

ASSEMBLY BILL

No. 1363

Introduced by Assembly Member Alejo

February 18, 2011

An act to amend Section 8670.3 of the Government Code, relating to oil spill prevention and response.

LEGISLATIVE COUNSEL'S DIGEST

AB 1363, as introduced, Alejo. Lempert-Keene-Seastrand Oil Spill Prevention and Response Act: definitions.

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, preparedness, containment, and cleanup, as prescribed. The act defines specified terms for its purposes.

This bill would make various technical, nonsubstantive changes in those provisions defining terms for purposes of the act.

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

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

- 1 SECTION 1. Section 8670.3 of the Government Code is
- 2 amended to read:
- 3 8670.3. Unless the context requires otherwise, the following
- 4 definitions shall govern the construction of this chapter:
- 5 (a) "Administrator" means the administrator for oil spill response
- 6 who is appointed by the Governor pursuant to Section 8670.4.

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

- (A) The protection provided by the measure.
- (B) The technological achievability of the measure.
- (C) The cost of the measure.

(2) The administrator shall not use a cost-benefit or cost-effectiveness analysis or any particular method of analysis in determining to determine which measures provide the best achievable protection. The administrator shall instead, when determining which measures provide best achievable protection, give reasonable consideration to the protection provided by the measures, the technological achievability of the measures, and the cost of the measures when establishing the requirements to provide the best achievable protection for coastal and marine resources.

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

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

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

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

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

(e) “Director” means the Director of Fish and Game.

(f) “Environmentally sensitive area” means an area *that is* defined pursuant to the applicable area contingency plans, as created and revised by the Coast Guard and the administrator.

1 (g) “Inland spill” means a release of at least one barrel (42
2 gallons) of oil into inland waters that is not authorized by any
3 federal, state, or local governmental entity.

4 (h) “Inland waters” means waters of the state other than marine
5 waters, but not including groundwater.

6 (i) “Local government” means a chartered or general law city,
7 a chartered or general law county, or a city and county.

8 (j) (1) “Marine facility” means any facility of any kind, other
9 than a tank ship or tank barge, that is or was used for the purposes
10 of exploring for, drilling for, producing, storing, handling,
11 transferring, processing, refining, or transporting oil and is located
12 in marine waters, or is located where a discharge could impact
13 marine waters unless the facility is either of the following:

14 (A) Subject to Chapter 6.67 (commencing with Section 25270)
15 or Chapter 6.75 (commencing with Section 25299.10) of Division
16 20 of the Health and Safety Code.

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

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

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

24 (k) (1) “Marine terminal” means any marine facility used for
25 transferring oil to or from a tank ship or tank barge.

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

29 (l) “Marine waters” means those waters subject to tidal
30 influence, and includes the waterways used for waterborne
31 commercial vessel traffic to the Port of Sacramento and the Port
32 of Stockton.

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

37 (n) “Nondedicated response resources” means those response
38 resources identified by an Oil Spill Response Organization for oil
39 spill response activities that are not dedicated response resources.

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

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

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

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

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

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

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

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

(u) “Onshore facility” means a facility of any kind that is located entirely on lands not covered by marine waters.

(v) (1) “Owner” or “operator” means any of the following:

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

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

1 (C) Except as provided in subparagraph (D), in the case of a
2 vessel or marine facility, where title or control was conveyed due
3 to bankruptcy, foreclosure, tax delinquency, abandonment, or
4 similar means to an entity of state or local government, a person
5 who owned, held an ownership interest in, operated, or otherwise
6 controlled activities concerning the vessel or marine facility
7 immediately beforehand.

8 (D) An entity of the state or local government that acquired
9 ownership or control of a vessel or marine facility, when the entity
10 of the state or local government has caused or contributed to a spill
11 or discharge of oil into marine waters.

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

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

19 (w) "Person" means an individual, trust, firm, joint stock
20 company, or corporation, including, but not limited to, a
21 government corporation, partnership, and association. "Person"
22 also includes a city, county, city and county, district, and the state
23 or any department or agency thereof, and the federal government,
24 or any department or agency thereof, to the extent permitted by
25 law.

26 (x) "Pipeline" means a pipeline used at any time to transport
27 oil.

28 (y) "Reasonable worst case spill" means, for the purposes of
29 preparing contingency plans for a nontank vessel, the total volume
30 of the largest fuel tank on the nontank vessel.

31 (z) "Responsible party" or "party responsible" means any of
32 the following:

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

35 (2) The owner, operator, or lessee of, or a person that charters
36 by demise, a vessel or marine facility, or a person or entity
37 accepting responsibility for the vessel or marine facility.

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

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

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

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

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

(1) A mobile transfer unit.

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

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

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

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

(ad) “Spill” or “discharge” means a release of at least one barrel (42 gallons) of oil into marine waters that is not authorized by a federal, state, or local government entity.

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

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

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

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

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

- 1 (aj) “Vessel” means a watercraft or ship of any kind, including
- 2 every structure adapted to be navigated from place to place for the
- 3 transportation of merchandise or persons.
- 4 (ak) “Vessel carrying oil as secondary cargo” means a vessel
- 5 that does not carry oil as a primary cargo, but does carry oil in
- 6 bulk as cargo or cargo residue.