

AMENDED IN ASSEMBLY APRIL 21, 2008

AMENDED IN ASSEMBLY APRIL 9, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2935

**Introduced by Assembly Member Huffman
(Coauthors: Assembly Members DeSaulnier, Hancock, Laird, Leno,
Mullin, Ruskin, and Wolk)**

February 22, 2008

An act to add Section 5654 to the Fish and Game Code, and to amend Section 8574.7 of, and to add Section 8670.15 to, the Government Code, relating to toxic spills.

LEGISLATIVE COUNSEL'S DIGEST

AB 2935, as amended, Huffman. Toxic spill prevention and response.

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 emergency drills and preparedness, and oil spill containment and cleanup, and to represent the state in any coordinated response efforts with the federal government. Existing law requires the administrator to amend, on a triennial basis, the California oil spill contingency plan containing specified elements, including an environmentally and ecologically sensitive element for the preparation and distribution of maps depicting environmentally and ecologically sensitive areas in marine waters or along the coast.

This bill would additionally require the environmentally and ecologically sensitive element to include the identification and

prioritization of environmentally and ecologically sensitive areas, a plan for protection actions to be taken in the event of an oil spill in those areas, the location of available response equipment and personnel to deploy the equipment to protect priority environmentally and ecologically sensitive areas, and a program for testing protection strategies for each of the priority environmental and ecologically sensitive areas. The bill would additionally require the California oil spill contingency plan to include an element that would consider the utilization of specified private working craft and mariners in plans for containment and cleanup.

Existing law authorizes an oil spill response organization (OSRO) to apply to the administrator for a rating of its response capabilities. Upon receiving a completed application for a rating, existing law requires the administrator to review the application and rate the OSRO based on the OSRO's satisfactory compliance with criteria established by the administrator.

This bill would require the administrator to establish a database available on the Internet Web site of the Office of Spill Prevention and Response containing each OSRO's information on the location of prepositioned equipment and personnel available to respond to an oil spill. The bill would require the administrator to update this information annually.

Existing law with regard to fish generally makes it unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this state any of certain listed petroleum products. Existing law authorizes the Department of Fish and Game to clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, to order any person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

This bill would require the Director of Fish and Game, within not more than 24 hours of notification of a spill of oil or other petroleum product or of any toxic substance, as described, to close certain waters to the take of all fish and shellfish. The bill would require the director, *in consultation with the Office of Environmental Health Hazard Assessment*, to make specific determinations with regard to the spill

within 48 hours. The director would be required, after complying with the above provisions, but in no event in less than 7 days from notification of the spill, to order expedited tests of fish and shellfish known to be taken for commercial, recreational, or subsistence purposes in the closed area, to determine the levels of contamination, if any, and whether the fish or shellfish are safe and desirable for human consumption. The bill would require ~~the director~~ *if the Office of Environmental Health Hazard Assessment recommends to the director and he or she concurs*, within not more than 24 hours of receiving the results of the tests, and subject to certain findings, ~~to reopen~~ *that the closed areas be reopened*. The bill would require the director to seek full reimbursement from the responsible party or parties for the spill for all reasonable costs incurred by the department in carrying out these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 5654 is added to the Fish and Game Code,
 2 to read:
 3 5654. (a) The director, within not more than 24 hours of
 4 notification of a spill of oil or other petroleum product, or any
 5 toxic substance, into any waters of the state, including, but not
 6 limited to, ocean waters, in the amount of 42 gallons or more,
 7 where any fishing, including all commercial, recreational, and
 8 nonlicensed subsistence fishing, may take place, or where
 9 aquaculture operations are taking place, shall close to the take of
 10 all fish and shellfish all waters in the vicinity of the spill or where
 11 the spilled material has spread, or is likely to spread. At the time
 12 of closure, the department shall make all reasonable efforts to
 13 notify the public of the closure, including notification to
 14 commercial and recreational fishing organizations, and posting of
 15 warnings on public piers and other locations where subsistence
 16 fishing is known to occur. The department shall coordinate, when
 17 possible, with local and regional agencies and organizations to
 18 expedite public notification.
 19 (b) Within 48 hours of notification of a spill subject to
 20 subdivision (a), the director, *in consultation with the Office of*
 21 *Environmental Health Hazard Assessment*, shall make an
 22 assessment and determine all of the following:

1 (1) The danger posed to the public from fishing in the area of
 2 where the spill occurred or spread, the danger of consuming fish
 3 taken in the area where the spill occurred or spread, and the
 4 potential danger from fish onboard a vessel becoming contaminated
 5 by the vessel’s movement through an area where the spill occurred
 6 or spread.

7 (2) Whether the areas closed for the take of fish or shellfish
 8 should be expanded to prevent any potential take or consumption
 9 of any fish or shellfish that may have been contaminated by the
 10 spill.

11 (3) The likely period for maintaining a closure on the take of
 12 fish and shellfish in order to prevent any possible contaminated
 13 fish or shellfish from being taken or consumed or other threats to
 14 human health.

15 (c) After complying with subdivisions (a) and (b), the director,
 16 in consultation with the Office of Environmental Health Hazard
 17 Assessment, but in no event in less than seven days from
 18 notification of the spill, shall order expedited tests of fish and
 19 shellfish known to be taken for commercial, recreational, or
 20 subsistence purposes in the closed area, to determine the levels of
 21 contamination, if any, and whether the fish or shellfish are safe
 22 and desirable for human consumption.

23 (d) Within not more than 24 hours of receiving the results of
 24 the tests ordered pursuant to subdivision (c), if the ~~director finds~~
 25 *Office of Environmental Health Hazard Assessment recommends*
 26 *to the director and the director concurs* that no threat to human
 27 health exists or that no contaminant from the spill is present ~~to~~
 28 ~~taint that that could contaminate~~ fish or shellfish, he or she shall
 29 reopen all of the areas closed pursuant to this section, excepting
 30 any remaining portion of the closed area where he or she finds
 31 contamination from the spill persists that may adversely affect
 32 human health or, in the case of commercial fishing and aquaculture,
 33 the marketability of the fish or shellfish. *In determining whether*
 34 *contamination persists that may adversely affect the marketability*
 35 *of commercial fish, shellfish, OR aquaculture, the department may*
 36 *consider, but is not limited to both of the following:*

37 (1) *Whether there is any detectable contaminant still present*
 38 *that may adversely affect the quality of the fish or shellfish being*
 39 *marketed, including any adverse affects on odor, taste, coloration,*
 40 *or any other detectable affect on the quality of the fish or shellfish.*

1 (2) *Whether the presence of any detectable amount of*
2 *contamination has the effect of otherwise rendering the fish or*
3 *shellfish commercially unmarketable.*

4 (e) To the extent feasible, the director shall consult with
5 representatives of commercial and recreational fishing associations
6 and subsistence fishing communities regarding the extent and
7 duration of a closure, testing protocols, and findings. If a spill
8 occurs within the lands governed by a tribe or affecting waters
9 flowing through tribal lands, or tribal fisheries, the director shall
10 consult with the affected tribal governments.

11 (f) The director shall seek full reimbursement from the
12 responsible party or parties for the spill for all reasonable costs
13 incurred by the department in carrying out this section, including,
14 but not limited to, all testing.

15 SEC. 2. Section 8574.7 of the Government Code is amended
16 to read:

17 8574.7. The Governor shall require the administrator, in
18 consultation with the State Interagency Oil Spill Committee and
19 not in conflict with the National Contingency Plan, to amend the
20 California oil spill contingency plan by adding a marine oil spill
21 contingency planning section that provides for the best achievable
22 protection of the coast and marine waters. "Administrator" for
23 purposes of this section means the administrator appointed by the
24 Governor pursuant to Section 8670.4. The marine oil spill
25 contingency planning section shall consist of all of the following
26 elements:

27 (a) A state marine response element that specifies the hierarchy
28 for state and local agency response to an oil spill. The element
29 shall define the necessary tasks for oversight and control of cleanup
30 and removal activities associated with a marine oil spill and shall
31 specify each agency's particular responsibility in carrying out these
32 tasks. The element shall also include an organizational chart of
33 the state marine oil spill response organization and a definition of
34 the resources, capabilities, and response assignments of each
35 agency involved in cleanup and removal actions in a marine oil
36 spill.

37 (b) A regional and local planning element that shall provide the
38 framework for the involvement of regional and local agencies in
39 the state effort to respond to a marine oil spill, and shall ensure

- 1 the effective and efficient use of regional and local resources in
2 all of the following:
- 3 (1) Traffic and crowd control.
 - 4 (2) Firefighting.
 - 5 (3) Boating traffic control.
 - 6 (4) Radio and communications control and provision of access
7 to equipment.
 - 8 (5) Identification and use of available local and regional
9 equipment or other resources suitable for use in cleanup and
10 removal actions.
 - 11 (6) Identification of private and volunteer resources or personnel
12 with special or unique capabilities relating to marine oil spill
13 cleanup and removal actions.
 - 14 (7) Provision of medical emergency services.
- 15 (c) A coastal protection element that establishes the state
16 standards for coastline protection. The administrator, in
17 consultation with the State Interagency Oil Spill Committee, the
18 Coast Guard and Navy, and the shipping industry, shall develop
19 criteria for coastline protection. If appropriate, the administrator
20 shall consult with representatives from the States of Alaska,
21 Washington, and Oregon, the Province of British Columbia in
22 Canada, and the Republic of Mexico. The criteria shall designate
23 at least all of the following:
- 24 (1) Appropriate shipping lanes and navigational aids for tankers,
25 barges, and other commercial vessels to reduce the likelihood of
26 collisions between tankers, barges, and other commercial vessels.
27 Designated shipping lanes shall be located off the coastline at a
28 distance sufficient to significantly reduce the likelihood that
29 disabled vessels will run aground along the coast of the state.
 - 30 (2) Ship position reporting and communications requirements.
 - 31 (3) Required predeployment of protective equipment for
32 sensitive environmental areas along the coastline.
 - 33 (4) Required emergency response vessels that are capable of
34 preventing disabled tankers from running aground.
 - 35 (5) Required emergency response vessels that are capable of
36 commencing oil cleanup operations before spilled oil can reach
37 the shoreline.
 - 38 (6) An expedited decisionmaking process for dispersant use in
39 coastal waters. Prior to adoption of the process, the administrator
40 shall ensure that a comprehensive testing program is carried out

1 for any dispersant proposed for use in California marine waters.
2 The testing program shall evaluate toxicity and effectiveness of
3 the dispersants.

4 (7) Required rehabilitation facilities for wildlife injured by
5 spilled oil.

6 (8) An assessment of how activities that usually require a permit
7 from a state or local agency may be expedited or issued by the
8 administrator in the event of an oil spill.

9 (d) An environmentally and ecologically sensitive areas element
10 that shall provide the framework for prioritizing and ensuring the
11 protection of environmentally and ecologically sensitive areas.
12 The environmentally and ecologically sensitive areas element shall
13 be developed by the administrator, in conjunction with appropriate
14 local agencies, and shall include all of the following:

15 (1) Identification and prioritization of environmentally and
16 ecologically sensitive areas in marine waters and along the coast.
17 Identification and prioritization of environmentally and ecologically
18 sensitive areas shall not prevent or excuse the use of all reasonably
19 available containment and cleanup resources from being used to
20 protect every environmentally and ecologically sensitive area
21 possible. Environmentally and ecologically sensitive areas shall
22 be prioritized through the evaluation of criteria including, but not
23 limited to, all of the following:

24 (A) Risk of contamination by oil after a spill.

25 (B) Environmental, ecological, recreational, and economic
26 importance.

27 (C) Risk of public exposure should the area be contaminated.

28 (2) Regional maps depicting environmentally and ecologically
29 sensitive areas in marine waters or along the coast that shall be
30 distributed to facilities and local and state agencies. The maps shall
31 designate those areas that have particularly high priority for
32 protection against oil spills.

33 (3) A plan for protection actions required to be taken in the
34 event of an oil spill for each of the environmentally and
35 ecologically sensitive areas and protection priorities for the first
36 24 to 48 hours after an oil spill shall be specified.

37 (4) The location of available response equipment and the
38 availability of trained personnel to deploy the equipment to protect
39 the priority environmentally and ecologically sensitive areas.

1 (5) A program for systemically testing and revising, if necessary,
2 protection strategies for each of the priority environmentally and
3 ecologically sensitive areas.

4 (e) An element that shall consider the utilization of private
5 working craft and mariners, including commercial fishing vessels
6 and licensed commercial fishing men and women in all plans for
7 containment and cleanup.

8 SEC. 3. Section 8670.15 is added to the Government Code, to
9 read:

10 8670.15. The administrator shall establish a database available
11 on the Internet Web site of the Office of Spill Prevention and
12 Response containing each OSRO's information on the location of
13 prepositioned equipment and personnel available to respond to an
14 oil spill. The administrator shall update this information annually.