:

14 8670.29. (a) In accordance with the rules, regulations, and  
15 policies established by the administrator pursuant to Section  
16 8670.28, an owner or operator of a marine facility, small marine  
17 fueling facility, or mobile transfer unit, prior to operating in the  
18 marine waters of the state or where an oil spill could impact marine  
19 waters; and an owner or operator of a tank vessel, nontank vessel,  
20 or vessel carrying oil as secondary cargo before operating in the  
21 marine waters of the state, shall prepare and implement an oil spill  
22 contingency plan that has been submitted to, and approved by, the  
23 administrator pursuant to Section 8670.31. The oil spill contingency  
24 plan shall ensure the undertaking of prompt and adequate response  
25 and removal action in case of an oil spill, shall be consistent with  
26 the California oil spill contingency plan, and shall not conflict with  
27 the National Contingency Plan.

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

30 (1) Be a written document, reviewed for feasibility and  
31 executability, and signed by the owner or operator, or their  
32 designee.

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

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

38 (4) Describe the communication plans to be used during a spill.

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

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

8 (7) Identify a qualified individual.

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

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

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

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

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

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

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

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

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

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

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

32 (1) Provisions for site security and control.

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

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

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

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

1 (6) Provisions for training and drills on elements of the plan at  
2 least annually.

3 (7) Provisions for subjecting all elements of the plan to drills  
4 or tests, as specified by the administrator, at least once every three  
5 years.

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

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

12 (g) In addition to the regulations adopted pursuant to Section  
13 8670.28, the administrator shall adopt regulations and guidelines  
14 to implement this section. The regulations and guidelines shall  
15 provide for the best achievable protection of coastal and marine  
16 resources. The administrator may establish additional oil spill  
17 contingency plan requirements, including, but not limited to,  
18 requirements based on the different geographic regions of the state.  
19 All regulations and guidelines shall be developed in consultation  
20 with the State Interagency Oil Spill Committee and the Oil Spill  
21 Technical Advisory Committee.

22 (h) On or before July 1, 2009, the administrator shall report to  
23 the Legislature with recommendations on specific actions that  
24 should be taken to prevent, prepare for, and respond to, oil spills  
25 in waters of the state other than marine waters. The  
26 recommendations may include, but are not limited to, all of the  
27 following:

28 (1) Whether a state inland oil spill contingency planning section  
29 should be added to the California oil spill contingency plan  
30 specified in Section 8574.1, and if so, what specific elements  
31 should be included in the plan.

32 (2) Whether a contingency plan should be required to be  
33 prepared by an owner or operator of a vessel, facility, pipeline,  
34 railroad, ~~or refinery~~ refinery, or tank farm for oil spills in waters  
35 of the state other than marine waters, and if so, what the minimum  
36 requirements should be for those plans.

37 (3) *How the Oiled Wildlife Care Network can be expanded to*  
38 *meet the best achievable treatment standard for oiled wildlife in*  
39 *inland spills and the types of wildlife that should be covered.*

40 (3)

1 (4) Other necessary tasks for oversight and control of cleanup,  
2 abatement, and removal activities associated with oil spills in  
3 waters of the state other than marine waters.

4 SEC. 11. Section 8670.48 of the Government Code is amended  
5 to read:

6 8670.48. (a) (1) A uniform oil spill response fee in an amount  
7 not exceeding twenty-five cents (\$0.25) for each barrel of  
8 petroleum products, as set by the administrator pursuant to  
9 subdivision (f), shall be imposed upon a person owning petroleum  
10 products at the time the petroleum products are received at a marine  
11 terminal within this state by means of a vessel from a point of  
12 origin outside this state. The fee shall be remitted to the State Board  
13 of Equalization by the terminal operator on the 25th day of each  
14 month based upon the number of barrels of petroleum products  
15 received during the preceding month.

16 (2) An owner of petroleum products is liable for the fee until it  
17 has been paid to the state, except that payment to a marine terminal  
18 operator registered under this chapter is sufficient to relieve the  
19 owner from further liability for the fee.

20 (b) An operator of a pipeline shall also pay a uniform oil spill  
21 response fee in an amount not exceeding twenty-five cents (\$0.25)  
22 for each barrel of petroleum products, as set by the administrator  
23 pursuant to subdivision (f), transported into the state by means of  
24 a pipeline operating across, under, or through the marine waters  
25 of the state. The fee shall be paid on the 25th day of each month  
26 based upon the number of barrels of petroleum products so  
27 transported into the state during the preceding month.

28 (c) (1) An operator of a refinery shall pay a uniform oil spill  
29 response fee in an amount not exceeding twenty-five cents (\$0.25)  
30 for each barrel of crude oil, as set by the administrator pursuant  
31 to subdivision (f), received at a refinery within the state. The fee  
32 shall be paid on the 25th day of each month based upon the number  
33 of barrels of crude oil so received during the preceding month.

34 (2) The fee shall not be imposed by a refiner, or a person or  
35 entity acting as an agent for a refiner, on crude oil produced by an  
36 independent crude oil producer as defined in paragraph (3). The  
37 board shall not identify a company as exempt from the fee  
38 requirements of this section if that company was reorganized, sold,  
39 or otherwise modified with the intent of circumventing the  
40 requirements of this section.

1 (3) For purposes of this chapter, “independent crude oil  
2 producer” means a person or entity producing crude oil within this  
3 state who does not refine crude oil into product and who does not  
4 possess or own a retail gasoline marketing facility.

5 (d) A marine terminal operator shall pay a uniform oil spill  
6 response fee in an amount not exceeding twenty-five cents (\$0.25),  
7 in accordance with subdivision (g), for each barrel of crude oil, as  
8 set by the administrator pursuant to subdivision (f), that is  
9 transported from within this state by means of marine vessel to a  
10 destination outside this state.

11 (e) A operator of a pipeline shall pay a uniform oil spill response  
12 fee in an amount not exceeding twenty-five cents (\$0.25), in  
13 accordance with subdivision (g), for each barrel of crude oil, as  
14 set by the administrator pursuant to subdivision (f), transported  
15 out of the state by pipeline.

16 (f) (1) The fees required pursuant to this section shall be  
17 collected during a period for which the administrator determines  
18 that collection is necessary for any of the following reasons:

19 (A) The amount in the fund is less than or equal to 95 percent  
20 of the designated amount specified in subdivision (a) of Section  
21 46012 of the Revenue and Taxation Code.

22 (B) Additional money is required to pay for the purposes  
23 specified in subdivision (k).

24 (C) The revenue is necessary to repay a draw on a financial  
25 security obtained by the Treasurer pursuant to subdivision (o) or  
26 borrowing by the Treasurer pursuant to Article 7.5 (commencing  
27 with Section 8670.53.1) including any principal, interest, premium,  
28 fees, charges, or costs of any kind incurred in connection with  
29 those borrowings or financial security.

30 (2) The administrator, in consultation with the State Board of  
31 Equalization, and with the approval of the Treasurer, may direct  
32 the State Board of Equalization to cease collecting the fee when  
33 the administrator determines that further collection of the fee is  
34 not necessary for the purposes specified in paragraph (1).

35 (3) The administrator, in consultation with the State Board of  
36 Equalization, shall set the amount of the oil spill response fees.  
37 The oil spill response fees shall be imposed on all feepayers in the  
38 same amount. The administrator shall not set the amount of the  
39 fee at less than twenty-five cents (\$0.25) for each barrel of  
40 petroleum products or crude oil, unless the administrator finds that

1 the assessment of a lesser fee will cause the fund to reach the  
2 designated amount specified in subdivision (a) of Section 46012  
3 of the Revenue and Taxation Code within four months. The fee  
4 shall not be less than twenty-five cents (\$0.25) for each barrel of  
5 petroleum products or crude oil if the administrator has drawn  
6 upon the financial security obtained by the Treasurer pursuant to  
7 subdivision (o) or if the Treasurer has borrowed money pursuant  
8 to Article 7.5 (commencing with Section 8670.53.1) and principal,  
9 interest, premium, fees, charges, or costs of any kind incurred in  
10 connection with those borrowings remain outstanding or unpaid,  
11 unless the Treasurer has certified to the administrator that the  
12 ~~money in the fund is~~ *moneys in the fund are* not necessary for the  
13 purposes specified in paragraph (1).

14 (g) The fees imposed by subdivisions (d) and (e) shall be  
15 imposed in any calendar year beginning the month following the  
16 month when the total cumulative year-to-date barrels of crude oil  
17 transported outside the state by all feepayers by means of vessel  
18 or pipeline exceeds 6 percent by volume of the total barrels of  
19 crude oil and petroleum products subject to oil spill response fees  
20 under subdivisions (a), (b), and (c) for the prior calendar year.

21 (h) For purposes of this chapter, “designated amount” means  
22 the amounts specified in Section 46012 of the Revenue and  
23 Taxation Code.

24 (i) The administrator, in consultation with the State Board of  
25 Equalization and with the approval of the Treasurer, shall authorize  
26 refunds of any money collected that is not necessary for the  
27 purposes specified in paragraph (1) of subdivision (f). The State  
28 Board of Equalization, as directed by the administrator, and in  
29 accordance with Section 46653 of the Revenue and Taxation Code,  
30 shall refund the excess amount of fees collected to each feepayer  
31 who paid the fee to the state, in proportion to the amount that each  
32 feepayer paid into the fund during the preceding 12 monthly  
33 reporting periods in which there was a fee due, including the month  
34 in which the fund exceeded the specified amount. If the total  
35 amount of ~~money in the fund exceeds~~ *moneys in the fund exceed*  
36 the amount specified in this subdivision by 10 percent or less,  
37 refunds need not be ordered by the administrator. This section ~~does~~  
38 *does* not require the refund of excess fees as provided in this  
39 subdivision more frequently than once each year.

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

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

7 (1) To provide funds to cover promptly the costs of response,  
8 containment, and cleanup of oil spills into marine waters or into  
9 waters of the state other than marine waters, including damage  
10 assessment costs and wildlife rehabilitation as provided in Section  
11 8670.61.5.

12 (2) To cover response and cleanup costs and other damages  
13 suffered by the state or other persons or entities from oil spills into  
14 marine waters or into waters of the state other than marine waters,  
15 which cannot otherwise be compensated by responsible parties or  
16 the federal government.

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

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

21 (5) To pay for the cost of obtaining financial security in the  
22 amount specified in subdivision (b) of Section 46012 of the  
23 Revenue and Taxation Code, as authorized by subdivision (o).

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

26 (7) To pay principal, interest, ~~premium~~ *premiums*, if any, and  
27 fees, charges, and costs of any kind incurred in connection with  
28 moneys drawn by the administrator on the financial security  
29 obtained by the Treasurer pursuant to subdivision (o) or borrowed  
30 by the Treasurer pursuant to Article 7.5 (commencing with Section  
31 8670.53.1).

32 (8) To pay for the costs of rescue, medical treatment,  
33 rehabilitation, and disposition of oiled wildlife, as incurred by the  
34 network of oiled wildlife rescue and rehabilitation stations created  
35 pursuant to Section 8670.37.5.

36 (l) (1) The interest that the state earns on the funds deposited  
37 into the Oil Spill Response Trust Fund shall be deposited in the  
38 fund and shall be used to maintain the fund at the designated  
39 amount specified in subdivision (a) of Section 46012 of the  
40 Revenue and Taxation Code. Interest earned until July 1, 1998,

1 on funds deposited pursuant to subdivision (a) of Section 46012  
2 of the Revenue and Taxation Code, as determined jointly by the  
3 Controller and the Director of Finance, shall be available upon  
4 appropriation by the Legislature in the Budget Act to establish,  
5 equip, operate, and maintain the network of rescue and  
6 rehabilitation stations for oiled wildlife as described in Section  
7 8670.37.5 and to support technology development and research  
8 related to oiled wildlife care. Interest earned on the financial  
9 security portion of the fund, required to be accessible pursuant to  
10 subdivision (b) of Section 46012 of the Revenue and Taxation  
11 Code shall not be available for that purpose. If the amount in the  
12 fund exceeds that designated amount, the interest not needed to  
13 equip, operate, and maintain the network of rescue and  
14 rehabilitation stations, or for appropriate technology development  
15 and research regarding oiled wildlife care, shall be deposited into  
16 the Oil Spill Prevention and Administration Fund, and shall be  
17 available for the purposes authorized by Article 6 (commencing  
18 with Section 8670.38).

19 (2) (A) For each fiscal year, consistent with this article, the  
20 administrator shall submit, as a proposed appropriation in the  
21 Governor's Budget, an amount up to one million five hundred  
22 thousand dollars (\$1,500,000); of the interest earned on the funds  
23 deposited into the Oil Spill Response Trust Fund, for the purpose  
24 of equipping, operating, and maintaining the network of oiled  
25 wildlife rescue and rehabilitation stations established pursuant to  
26 Section 8670.37.5 and for support of technology development and  
27 research related to oiled wildlife care. The remaining interest shall  
28 be deposited into the Oil Spill Prevention and Administration Fund  
29 pursuant to paragraph (1).

30 (B) The administrator shall report to the Legislature not later  
31 than June 30, 2002, on the progress and effectiveness of the  
32 network of oiled wildlife rescue and rehabilitation stations  
33 established pursuant to Section 8670.37.5 and the adequacy of the  
34 Oil Spill Response Trust Fund to meet the purposes for which it  
35 was established.

36 (C) At the administrator's request, the funds made available  
37 pursuant to this paragraph may be directly appropriated to a suitable  
38 program for *oiled* wildlife health and rehabilitation within a school  
39 of veterinary medicine within this state, provided that an agreement  
40 exists, consistent with this chapter, between the administrator and

1 an appropriate representative of the program for carrying out that  
2 purpose. The administrator shall attempt to have an agreement in  
3 place at all times. The agreement shall ensure that the training of,  
4 and the care provided by, the program staff are at levels that are  
5 consistent with those standards generally accepted within the  
6 veterinary profession.

7 (D) The funds made available pursuant to this paragraph shall  
8 not be considered an offset to any other state funds appropriated  
9 to the program, the program's associated school of veterinary  
10 medicine, or the program's associated college or university and  
11 the funds shall not be used for any other purpose. If an offset does  
12 occur or the funds are used for an unintended purpose, expenditure  
13 of any appropriation of funds pursuant to this paragraph may be  
14 terminated by the administrator and the administrator may request  
15 a reappropriation to accomplish the intended purpose. The  
16 administrator shall annually review and approve the proposed uses  
17 of any funds made available pursuant to this paragraph.

18 (m) The Legislature finds and declares that effective response  
19 to oil spills requires that the state have available sufficient funds  
20 in a response fund. The Legislature further finds and declares that  
21 maintenance of that fund is of utmost importance to the state and  
22 that the ~~money~~ *moneys* in the fund shall be used solely for the  
23 purposes specified in subdivision (k).

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

28 (o) The Treasurer shall obtain financial security, in the  
29 designated amount specified in subdivision (b) of Section 46012  
30 of the Revenue and Taxation Code, in a form which, in the event  
31 of an oil spill, may be drawn upon immediately by the administrator  
32 upon making the determinations required by paragraph (2) of  
33 subdivision (a) of Section 8670.49. The financial security may be  
34 obtained in any of the forms described in subdivision (b) of Section  
35 8670.53.3, as determined by the Treasurer.

36 (p) This section does not limit the authority of the administrator  
37 to raise oil spill response fees pursuant to Section 8670.48.5.

38 SEC. 12. Section 8670.64 of the Government Code is amended  
39 to read:

1 8670.64. (a) A person who commits any of the following acts,  
2 shall, upon conviction, be punished by imprisonment in the county  
3 jail for not more than one year or by imprisonment in the state  
4 prison:

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

8 (2) Knowingly fails to notify the Coast Guard that a vessel is  
9 disabled within one hour of the disability and the vessel, while  
10 disabled, causes a discharge of oil which enters marine waters.  
11 For the purposes of this paragraph, “vessel” means a vessel, as  
12 defined in Section 21 of the Harbors and Navigation Code, of 300  
13 gross registered tons or more.

14 (3) Knowingly engages in or causes the discharge or spill of oil  
15 into marine waters, or into waters of the state other than marine  
16 waters, or a person who reasonably should have known that he or  
17 she was engaging in or causing the discharge or spill of oil into  
18 marine waters, or into waters of the state other than marine waters,  
19 unless the discharge is authorized by the United States, the state,  
20 or another agency with appropriate jurisdiction.

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

23 (b) The court shall also impose upon a person convicted of  
24 violating subdivision (a), a fine of not less than five thousand  
25 dollars (\$5,000) or more than five hundred thousand dollars  
26 (\$500,000) for each violation. For purposes of this subdivision,  
27 each day or partial day that a violation occurs is a separate  
28 violation.

29 (c) (1) A person who knowingly does any of the acts specified  
30 in paragraph (2) shall, upon conviction, be punished by a fine of  
31 not less than two thousand five hundred dollars (\$2,500) or more  
32 than two hundred fifty thousand dollars (\$250,000), or by  
33 imprisonment in a county jail for not more than one year, or by  
34 both the fine and imprisonment. For purposes of this subdivision,  
35 each day or partial day that a violation occurs is a separate  
36 violation. If the conviction is for a second or subsequent violation  
37 of this subdivision, the person shall be punished by imprisonment  
38 in the state prison or in a county jail for not more than one year,  
39 or by a fine of not less than five thousand dollars (\$5,000) or more

1 than five hundred thousand dollars (\$500,000), or by both the fine  
2 and imprisonment:

3 (2) The acts subject to this subdivision are all of the following:

4 (A) Fails to notify the Office of Emergency Services in violation  
5 of Section 8670.25.5.

6 (B) Continues operations for which an oil spill contingency plan  
7 is required without an oil spill contingency plan approved pursuant  
8 to Article 5 (commencing with Section 8670.28).

9 (C) Except as provided in Section 8670.27, knowingly fails to  
10 follow the material provisions of an applicable oil spill contingency  
11 plan.

12 SEC. 13. Section 8670.66 of the Government Code is amended  
13 to read:

14 8670.66. (a) A person who intentionally or negligently does  
15 any of the following acts shall be subject to a civil penalty of not  
16 less than twenty-five thousand dollars (\$25,000) or more than five  
17 hundred thousand dollars (\$500,000) for each violation, and each  
18 day or partial day that a violation occurs is a separate violation:

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

22 (2) Fails to notify the Coast Guard that a vessel is disabled  
23 within one hour of the disability and the vessel, while disabled,  
24 causes a discharge of oil which enters marine waters. For the  
25 purposes of this paragraph, "vessel" means a vessel, as defined in  
26 Section 21 of the Harbors and Navigation Code, of 300 gross  
27 registered tons or more.

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

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

34 (b) Except as provided in subdivision (a), a person who  
35 intentionally or negligently violates any provision of this chapter,  
36 or Division 7.8 (commencing with Section 8750) of the Public  
37 Resources Code, or any permit, rule, regulation, standard, or  
38 requirement issued or adopted pursuant to those provisions, shall  
39 be liable for a civil penalty not to exceed two hundred fifty  
40 thousand dollars (\$250,000) for each violation of a separate

1 provision, or, for continuing violations, for each day that violation  
2 continues.

3 (c) A person shall not be liable for a civil penalty imposed under  
4 this section and for a civil penalty imposed pursuant to Section  
5 8670.67 for the same act or failure to act.

6 SEC. 14. Section 8670.67 of the Government Code is amended  
7 to read:

8 8670.67. (a) A person who intentionally or negligently does  
9 any of the following acts shall be subject to an administrative civil  
10 penalty not to exceed one hundred thousand dollars (\$100,000)  
11 for each violation as imposed by the administrator pursuant to  
12 Section 8670.68, and each day or partial day that a violation occurs  
13 is a separate violation:

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

17 (2) Fails to notify the Coast Guard that a vessel is disabled  
18 within one hour of the disability and the vessel, while disabled,  
19 causes a discharge of oil which enters marine waters. For the  
20 purposes of this paragraph, “vessel” means a vessel, as defined in  
21 Section 21 of the Harbors and Navigation Code, of 300 gross  
22 registered tons or more.

23 (3) Discharges or spills oil into marine waters or into waters of  
24 the state other than marine waters, unless the discharge is  
25 authorized by the United States, the state, or ~~other~~ *another* agency  
26 with appropriate jurisdiction.

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

29 (b) Except as provided in subdivision (a), a person who  
30 intentionally or negligently violates any provision of this chapter,  
31 or Division 7.8 (commencing with Section 8750) of the Public  
32 Resources Code, or any permit, rule, regulation, standard, cease  
33 and desist order, or requirement issued or adopted pursuant to  
34 those provisions, shall be liable for an administrative civil penalty  
35 as imposed by the administrator pursuant to Section 8670.68, not  
36 to exceed one hundred thousand dollars (\$100,000) for each  
37 violation of a separate provision, or, for continuing violations, for  
38 each day that violation continues.

1 (c) A person shall not be liable for a civil penalty imposed under  
2 this section and for a civil penalty imposed pursuant to Section  
3 8670.66 for the same act or failure to act.

4 SEC. 15. Section 8670.67.3 is added to the Government Code,  
5 to read:

6 8670.67.3. In determining the amount of criminal, civil, or  
7 civil administrative penalties to impose, for a discharge or spill  
8 into the waters of the state other than marine waters, the court or  
9 administrator shall take into consideration all relevant  
10 circumstances including, but not limited to, all of the following:

- 11 (a) The nature, circumstance, extent, and gravity of the violation.
- 12 (b) The extent of harm caused.
- 13 (c) Any voluntary cleanup efforts undertaken by the defendant.
- 14 (d) The degree of culpability of the defendant.
- 15 (e) Any prior history of spills, discharges, or other violations,  
16 by the defendant.
- 17 (f) The economic benefit, if any, to the defendant from the  
18 violation.
- 19 (g) Whether or not the defendant has been diligent in  
20 implementing practices to reduce the possibility of an oil spill into  
21 the surface water.
- 22 (h) Any other factors the interests of justice may require.

23 SEC. 16. Section 8670.70 of the Government Code is amended  
24 to read:

25 8670.70. The Environmental Enhancement Fund is hereby  
26 created in the State Treasury. All penalties collected under Article  
27 9 (commencing with Section 8670.57) shall be deposited in the  
28 Environmental Enhancement Fund, except as specified in Sections  
29 8670.68.5 and 8670.75. ~~The money moneys~~ in the fund shall only  
30 be used for environmental enhancement projects and shall not be  
31 used for the cleanup of an oil spill or the restoration required after  
32 an oil spill. ~~The money moneys~~ in the fund shall be available to  
33 the administrator for environmental enhancement projects, upon  
34 appropriation therefor by the Legislature.

35 SEC. 17. Section 8670.75 is added to the Government Code,  
36 to read:

37 8670.75. (a) All penalties collected under Article 9  
38 (commencing with Section 8670.57) that are derived from spills  
39 or discharges into the waters of the state other than marine waters  
40 shall be deposited in the Fish and Wildlife Pollution Account in

1 the Fish and Game Preservation Fund and be available for  
2 expenditure in accordance with Section 12017 of the Fish and  
3 Game Code upon appropriation by the Legislature.

4 (b) With respect to discharges or spills of oil into the waters of  
5 the state other than marine waters all of the following conditions  
6 shall apply:

7 (1) This chapter shall not be construed to prevent the Attorney  
8 General, a district attorney, or city attorney from filing a criminal  
9 or civil action for a violation arising from the same discharge or  
10 spill under any other law that may apply. This chapter shall also  
11 not be construed to prohibit the Attorney General, a district  
12 attorney, or a city attorney from seeking a criminal fine or civil  
13 penalty, or both, under this chapter and, in addition, seeking any  
14 other legal or equitable remedy, other than a criminal fine or civil  
15 penalty, pursuant to any other law for the same violation including,  
16 but not limited to, injunctive relief, restitution, damages, recovery  
17 of cleanup costs, environmental restoration, or an award of attorney  
18 fees and court costs, if applicable.

19 (2) If, in the same proceeding, the Attorney General, a district  
20 attorney, or a city attorney seeks a criminal fine or civil penalty,  
21 or both, under both this chapter and any other applicable law, a  
22 criminal fine or civil penalty shall not be imposed for violations  
23 arising from the same discharge or spill under both this chapter  
24 and that other law. This paragraph does not affect the right of the  
25 people to seek a criminal fine or civil penalty, or both, under this  
26 chapter and other legal or equitable relief for violations arising  
27 from the same discharge or spill, as described in paragraph (1).

28 (3) If a criminal fine or civil penalty, or both, has been imposed  
29 for a violation arising from the same discharge or spill in another  
30 action pursuant to another law, the maximum criminal fine or civil  
31 penalty for which the defendant is liable under Section 8670.64  
32 or Section 8670.66 shall be reduced by the amount of the criminal  
33 fine or civil penalty imposed in the other action. This paragraph  
34 does not require a reduction in the maximum criminal fine or civil  
35 penalty under this chapter if other legal or equitable relief is sought  
36 for a violation arising from the same discharge or spill, as described  
37 in paragraph (1).

38 (4) If a civil administrative penalty is imposed pursuant to  
39 Section 8670.67, the maximum civil administrative penalty that  
40 may be imposed pursuant to that section shall be reduced by the

1 amount of the civil administrative penalty imposed under any other  
2 law for a violation arising from the same discharge or spill. This  
3 paragraph does not require a reduction in a maximum civil  
4 administrative penalty that may be imposed under Section 8670.67  
5 for any relief other than a civil administrative penalty ordered by  
6 an administrative agency for a violation arising from the same  
7 discharge or spill, including, but not limited to, orders related to  
8 cleanup, abatement, environmental restoration, recovery of  
9 damages, restitution, and costs.

10 (5) Except as otherwise expressly provided in this chapter, this  
11 chapter does not add to or reduce the rights or liabilities of person  
12 under any other law.

13 SEC. 18. The changes in the Lempert-Keene-Seastrand Oil  
14 Spill Prevention and Response Act, Chapter 7.4 (commencing with  
15 Section 8670.1) of Division 1 of Title 2 of the Government Code,  
16 made by this act shall apply to violations of Sections 8670.64,  
17 8670.66, and 8670.67 of the Government Code that occur on or  
18 after January 1, 2009.

19 SEC. 19. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.