

Assembly Bill No. 3044

Passed the Assembly August 30, 1996

Chief Clerk of the Assembly

Passed the Senate August 26, 1996

Secretary of the Senate

This bill was received by the Governor this ___ day
of _____, 1996, at ___ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Section 8670.7 of the Government Code, and to add Division 37.5 (commencing with Section 57050) to the Health and Safety Code, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 3044, Olberg. Oil spills: repair or maintenance projects: consolidated permits.

(1) Under existing law, the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, the administrator for oil spill response exercises authority pertaining to the prevention of, and response to, oil spills in marine waters and pertaining to oil spill contingency planning.

This bill would require the administrator to coordinate all actions required by state or local agencies, as defined, to assess injury to, and provide full mitigation for, or restore, rehabilitate, or replace, natural resources, that are damaged by an oil spill. The bill would require the responsible party to be liable for all coordination costs incurred by the administrator, and would specify related matters.

(2) Various environmental protection laws regulate the condition of facilities and structures to prevent injury to persons or damage to the environment. Existing law, the Environmental Protection Permit Reform Act of 1993, requires the Secretary for Environmental Protection to establish an administrative process which may be used, at the request of a permit applicant for a project, defined as an activity, the conduct of which requires an environmental permit from 2 or more environmental agencies, as defined, for the designation of a consolidated permit agency for the project.

This bill would authorize any responsible party, as defined, to request a permit assistance center operated by the office of the secretary to designate a consolidated permit agency, as defined, for a repair or maintenance project, as defined, to administer the processing and



issuance of a consolidated permit for the project. The bill would prescribe related procedures, specify related matters, and make related legislative findings and declarations.

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

SECTION 1. Section 8670.7 of the Government Code is amended to read:

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

(b) The administrator shall implement the state oil spill contingency plan, required pursuant to Section 8574.1, to the fullest extent possible.

(c) The administrator shall do all of the following:

(1) The administrator shall be present at the location of any oil spill of more than 100,000 gallons in marine waters, as soon as possible after notice of the discharge.

(2) The administrator shall ensure that persons trained in oil spill response and cleanup, whether employed by the responsible party, the state, or another private or public person or entity, are onsite to respond to, contain, and clean up any oil spill in marine waters, as soon as possible after notice of the discharge.

(d) Throughout the response and cleanup process, the administrator shall apprise the members of the State Interagency Oil Spill Committee, the air quality management district or air pollution control district having jurisdiction over the area in which the oil spill occurred, and the local government entities which are affected by the spill.

(e) The administrator, with the assistance of the State Fire Marshal, the State Lands Commission, and the



federal on-scene coordinator, shall determine the cause and amount of the discharge.

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

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

(2) Within 90 days following the conclusion of the workshops, or by June 30, 1996, whichever occurs first, the administrator shall publish decision guidelines on the policies, procedures, and parameters for the use of in situ burning, which may be implemented in the event of an oil spill. The administrator shall, by whichever of those dates occurs first, additionally publish a schedule for future workshops to be held to develop guidelines for the use of other identified technologies.

(h) (1) The administrator shall ensure that, as part of the response to any significant spill, biologists or other personnel are present and provided any support and funding necessary and appropriate for the assessment of damages to natural resources and for the collection of



data and other evidence which may help in determining and recovering damages.

(2) (A) The administrator shall coordinate all actions required by state or local agencies to assess injury to, and provide full mitigation for injury to, or to restore, rehabilitate, or replace, natural resources, including wildlife, fisheries, wildlife or fisheries habitat, and beaches and other coastal areas, that are damaged by an oil spill. For purposes of this subparagraph, “actions required by state or local agencies” include, but are not limited to, actions required by state trustees under Section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. Sec. 2706) and actions required pursuant to Section 8670.61.5.

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

(3) Nothing in this subdivision shall be construed to give the administrator any authority to administer state or local laws or to limit the authority of another state or local agency to implement and enforce state or local laws under its jurisdiction, nor does this subdivision limit the authority or duties of the administrator under this chapter or limit the authority of an agency to enforce existing permits or permit conditions.

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

(2) The memorandum of understanding entered into pursuant to paragraph (1) shall address any permits, requirements, or authorizations that are required for the specified discharges. The memorandum of understanding shall be consistent with requirements that protect state water quality and beneficial uses and with



any applicable provisions of the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) or the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and shall expedite efficient oil spill response.

(3) The memorandum of understanding shall be completed by May 15, 1994.

SEC. 2. Division 37.5 (commencing with Section 57050) is added to the Health and Safety Code, to read:

DIVISION 37.5. REPAIR OR MAINTENANCE
PROJECTS

CHAPTER 1. GENERAL PROVISIONS

Article 1. Legislative Declarations

57050. The Legislature hereby finds and declares all of the following:

(a) The failure to properly repair and maintain commercial and industrial facilities or structures can pose a threat to public health or safety or to the environment that can be prevented through expeditious and coordinated agency action.

(b) There is an urgent need to implement repair or maintenance projects, as defined in subdivision (g) of Section 57051 as quickly and as effectively as possible to avoid potential threats to public health or safety or to the environment.

(c) It is the intent of this division to provide, at the request of a responsible party, a mechanism that can ensure that the permits required to carry out necessary repair or maintenance projects at commercial or industrial facilities or structures will be issued in an expeditious, timely, and coordinated manner and will be consistent with one another.



Article 2. Definitions

57051. For purposes of this division, the following terms have the following meaning:

(a) “Consolidated permit” means a permit incorporating permits for a repair or maintenance project and issued in a single permit document by the consolidated permit agency.

(b) “Consolidated permit agency” means the public agency that has the greatest overall jurisdiction over a repair or maintenance project, as determined pursuant to Section 57053.

(c) “Office” means the permit assistance centers operated by the office of the Secretary for Environmental Protection.

(d) “Participating permit agency” means a public agency, other than the consolidated permit agency, that is responsible for the issuance of a repair or maintenance project permit.

(e) “Public agency” means any state or local agency that has jurisdiction under state or local law to approve a repair or maintenance project.

(f) “Repair or maintenance project permit” means any license, certificate, registration, permit, or other form of authorization required by a public agency to carry out a repair and maintenance project.

(g) “Repair or maintenance project” means a project to repair or maintain an existing commercial or industrial facility or structure that would not involve or allow an addition to, or an enlargement or expansion of, the use of the facility or structure when the failure to repair or maintain that facility or structure would potentially cause a violation of any law or regulation intended for the protection of human health or safety, or the environment.

(h) “Responsible party” means the owner or lessee or operator of the facility or structure proposed to be repaired or maintained pursuant to a repair or maintenance project.



CHAPTER 2. REPAIR OR MAINTENANCE PROJECTS

57053. (a) Any responsible party may request the office to designate a consolidated permit agency for a repair or maintenance project to administer the processing and issuance of a consolidated permit for the repair or maintenance project subject to this division. The office is not authorized to act pursuant to this chapter in the absence of a request by a responsible party. The office shall designate a consolidated permit agency within 30 days from the date that the request was received.

(b) A responsible party that requests the designation of a consolidated permit agency shall provide the office with a description of the repair or maintenance project, a preliminary list of the repair or maintenance project permits that the repair or maintenance project may require, the identity of any public agency that has been designated the lead agency for the repair or maintenance project pursuant to Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code or Division 13 (commencing with Section 21000) of the Public Resources Code, and the identity of the participating permit agencies. The office may request any information from the responsible party that is necessary to make the designation under subdivision (a), and may convene a scoping meeting of the likely consolidated permit agency and participating permit agencies to make that designation.

(c) In those cases where a public agency is the lead agency for purposes of Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code or Division 13 (commencing with Section 21000) of the Public Resources Code, that agency shall be the consolidated permit agency. In other cases, the following factors shall be considered in determining which public agency has the greatest overall jurisdiction over the repair or maintenance project:

(1) The type of facility or structure that is the subject of the proposed repair or maintenance project.



(2) The nature of the threat that a failure to repair and maintain the structure or facility poses to public health or safety or to the environment, including the environmental medium that may be affected by a failure to repair and maintain the structure or facility.

(3) The environmental and human health and safety concerns that should be considered in properly carrying out the repair or maintenance project.

(4) The statutory and regulatory standards applicable to the repair or maintenance project.

(d) The consolidated permit agency shall serve as the main point of contact for the responsible party with regard to the processing of the consolidated permit for the repair or maintenance project and shall coordinate the procedural aspects of the processing consistent with existing laws governing the consolidated permit agency and participating permit agencies, and with the procedures agreed to by those agencies in accordance with Section 57053.1. In carrying out those responsibilities, the consolidated permit agency shall ensure that consolidated permit applicant has all of the information needed to apply for all of the component repair or maintenance project permits that are incorporated in the consolidated permit, coordinate the review of those repair or maintenance project permits by the respective participating permit agencies, ensure that timely permit decisions are made by the participating permit agencies, and assist in resolving any conflict or inconsistency among the repair or maintenance project permit requirements and conditions that are to be imposed by the participating permit agencies with regard to the repair or maintenance project.

(e) This division shall not be construed to limit or abridge the authority or responsibilities of any participating permit agency pursuant to the law that authorizes or requires the agency to issue a permit for a repair or maintenance project or to grant any agency any new powers independent of those granted by other laws. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural



matters with regard to the respective component repair or maintenance project permit that is within the scope of its authority or responsibility, including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial. The consolidated permit agency may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters.

57053.1. (a) Within 15 working days of the date that the consolidated permit agency is designated, the consolidated permit agency shall convene a meeting with the consolidated permit applicant for the repair or maintenance project and with the participating permit agencies. The meeting agenda shall include at least all of the following matters:

(1) A determination of the repair or maintenance project permits that are required for the repair or maintenance project.

(2) A review of the permit application forms and other application requirements of the agencies that are participating in the consolidated permit process.

(3) A discussion of the option available to the permit applicant to use the consolidated permit application form that is authorized by subdivision (e) or (f) of Section 15399.56 of the Government Code in lieu of the separate application forms for each component repair or maintenance project permit that would be provided by the consolidated permit agency and the participating permit agencies.

(4) The setting of time limits that will be applicable to the consolidated permit agency and each participating permit agency in making consolidated and repair or maintenance project permit decisions, including the time periods required to determine if the repair or maintenance project permit applications are complete or the consolidated permit application is complete, to review the application or applications, and to process the component repair or maintenance project permits, and the timelines that will be used by the consolidated permit



agency to aggregate the component repair or maintenance project permits into, and to issue, the consolidated permit. Notwithstanding Chapter 3 (commencing with Section 15374) of Part 6.7 of Division 3 of Title 2 of the Government Code, and Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, the timelines established pursuant to this paragraph may, with the assent of the consolidated permit agency and each participating permit agency, commit the consolidated permit agency and each participating permit agency to act on the component repair or maintenance project permit within time periods that are different than those required by Sections 65950 and 65952 of the Government Code, subdivisions (a) and (b) of Section 15376 of the Government Code, or other applicable provisions of law. However, no accelerated time period for the consideration of a repair or maintenance project permit application may be set if that accelerated time period would be inconsistent with, or in conflict with, any time period or series of time periods set by statute for that consideration, or with any statute, rule, or regulation, or adopted state policy, standard, or guideline, which require any of the following:

(A) Other agencies, interested persons, or the public to be given adequate notice of the application.

(B) Other agencies to be given a role in, or be allowed to participate in, the decision to approve or disapprove the application.

(C) Interested persons or the public to be provided the opportunity to challenge, comment on, or otherwise voice their concerns regarding the application.

(5) The scheduling of any public hearings that are required to issue repair or maintenance project permits for the repair or maintenance project and a determination of the feasibility of coordinating or consolidating any of those required public hearings.

(6) A discussion of fee arrangements for the consolidated permit process, including an estimate of the



fee authorized under Section 57053.5 and the billing process.

(b) The consolidated permit agency may request any information from the consolidated permit applicant that is necessary to comply with its obligations under this division, consistent with the time limits set pursuant to paragraph (4) of subdivision (a).

(c) A summary of the decisions made pursuant to this section shall be made available for public review upon the filing of the consolidated permit application or repair or maintenance project permit applications.

57053.2. The consolidated permit applicant may withdraw from the consolidated permit process by submitting to the consolidated permit agency a written request that the process be terminated. Upon receipt of the request, the consolidated permit agency shall notify the office and each participating permit agency that a consolidated permit is no longer applicable to the repair or maintenance project.

57053.3. The consolidated permit agency shall coordinate the activities of the participating permit agencies in order that each participating permit agency is able to act on its component repair or maintenance project permits within the time limits set pursuant to paragraph (4) of subdivision (a) of Section 57053.1.

57053.4. Each repair or maintenance project permit incorporated in the consolidated permit shall have the legal status and the regulatory effect that is specified in the statute and regulations under which the repair or maintenance project permit would be separately issued and shall be administered and enforced by the public agency that would have separately issued it. Nothing in this chapter shall limit the authority of an agency to enforce existing permits or permit conditions.

57053.5. (a) A consolidated permit agency may charge and collect a reasonable fee from any person seeking a consolidated permit to recover the estimated costs incurred by the consolidated permit agency and the office in carrying out this division.



(b) The fees charged shall recover only the costs of performing those consolidated permit services and shall be either negotiated with the responsible party in the meeting convened pursuant to Section 57053.1 or set by the public agency in advance of its designation as a consolidated permit agency for the repair or maintenance project in a fee schedule adopted by the public agency for use in the event that the public agency is so designated. In addition, the billing process shall provide for accurate time and cost accounting and a billing cycle that provide for progress payments. Nothing in this section limits the ability of a participating agency or the office to collect appropriate fees.

57053.6. A petition by the responsible party for review of a public agency action in issuing, denying, or amending a repair or maintenance project permit, or any portion of a consolidated permit, shall, to resolve conflicts among the permit conditions, be submitted by the responsible party to the consolidated permit agency or the participating permit agency having jurisdiction over that portion of the consolidated permit and shall be processed in accordance with the procedures of that agency. The public agency receiving the petition shall, within 30 days from the date of receipt, notify the other public agencies participating in the original consolidated permit.

57053.7. If the consolidated permit applicant petitions for a significant amendment or modification to a consolidated permit application or any of its component repair or maintenance project permit applications, the consolidated permit agency shall reconvene a meeting of the participating permit agencies, conducted in accordance with Section 57053.1.

57053.8. If the consolidated permit applicant fails to provide information required for the processing of the component repair or maintenance project permit applications for a consolidated permit or for the designation of a consolidated permit agency, the time limits set pursuant to paragraph (4) of subdivision (a) of Section 57053.1 shall be tolled until such time as the information is provided.



57053.9. (a) On or before December 31, 1997, the office shall adopt regulations establishing an expedited appeals process by which a petitioner or responsible party may appeal any failure by a public agency to take timely action on the issuance or denial of a repair or maintenance project permit or consolidated permit in accordance with the time limits set pursuant to paragraph (4) of subdivision (a) of Section 57053.1.

(b) If the office finds that the time limits under appeal have been violated without good cause, the office shall establish a date certain by which the public agency shall act on the repair or maintenance project permit or consolidated permit application with adequate provision for the requirements described in subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (a) of Section 57053.1, and shall provide for the full reimbursement of any filing or permit processing fees paid by the responsible party to the public agency for the permit application under appeal. For purposes of this section, “good cause” shall have the same meaning as defined in subdivision (h) of Section 15376 of the Government Code.

(c) The determination of the office on an appeal shall be based only on procedural violations, including, but not limited to, the exceeding of time limits, not on any nonprocedural matter with regard to the repair or maintenance project permit, or permit application, or the consolidated permit, or consolidated permit application.

(d) In cases of a violation of time limits set pursuant to paragraph (4) of subdivision (a) of Section 57053.1, the determination of the office to order a reimbursement of any application fee pursuant to the regulations adopted pursuant to subdivision (a) shall only be applicable to the consolidated permit agency or to the participating permit agencies that are in violation of the time limits without showing good cause.

(e) An appeal taken pursuant to this section shall be only for violations of the time limits set pursuant to paragraph (4) of subdivision (a) of Section 57053.1.



Approved _____, 1996

Governor

